

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

Summary of the 73rd Session of the UN Committee on the Elimination of Racial Discrimination (CERD)

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Introduction

The Committee on the Elimination of Racial Discrimination (CERD) met in Geneva for its 73rd session from the 27th July to the 15th August 2008. The countries under review were Ecuador, Namibia, Togo, Russia, Austria, Germany, Switzerland and Sweden. Although Peru had not submitted a state report, CERD nevertheless undertook a brief review of the country, which focused upon the extraction of hydrocarbons from land belonging to indigenous peoples and the environmental damage being caused by this process. Belize, who were meant to have been the subject of a similar focused review, were provided with extra time and support to complete their state report. Finally, there was a lively thematic discussion on Special Measures between the Committee, Non-Government Organisations (NGOs) and representatives of state parties.

The Early Warning, Urgent Action Working Group of CERD also discussed a number of countries in closed sessions. As the result of issues that had come to the attention of the Working Group, either through NGO reports or through the concerns of members of CERD, it was decided to send letters to Canada, the Czech Republic, Italy, Panama, India, Brazil, the Philippines and Belize.

Situation of the Roma and other specific minority groups

Ecuador:

The situation of the Roma was brought up at length in the discussions on the Ecuadorian report. It was noted that there are 1,000 Roma peoples residing in the country.¹ Mr Avtonomov asked the Ecuadorian delegation whether all Roma persons living in the country were citizens of Ecuador, or if any were stateless. As Mr Thornberry later highlighted, paragraph 123 of the Ecuadorian state report indicates that the Roma are often regarded as “gypsies” rather than Ecuadorians and as a consequence are not appropriated sufficient human rights.²

In response to these questions from Mr Avtonomov and Mr Thornberry, the Ecuadorian delegation explained that a detailed answer would be submitted in writing to the Committee at a later date. However, after more questions from Mr Amir and Mr Thornberry, Mr Holguín of the Ecuadorian delegation confirmed that there were no stateless Roma in Ecuador. The delegation went on to explain that Roma with Ecuadorian nationality are treated as Ecuadorian citizens, while non-Ecuadorians are treated as foreign nationals. Mr Thornberry did however remind the Ecuadorian delegation that according to CERD’s General Recommendation 27, it is recommended that governments respect the right of the Roma to self-identification.

Mr Thornberry then drew attention to the claim that many Afro-Ecuadorians do not accept their own race.³ Mr Thornberry asked whether this was because of a refusal to admit their racial background, or of a fear to do so in case of discrimination. In relation to the acceptance of race, Mr Chalá of the Ecuadorian delegation answered that this was indeed a problem and that efforts were underway to sensitise Ecuadorians to ethnic and racial backgrounds.

Russia:

¹ CERD/C/ECU/19, para. 121

² *Ibid.*, para. 123

³ *Ibid.*, para. 102

The discussion over the Roma in Russia was concentrated on allegations that Roma settlements had been destroyed within the country, yet very rarely was any resettlement being undertaken. Mr Sicilianos, the Country Rapporteur, suggested that although the settlements in question may have been unlawfully built, the situation is common throughout Europe. Mr Thornberry also raised the issue of education and the allegations that Roma children were being segregated into special classes and schools.

Mr Thornberry later asked the Russian delegation about the Laboratory to Socialise the Roma; his main concern being that he felt the attributed name did not give a positive impression. In response to this question, Ms Petrova explained that the name adequately described the work being undertaken there and was indicative of Russia's belief that education is vital to socialisation.

Relating to minority issues, Mr de Gouttes commented upon the 2007 report of Doudou Diène, the Special Rapporteur on Contemporary Forms of Racism, which highlighted allegations of discriminations against Roma, Georgians, non-Russian citizens, migrants and refugees within the country.

Germany:

On the Roma in Germany, Mr Diaconu commented on the fact that although Roma with German citizenship are considered a national minority, that protection disappears if they leave their settlements. Furthermore, non-German Roma are not considered a national minority and therefore are not afforded any protection. Mr Diaconu also noted biased media reporting in relation to Roma peoples. The answer from the German delegation indicated that the Roma and Sinti populations, for historical reasons, are protected no matter their location.

Mr De Gouttes also brought up the issue of a police statement defaming the Roma and asked what measures were being introduced to ensure such incidents are not repeated. Although the officers responsible for the article were later sanctioned, the German delegation confirmed that it would be providing more information to the Committee in writing at a later date.

There was some further criticism however from Mr Diaconu and Mr Lahiri, both of whom expressed concern at the fact that only a small number of ethnic groups in Germany are considered national minorities. Mr Lahiri pointed out that the Turkish populations of Germany do not have any specific protection against discrimination. Meanwhile, Mr Diaconu asked why Germany does not account for the ethnic background of populations, choosing instead to classify them by religious affiliation.

Austria:

There were various issues surrounding minorities in Austria; Mr Diaconu, the Country Rapporteur, and Mr Lahiri asked about the lack of accurate data on minorities coming from censuses. Mr Diaconu suggested that if censuses were not gaining adequate results, then changes need to be made to those surveys. Mr Thornberry noted the potential psychological reasons behind any refusal to partake in censuses, however he also recognised the fact that members of minorities are not always in consensus on the issue of data collection.

