

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

Summary of the 74th 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 74th session from 16th February to 6th March 2009. The countries under review were Tunisia, Bulgaria, Republic of Congo, Pakistan, Turkey, Suriname, Finland, Croatia and Montenegro. Congo, Turkey and Montenegro were submitting initial reports. The 2nd - 15th periodic reports of Gambia were overdue and the country situation in the absence of a state party report was considered in closed meetings by CERD. The Committee also made an appeal to all state parties during the 74th session to ratify the amendment to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The CERD Working Group on Early Warning and Urgent Action Procedures also met in closed sessions to discuss several situations. Near the end of its session, the Committee discussed reports on follow-up to the Committee's concluding observations concerning the two countries for which replies had been received – Bosnia and Herzegovina, and Republic of Korea. A new Committee expert, Mr Danielsen from Denmark, took up post on the morning of Wednesday 17th February.

Situation of Roma and other specific minority groups

Tunisia

Mr Jamal of the Tunisian delegation began his presentation with very few direct references to the Berber, and spoke on more general terms. When he did refer to them he said “the Berber people are basically Tunisian, we are branches of the same tree and there is no racial diversity in Tunisia only plural unity.” Mr Shagrawi (from the Human Rights Unit of Foreign Affairs in Tunisia) added that the Berber represents only 1% of the Tunisian population (to which Mr Diaconu replied that this concerns around 100,000 people – a substantial number), that they are fully integrated and that there are no cases of racial discrimination against them. The concept of “Tunisianity” and Tunisian identity took primacy in the delegation's presentation and responses. Almost all of the Committee members voiced concerns about statements made by the delegation suggesting there is no discrimination at all in Tunisia. Mr Sicilianos commented on how the Tunisian identity is basically equated with Arabo-Islamic identity, and that other sources of information have suggested a certain Arabization and economic exclusion of the Berber speaking regions.

Mr de Gouttes, Mr Sicilianos and Country Rapporteur Mr Avtonomov enquired into whether there were any plans for training programmes to allow the Berber population to use their language when interacting with the administration. They also asked the delegation whether a programme would be introduced in schools for people who wished to study the Berber language or other minority languages. Mr de Gouttes stressed the need for explicit measures to be taken by the Tunisian government to guarantee the right of the Berber in teaching and education provision.

Bulgaria

Mr Thornberry said that for the minority groups of Bulgaria, access to education is the primary problem. There remained many barriers, for example physically, psychologically, geographically and linguistically. Mr Thornberry said that for the Roma, it is possible that schools are not a very welcoming, even a hostile environment. In addition he gave particular mention to the special needs and remedial schools in Bulgaria. He said that the Committee's primary concern with these schools is the given association between intellectual inferiority and ethnicity, an idea which is absolutely contrary to the Convention. He suggested that the

criteria for admission to these schools is an important issue that should be clarified and rectified. Mr Droganov of the Bulgarian delegation said that the high levels of unemployment are usually consequences of lack of education, so also in this case. Mr Droganov said he agreed with Mr Thornberry in his comments that education should be one of the most important areas of focus. However, Mr Droganov did emphasise that these issues had very little to do with ethnic origin; but that they were more to do with the choices these people make. There was also mention of the absence of (in the report and from the last examination of CERD reports) references to the minorities of Turkish origin in Bulgaria.

Pakistan

Mr de Gouttes expressed concern at the great discrepancy between the information provided in the government report and that of the NGOs and other sources on this issue. On the definition of minorities Mr Akram of the Pakistani delegation said that based on principles of equality in Islam, Pakistan's constitution does not distinguish between citizens based on ethnic background. Only religious minorities are recognised and only they have