Switzerland:

Mr Sicilianos noted that Switzerland has rejected a recommendation by the Human Rights Council's Universal Periodic Review (UPR) to recruit ethnic minorities to its police forces, the reason given being one of federalism.

Mr Avtonomov asked about travellers in Switzerland and their status. He also asked about the composition of these travellers, whether they are simply Yiddish groups or whether Roma and Sinti populations also present in the country. Mr Avtonomov and Mr Thornberry enquired about the sedentary nature of the travellers, with Mr Thornberry asking further about whether travellers had been forced to end their nomadic traditions and settle. Mr Galizia of the Swiss delegation assured the Committee that the state had not forced travellers to end their sedentary ways but rather that declining economic conditions had led to the current state of affairs. He also explained that although Swiss travellers are mainly Yiddish, there are some Sinti and Roma communities, though the latter do not identify themselves as Roma for fear of discrimination.

Sweden:

Mr Kemal, the Country Rapporteur, noted that there has recently been a substantive amount of positive media attention surrounding the Roma. Mr Kemal commented that this was an important development as many Roma are fearful of admitting their ethnic background due to negative perceptions of their lifestyles. Furthermore, the Country Rapporteur also expressed his appreciation for the fact that 50% of the members of the Council of Roma in 2006 were Roma. However, Mr Kemal did point out that 80-90% of the Roma in Sweden are unemployed and 40% of Roma children do not attend school. Also on the subject of education, Mr Thornberry asked whether there was any inter-cultural teaching occurring between the Roma and other communities.

Situation of indigenous peoples

Ecuador:

In relation to Ecuador, the Country Rapporteur, Mr Cali Tzay, expressed concerns over the legal positions of the indigenous people in the country in relation to their ancestral land. In response, Ms Melo explained that indigenous peoples have the authority under Article 199 of the Ecuadorian constitution to impose justice over their communities and territories, providing that such justice does not contradict state or international law.

Namibia:

For the most part, the discussion surrounding minorities and indigenous people in Namibia was centred on the San people. Although much progress has been made in relation to integration of the San into society, including, as pointed out by Mr Lindgren, the establishment of mobile schools, issues were nevertheless raised by the Committee. In his observations, the Country Rapporteur, Mr Ewomsan, highlighted the fact that the San people still have the lowest life expectancy and remain the poorest people in Namibia. Mr Kemal reiterated this fact, pointing out that the human poverty index amongst the San bushmen is three times the rest of the population while the human development index is only a third that of the rest of Namibia. Furthermore, both Mr Sicilianos and Mr de Gouttes indicated that NGOs were reporting of continued discrimination against San Bushmen, with Mr Sicilianos commenting on the lack of San representation within the government.

Mr Thornberry asked whether there is any inter-state co-operation over the welfare of the San people. He explained that, as the rights reflected in Article 36 of the

Declaration on the Rights of Indigenous Peoples indicates, many indigenous communities are divided by State boundaries, meaning that they are not always viewed holistically.

Further questions were posed by Mr Kemal relating to the historical injustices suffered by the Damara and Herero peoples during the colonial period. He was appreciative to learn of ongoing negotiations between the Namibian and German governments on the issue of compensation for these peoples. Mr Thornberry also enquired about reparations offered to communities over the loss of land. CERD's General Recommendation 23 establishes standards for reparations and Mr Thornberry advised that Namibia use these standards as guidelines.

Togo:

In relation to Togo, not many issues surrounding indigenous peoples and minority groups were raised, although questions were asked by Mr de Gouttes on the legal status of Togo's indigenous peoples. The Togolese delegation answered that their state's definition of indigenous peoples was related to the ownership of land and that the current law of land ownership dates back to a decree of 1906, though this decree is in the process of being modernised.

Russia:

Mr Sicilianos and Mr Thornberry questioned the status of plans implemented by the Russian Federation in relation to indigenous representation and lands. Another issue, raised by Mr Cali Tzay amongst others, was the terminology used in the Russian state report; the measures described to aid indigenous peoples seemed to relate solely to those groups with fewer than 50,000 people. Mr Lahiri meanwhile questioned why Russia had still not ratified International Labour Organisation (ILO) Convention 169, while Mr Thornberry asked for a comment on Russia's abstention in General Assembly voting on adoption of the Declaration on the Rights of Indigenous Peoples in September 2007. The Russian delegation confirmed that would reply in writing to the concerns of Mr Lahiri and Mr Thornberry.

Mr Thornberry also asked about educational programmes in Russia and to what extent they were being developed in co-operation with indigenous peoples. Mr Kemal also commented on this point and also suggested improved co-operation between indigenous peoples and Russian authorities in relation to protection of the environment. The Russian delegation acknowledged the latter comment by Mr Kemal and said they would recommend this to their government. Mr Kemal also asked about the right of indigenous peoples to litigate if their rights are violated. According to the Russian delegation, indigenous peoples do receive the support of the Russian state, though it was admitted that such cases are sometimes difficult to resolve successfully when large companies, willing to spend large amounts of money to fight litigation, are involved.

Peru:

The situation of indigenous peoples in Peru in relation to mining and the extraction of hydrocarbons was of great concern to the Committee. Mr Amir asked whether the Peruvian government had taken into account the opinions of indigenous peoples affected by pollution from the mining and extraction processes. Mr De Gouttes posed a similar question but went on to ask whether any mining or extraction projects had been cancelled after objections from local peoples. Mr Aboul-Nasr also asked whether any indemnification was offered to indigenous peoples for damages done to their land.

Mr Sicilianos and Mr Avtonomov also questioned the stark contrast between the report of the Peruvian Delegation and the information provided in an NGO briefing which had taken place during the lunch break. Although the Peruvian delegation had described the situation as improving, the NGO report painted a radically different picture.

Sweden:

On the Sami peoples of Sweden, although Mr Kemal appreciated that work has been done to improve the influence of the Sami parliament, he noted that concerns still remained over the importance of the decisions delegated to it by the Swedish government. Furthermore, Mr Kemal and Mr Cali Tzay discussed allegations that the Sami are not receiving financial assistance from the government, though Mr Kemal was pleased to hear of state-funded healthcare.

Questions were also asked by the Country Rapporteur as to the progress of the Nordic Sami Convention. Mr Ternbo of the Swedish delegation answered that negotiations between Norway, Sweden and Finland were about begin over the draft convention. Furthermore, following a question by Mr Avtonomov on Russia's involvement, Mr Ternbo responded that Russian involvement would be welcomed, although it would probably have to wait until preliminary negotiations were concluded.

There was also an issue over the description of the Sami; Mr Kemal and Mr Sicilianos both believed that they would prefer to be referred to as an indigenous people rather than a national minority. However, the Swedish delegation answered that following requests by the Sami communities of Sweden, the Sami are recognised as both and indigenous and a minority people.

Mr Sicilianos also noted that the Swedish ombudsman's report on the Sami recommends similar actions as CERD did in 2004, including the ratification of ILO Convention 169. The Swedish delegation responded that although there are no current plans for the ratification of ILO Convention 169, improved Sami rights will be included in the Sami rights bill which is planned to be presented to parliament in 2010.

Discrimination based on descent

Germany:

Mr Avtonomov, Mr Ewomsan and Mr Lindgren asked about the lack of information relating to discrimination against non-Germans. Mr Avtonomov also noted that that Germany only collects information on religious discrimination and that as a result, little is known about racial discrimination in the country. He pointed out to the German delegation that discrimination does not just happen for religious reasons; Afro-descendants are also often persecuted. However, no information was presented in the report relating to such discrimination. Mr Peter also highlighted that there was no information relating to discrimination in Eastern Germany, yet reports indicated that there was a significant amount of persecution against Afro-descendants in that half of the country. Ms Siefker-Eberle apologised for the lack of information on Eastern Germany and provided the relevant data to the Secretariat.

Austria:

Mr Peter was appreciative of the inclusion of Afro-descendants and other, in the words of Mr Lindgren, "visible minorities" in the Viennese police force. Mr Ewomsan also commented on discrimination against Blacks in this country.

Switzerland:

Mr Prosper referred to the continued discrimination against Blacks in Switzerland. He mentioned that this issue was discussed at the previous periodical view yet racist attitudes still remain. Mr Lindgren later highlighted an issue surrounding a particular example of political propaganda which showed a white sheep kicking a black sheep in order to protect Switzerland. Mr Lindgren asked how the Swiss delegation could defend such propaganda on the basis of freedom of expression.

Mr Peter referred to the Black community in Switzerland, which includes 37,000 Swiss nationals who remain anxious despite citizenship, due to persistent discrimination. There are many examples of Blacks being excluded from bars, clubs and more critically, employment opportunities. Mr Peter asked if there was a state policy in place against Blacks. Mr Ewomsan also expressed concern over the treatment of Blacks in Switzerland. He recalled how he had been discriminated against twice in the country. Mr Martinez also noted that when he was disembarking from an aircraft in Geneva, the only two passengers stopped for passport checks were Afro-descendants.

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

The 73rd session of CERD did not feature significant reports on discrimination against women belonging to minorities, indigenous women and migrant women. Commenting on Ecuador Mr. Lindgren asked for clarification of the practice of femicide against indigenous women.

Mr Peter enquired whether the husbands and offspring of Namibian females were entitled to receive Namibian citizenship in the same manner as spouses and children of Namibian men. In the case of Togo, Mr Ewomsan requested information on efforts to counter negative cultural practices relating to education of girls, encouraging the Togolese government to consider lower entry requirements for girls to correct historic inequalities. Further to this Mr Peter questioned what appeared to be laws allowing female minors to enter marriage without parental consent. Mr Aboul-Nasr however stressed that the emphasis on the rights of girls was beyond the legal scope of the Committee.

Land, economic, and social rights

Land, economic, social and cultural rights of indigenous peoples, national minorities and immigrants featured prominently during discussions on Ecuador, Namibia, Togo, Russia, Sweden, and Peru. The use and distribution of the benefits of sub-soil resources are dealt with under the jurisprudence relating to ILO Convention 169, which stipulates that the free, prior and informed consent of indigenous and tribal peoples is necessary for exploitation of such resources on their lands.

Ecuador:

The issue of consultation with indigenous peoples and Afro-descendants regarding economic exploitation of their lands was a point of contention in Ecuador. Mr Cali Tzay noted an imbalance in the administration of government projects designed to address social issues among indigenous people and Afro-Ecuadorians, with the state party itself admitting 90% of such projects were directed at indigenous people and only 10% at Afro-Ecuadorians. Mr Cali Tzay also stressed the state party's obligation to obtain free,

prior and informed consent from these two groups under ILO Convention 169 before exploiting resources on their lands.

Namibia:

In the case of Namibia land rights of the San people provoked significant discussion where it was noted by Committee members Mr Ewomsan and Mr Kemal that just 1/5 of the San had land rights despite living entirely off agriculture. Mr Lahiri expressed concern over the fact that Namibia's land distribution and ownership remained racially skewed 20 years after independence, particularly in respect of the San people. Mr Sicilianos voiced concern over the low income, low education and low life expectancy of the San compared to the rest of the population. Despite this CERD questioned the feasibility of Namibia's 5 million hectare land acquisition plan. The land acquisition plan is intended to restore land rights of different Namibian ethnic groups which was lost during the process of colonialism, but with particular emphasis on the San who have been more intensely affected by the history of colonialism. Mr Kemal noted that the country's property legislation and its adherence to the "willing buyer/willing seller" principle may stagnate such a plan.

Togo:

The primary concern in the case of Togo was expressed by Mr Diaconu who requested information on the status of collective property rights. Also Mr Amir opined that the problem of development facing Togo in particular and the African continent in general, was deeply rooted in problems stemming from land rights.

Russia:

A lack of residence registration for Roma was seen as an impediment to their enjoyment of economic, social and cultural rights. In light of this fact, Committee member Mr Sicilianos stressed that the Russian government could not refuse to register Roma. Taking note of the link between registration and settlements, Mr. Sicilianos suggested to the state party that Roma settlements could not be destroyed on evidence of illegality alone, because of the resultant negative impact this had on Roma enjoyment of economic, social and cultural rights.

Sweden:

On Sami land rights Mr Sicilianos asked for clarification of the delay in presenting the report drafted by the boundary commission on fishing and hunting rights as it had been completed in 2004 but was scheduled for presentation in 2010. He indicated that Sweden may be advised to consider an analogous bill introduced in Norway on this issue. Mr Thornberry noted the loss of several Sami land claims in court might result in *de facto* loss of land rights. He also advised the state party the burden of proof for land claims was excessive and needed to be revisited. Committee member Mr Sicilianos noted that the expense of litigation constituted a significant impediment to the pursuit of land rights by the Sami.

Peru:

Examination of the situation of land and economic rights in Peru surrounded the state party's exploitation of oil reserves in the Achua region. The granting of oil drilling licenses covering the entire territory of the Achua people prompted Mr. Thornberry to remind the state party of its obligation to secure free, prior and informed consent of indigenous peoples before subsoil resources are exploited on their lands, under ILO

Convention 169. The issue of land rights and its effect on economic and social rights were not significant in the reports of Germany, Switzerland and Austria.

Anti-racism legislation

Anti-racism legislation was an area of significant discussion for Russia, Namibia, Sweden, Germany, Austria and Switzerland, although each country stood out for quite different reasons. Mr Diaconu expressed concern over the lack of sufficient anti-discrimination legislation in Togo and Switzerland. Russia's sector by sector approach to anti-discrimination legislation and the lack of implementation was deemed problematic and to frustrate proper implementation of the convention. Mr Prosper and Mr Peter also noted the high incidences of racially motivated attacks and low prosecution rate suggested problems of implementation in Russia, despite the proliferation of legislation and regulations. In addition, the Committee suggested Sweden, Austria, Switzerland and Germany make racist motivation an aggravating circumstance in criminal offences.

Ecuador:

Committee member Mr Thornberry raised the implementation of 'self identification' in Ecuador as problematic and highlighted Article 169 of the ILO Convention 169 to the state party. The delineation of collective rights as stated in the constitution was also of concern to Committee member Mr Martinez while Mr Amir noted constitutional references to "black" as terminology for Afro descendants could constitute discrimination despite positive efforts by sections of the Afro-Ecuadorian community to reclaim the term as part of their identity. In relation to this Mr Thornberry noted the need for caution so as not to reproduce racist discourse in legislation.

Namibia:

In the case of Namibia Mr De Gouttes and Mr Avtonomov expressed concern that a high court decision on freedom of speech in 1998 had led to a more restrictive interpretation of racial discrimination than the previous 1991 law and had eroded the application of Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) constituting a defacto impediment to prosecution of racially motivated crimes. Mr Diaconu noted with regard to this issue that the provisions of Article 4 should be seen as imperative and compatible with freedom of expression.

Togo:

Mr. Diaconu expressed concern over the lack of sufficient anti-discrimination legislation in Togo and remained unconvinced by claims that international law is directly applicable in its national courts, suggesting that the situation did not fully comply with Article 4 of the ICERD. Here Country Rapporteur Mr De Gouttes was interested in whether the ICERD convention was directly applicable in Togolese courts. Mr De Gouttes also indicated an interest as to whether Togo was applying the rule contained in Article 7 of its constitution which prohibits the formation of ethnic political parties. He was also interested in when the new criminal code containing a definition of racial discrimination would be adopted, noting that it only partially responded to Article 4 of ICERD.

Russia:

Mr Diaconu noted that the issue of the definition of racial discrimination needed to be reopened as the definition in the current Russian penal code was not in line with the

intent of Article 1 of ICERD. Mr Sicilianos' comments were contradictory as he considered the definition in the new penal code in line with Article 1 of the convention. While ICERD was directly applicable at the municipal level, Committee member Mr Sicilianos was concerned about the absence of concrete examples of the implementation of the law. Russia's sector by sector approach to dealing with anti-discrimination legislation was of concern to Committee member Mr. Sicilianos who noted that the European Union Commission Against Racism had expressed similar concerns.

In addition to the above countries it was noted by Country Rapporteur on Switzerland Mr. Prosper that ambiguity of interpretation of the separation of powers between the cantons and the federal authorities frustrated the implementation of the convention and the even application of anti discrimination legislation.

Sweden:

Sweden received praise for codifying seven separate pieces of discrimination legislation into one act, but there was concern about hate crime laws which target individuals in groups propagating hate speech, but do not criminalize such groups. Sweden was advised to enact laws criminalising racist organizations and not just individual participants. Mr. Sicilianos also requested clarification on a peculiarity of Swedish legislation which permitted special measures in employment while prohibiting it in other areas of law. Mr Thornberry stressed that while one dispute of Sami rights did not constitute a violation of the convention, cumulatively such decisions may affect their ability to enjoy their rights particularly with regard to self determination. Though no specific cases were cited by Committee members, the case of Ivan Kitok with regard to reindeer farming as intrinsically linked to the definition of a Sami person in Swedish Reindeer Husbandry Act of 1971 is instructive.⁴ Its outcome was considered under the International Covenant on Civil and Political Rights (CCPR) of the United Nations (UN) is an example of the ways in which individual Sami may lose their land rights.⁵ Additionally Mr Thornberry questioned whether there was a doctrine of terra nullius in the historical expansion of the Swedish state over Sami land. Mr Cali Tzay drew the delegation's attention to the lack of interpreters during trial for criminal defendants who do not speak Swedish and the need to comply with General Recommendation 31 guidelines on the prevention of discrimination in the criminal justice system, to ensure access to justice without discrimination. Mr Lahiri advised the state party that CERD takes the position that lack of disaggregated statistics may indicate a denial of problems with racial discrimination and asked the reason for their reluctance to collect such statistics to fulfil ICERD obligations.

National human rights commissions/ombudspersons

One of the main issues surrounding each country's Ombudspersons was the number of complaints made to them. Mr Avtonomov noted that para. 20 and 35 of the Ecuadorian state report indicated that very few complaints have been received. Mr de Gouttes brought up a similar issue with paragraphs 176 and 351 of the Togolese state

⁴ CCPR. 'View of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil & Political Rights Thirty-Third- Session'. Communication No. 197/1985:Sweden. 10/08/88 CCPR/C/33/D/197/1985. (Jurisprudence).

([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d9332db8dfce2f63c1256ab50052d2ff?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d9332db8dfce2f63c1256ab50052d2ff?Opendocument))

⁵ Ibid.

report. Mr Avtonomov meanwhile, noted that although a similar shortfall was present in the Russian state report, the Russian delegation had acknowledged that this could possibly be attributed to a lack of public awareness regarding the relevant authorities. Mr Sicilianos, the Country Rapporteur for Russia, asked for more information on this lack of public awareness.

Austria:

Mr Peter asked Ms Kussbach, the representative of the Austrian Ombudsman, if she felt that her office needed more power in order to be more efficient and effective. Ms Kussbach admitted that there were issues of staffing as her office only had three permanent staff and one part-time member to deal with the entire of Austria. Furthermore, the absence of regional offices meant that the majority of complaints received were concentrated around Vienna, where the Ombudsman's office is located. Mr Diaconu, the Country Rapporteur, also noted that as NGOs have the right to represent according clients in court, the Ombudsman should at least deserve parity.

Switzerland:

Mr Prosper highlighted the fact that during CERD's 2002 periodical review, Switzerland had claimed to be considering the establishment of a National Human Rights Institution. However, six years have since passed and nothing has materialised. Given this delay, Mr Prosper asked for an answer as to whether Switzerland is likely to proceed in this matter.

Sweden:

Mr Sicilianos asked about the move to merge the four existing ombudsmen into a single national ombudsman. He asked about the details of the merger and what resources the single ombudsman would have at their disposal. Mr Prosper meanwhile was interested in who would appoint the ombudsman. Mr de Gouttes was also interested in the discussions in Sweden on whether an Ombudsman should have the right to test for evidence of discrimination.

Racial discrimination on the Internet

Germany:

Mr Prosper commended the German delegation on its efforts to tackle racial discrimination on the Internet and asked what could be done to further restrict the propagation of discriminating views and information via this medium. Mr Prosper also asked if Germany was willing to take leadership on the international stage to promote co-operation on the matter. Mr Seitz, answering for the German delegation, agreed with Mr Prosper on the severity of the issue and confirmed that international efforts were being co-ordinated with EU and G8 countries to tackle the propagation of discriminatory opinions via the Internet.

Immigration law/policy

Russia:

The immigration laws of Russia came under question during the first week. Mr de Gouttes asked for more information pertaining to the granting of Russian citizenship to ex-USSR citizens within 6 months of their return to the Russian Federation. Mr Sicilianos also highlighted allegations that additional requirements were being placed on indigenous and minority peoples before residency permits were issued.

Germany:

Mr Avtonomov asked about the new immigration law in Germany, the details of which were not included in the report.

Mr Peter meanwhile enquired about the new test being introduced for citizenship applications. Although he was grateful to hear from the German delegation that classes were being run for applicants to help with the preparation for the test, Mr Peter was still concerned at the involvement of the Länder in the process, and the potential for these local authorities to ask questions which discriminate against Islamic or Arabic applicants.

Austria:

Mr Huang commented on the fact that Austrian immigration law is one of the harshest in Europe, and that some Austrians do not welcome immigrants as they feel that employment opportunities disappear. However, Mr Huang noted that there are between 100,000 and 300,000 undocumented foreigners in Vienna alone and pointed out these people deserve protection and rights as much as everyone else.

Switzerland:

Mr Prosper, the Country Rapporteur, also commented on the allegations that the Swiss Asylum laws are the strictest in Europe and requested an explanation or clarification from the Swiss delegation. He also requested clarification on the legal reform which means Cantons must now provide a reason when they deny an application for naturalisation. Mr De Gouttes was also interested in this matter, as he had heard NGO reports claiming that arbitrary denials of naturalisation still occurred without any explanation.

Racism in the administration of justice

The prominent areas of concern for the Committee centred on collection of disaggregated statistics on ethnicity, human rights training for judicial and law enforcement functionaries and implementation mechanisms for human rights legislation. Sweden, Austria, Germany and Switzerland's policy of not collecting ethnic statistics on their populations was of great concern to the Committee. Committee members indicated that for many of the European states, reporting such statistics was of significant importance due to influxes of immigrants and asylum seekers particularly from Middle-Eastern and African states and the need to monitor their treatment by state mechanisms within the criminal justice system. Several Committee members including Mr Sicilianos, Mr Thornberry, Mr Peter and Mr Diaconu reminded the states parties of their responsibilities under General Recommendation 31 regarding non-discrimination in criminal justice and the importance of statistics as a basis for targeted anti-discrimination policies. The aforementioned state parties including Russia were also questioned by the Committee on discrimination in criminal justice against African, Middle-Eastern, Roma and Muslim minorities. Mr Thornberry suggested to Germany and Austria that they consider collecting language statistics as a surrogate for ethnic statistics and highlighted that the Committee must take note of Austria's claim that certain minorities preferred not to be counted.

Namibia:

Mr Ewomsan expressed concern over deficiencies in Namibia's anti-discrimination knowledge and training schemes for the police and judiciary and called for more concerted action in this area. In addition Mr Diaconu questioned the lack of

evidence of cases brought by Namibia's Ombudsman on discrimination despite wide ranging powers to bring cases before the courts. Despite this he commended the state party's ability to include three judicial cases where anti-discrimination law was applied.

Togo:

Togo now boasts the creation of a new High Commission on Human Rights whose role is to reduce ethnic tension and promote reconciliation, however Committee member Mr de Gouttes asked for concrete measures taken by it. The state party noted that, as indicated by paragraphs 158 to 173 of its report, its obligations under Article 4 of ICERD were difficult to fully implement due to lack of resources. Additionally Committee member Mr Thornberry was concerned by the characterization of reports of racial discrimination as a rarity in the state report, noting that this is not necessarily a positive sign.

Russia:

Russia's practice of conflating the term extremism with racial discrimination was scrutinised, with Committee members Mr Sicilianos and Mr Thornberry indicating that this could result in securing the interests of state institutions with regard to the promotion of law and order rather than individual rights. Russia also faced scrutiny for its sparse use of the 1951 Geneva Convention Relating to the Status of Refugees when deciding on the applications of refugees and asylum seekers. Russia also faced scrutiny over its failure to deal adequately with problems of racial hatred and violence against students which was noted by Committee member Mr. Martinez. Mr Kemal opined that while the state party has enacted Article 15 of the federal constitution of Russia with regard to racial discrimination there have been few instances of its application in the meting out of justice. This was considered serious bearing in mind the state party's own statistics showing significant increases in neo-Nazi attacks.

Sweden:

Mr Sicilianos encouraged Sweden to institute financial measures to make it easier for the Sami to pursue land claims. Sweden faced difficulty in convincing the Committee of the legitimacy of its non-collection of ethnic statistics on its population. Committee members Mr Sicilianos, Mr Amir, Mr Kemal and Mr Thornberry raised concerns about this practice and its ability to affect access to state services, justice and the development of efficient strategies to target racial discrimination. In this regard Mr Avtonomov reminded the state party of General Recommendation 31 on non-discrimination in criminal justice and the importance of disaggregated statistics to ensure such non-discrimination in reality. There was scrutiny of the ethnic composition of the Swedish Judiciary and its propensity to hand down disproportionate sentences to minorities. Sweden has managed a merger of its seven main pieces of anti-discrimination legislation including establishing a unified Ombudsman office against discrimination. However Committee member Mr Avtonomov raised concerns about the selection procedure of persons to this office. The dissolution of Sweden's integration board and dispersal of its responsibilities raised concerns in the Committee that anti-discrimination action would be diluted.

Austria:

Concern for the level of implementation of anti-discrimination practices lead Mr Avtonomov to request information and statistics on the implementation of decisions taken by Austria's Advisory Board of Human Rights and the effectiveness of its activities.

In regard to the activities and operation of law enforcement, he reminded the state party of its obligations under General Recommendation 31 of CERD on racism in the administration of justice. Mr Lahiri also questioned the absence of authentic disaggregated data on socio-economic indicators for ethnic minorities and immigrants, who constitute over some 10% of the population.

Germany:

Mr Thornberry noted that the difficulty with Germany's policy of non-collection of ethnic statistics was that it made targeted anti-discrimination strategies difficult to design, pursue and monitor. He suggested that anonymous self-identification surveys may prove useful. He noted further that this may result in under-reporting of acts of discrimination. In this vein Mr Thornberry highlighted the absence of data on the treatment of afro-descendant Germans. In addition Mr Avtonomov questioned the German delegation on why statistics on xenophobic attacks in the Eastern Länder were not made available in the periodic report.

Development in the working methods of the Committee, including the Committee's partnership with NGOs

Before the dialogue between CERD and the Russian delegation there was a briefing at the International Federation for Human Rights (FIDH) on the situation within the Russian Federation which highlighted acts of xenophobia and discrimination against Roma and indigenous peoples within the country.

There were also NGO briefings prior to the periodic reviews of Germany and Sweden. The German NGO briefing informed the Committee about issues of racial and minority discrimination in Germany, as well as concerns about the judicial system's approach to racism.

The Swedish briefing was just as productive, bringing a number of issues to the attention of the Committee concerning the situation in Sweden. Consequently, questions were asked of the Swedish delegation based on the allegations made during the briefing. For example, issues which had emerged during the briefing, surrounding the rights of the Sami people in Sweden, were raised during the dialogue between the Swedish delegation and the Committee.

Mr Thornberry has also suggested to the secretariat that all submissions to CERD on thematic discussions, including those of Civil Society, are uploaded to the Committee's website.

Early warning & urgent action

Mr Thornberry stressed that Article 9 of the ICERD convention gave the early warning and urgent procedures action group competence to address issues on which it had information without a submission from an external agency. Canada faced scrutiny with regard to the Lubicon Lake Indian Nation and the Lubicon gas pipeline while the Czech Republic's eviction of Roma was discussed. Racist discourse in Italy's public media received attention and Brazil's presidential decree to remove non-indigenous people from the Rapus del Sol was discussed. Construction of the Tipamok dam in India on lands belonging to the Naga people of Manipur raised concerns, while Peru's petroleum activities on the lands of the Achua people came under consideration. Finally mining contracts issued in the Philippines on indigenous lands and activities by the

Belize state threatening use of traditional lands by the Maya were also discussed. In all cases the working group proposed sending correspondence, indicating concern and asking for more information about the situation.

Special measures as per CERD General Recommendation 32

Leading the thematic discussion Mr Thornberry noted that the key articles on Special Measures (SMs) were Article 1 paragraph 4 and Article 2 paragraph 2 of ICERD and stressed the need to consider General Recommendation 25 of the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW), which discusses temporary special measures under CEDAW's convention. Contributors to the discussion included CEDAW, the ILO, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), Chile, Uruguay, the United Kingdom, Colombia, New Zealand, ARIS, Coalition of Forest Peoples, Central Council of German Sinti and Roma and finally, Bruce Abrahamson from the Peace Forum contributing in his personal capacity.

Conceptual Issues:

CEDAW representative Ms Schilling noted that while the CEDAW convention referred to **temporary special measures**, ICERD highlighted **special measures** and U.S. legislation uses the terminology **affirmative action**. She also noted that UN documents frequently use the terms **positive action** or **positive discrimination** and **reverse discrimination**. She suggested that as affirmative action was associated with U.S. jurisprudence it was best avoided and that terms like **positive action**, **positive discrimination** and **reverse discrimination** are ambiguous, legally problematic and prone to negative interpretation. She suggested the use of **temporary special measures** as it indicated applicability to specific groups to serve special goals. ILO representative Mr Olatz observed that the ILO convention did not differentiate between SMs or protection measures, stating clearly that “special measures shall not be deemed to be discriminatory,” to ensure compliance with other provisions of the Convention. CERD Committee member Mr Sicilianos noted that different working terms between CEDAW and CERD should not be exaggerated by over-emphasis on language as this would obscure commonalities. CERD Committee members Mr Avtonomov and Mr De Gouttes supported the need for harmonization of terminology among treaty bodies, though they also expressed support for retaining current ICERD terminology.

Analytical Issues:

Analytical issues centred on compatibility of SMs with the non-discrimination principle, distinctions between temporary and permanent rights, consideration of proportionality and issues of intersectionality of race, gender and disability. Discussing permanent vs temporary rights, Vanessa Jimenez of the Coalition of Forest Peoples drew CERD's attention to the fact that indigenous people possessed inherent human rights which were not special rights and should not be confused with SMs. She stressed that demarcation of lands and other related issues are permanent rights. Mr. Thornberry noted her submission and highlighted the need for participation in the formulation of SMs by the affected groups. Speaking on the non-discrimination principle, Mr. Thornberry concluded that SMs needed to be compatible with principles of equality and non-discrimination to avoid the creation of separate rights, citing Judge Tanaka's dissenting opinion from the *South West Africa Cases* where Judge Tanaka stated that “The principle of equality... recognizes relative equality, namely different treatment proportionate to

concrete individual circumstances.”⁶ Speaking on the intersectionality of race, gender and disability CERD Committee member Mr. Martinez noted that the fundamental issue of marginalisation as a basis for SMs had broad similarities for men and women and as such there was no need for strict distinction on the basis of gender with regard to SMs. However CEDAW Representative Ms. Schilling stressed that CEDAW aimed at protecting maternity and issues related to reproductive rights as permanent biological phenomena intrinsically related to women which are not temporary considerations, hence in constructing measures in this area it is important to separate these as issues of permanent rights not related to SMs.

Operational Issues:

Operational issues focused on definitions of “temporariness” of SMs aimed at ongoing situations of inequality. Committee members Mr. Amir, Mr. Avtonomov and Mr. Diaconu agreed that monitoring and evaluation were necessary for effective implementation and to avoid creating separate rights. Mr. Sicilianos noted the need for SMs should be based on objectivity and on results achieved. While Mr Avtonomov and Mr. Lahiri noted that SMs may require generations to correct past wrongs, so that “temporariness” is relative. Citing Article 2 of the ICERD Convention Mr De Gouttes noted that it was the state's responsibility to ensure implementation and monitoring of SMs. Mr. Lahiri noted that ICERD already provided for monitoring through its reporting procedure and more specifically, its stipulation that states gather disaggregated statistics on the treatment of groups by race, gender, language etc. Additionally, members of CERD generally expressed the need to consider issues of proportionality in the implementation and formulation of SMs.

⁶ International Court of Justice (ICJ), *South West Africa Cases*(Ethiopia v South Africa, Liberia v South Africa), judgment of 18 July 1966. 1966 ICJ Reports 6, 248(Tanaka J, dissenting).

Relevant documents

State Reports

Ecuador:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CERD/C/ECU/19&Lang=E>

Switzerland:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CERD/C/CHE/6&Lang=E>

Sweden:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CERD/C/SWE/18&Lang=E>

Germany:

<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.DEU.18.doc>

Austria:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CERD/C/AUT/17&Lang=E>

Togo (French version):

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/CERD.C.TGO.17.doc>

Namibia:

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/CERD.C.NAM.12.doc>

Russia:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CERD/C/RUS/19&Lang=E>

Other important documents and treaties

CCPR. 'View of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil & Political Rights Thirty-Third-Session'. *Communication No. 197/1985: Sweden*. 10/08/88 CCPR/C/33/D/197/1985. (Jurisprudence).

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d9332db8dfce2f63c1256ab50052d2ff?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d9332db8dfce2f63c1256ab50052d2ff?OpenDocument)

Committee on the Elimination of Racial Discrimination - General Comments

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

Diène, Doudou. *Report of the Special Rapporteur on contemporary forms of racial discrimination, xenophobia and related intolerance*. A/HRC/4/19/Add.3. (30th May 2007)

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/127/01/PDF/G0712701.pdf?OpenElement>

Indigenous and Tribal Peoples Convention (ILO 169)

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

International Court of Justice (ICJ), *South West Africa Cases* (Ethiopia v South Africa, Liberia v South Africa), judgment of 18 July 1966. 1966 ICJ Reports 6, 248(Tanaka J, dissenting).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

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

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):

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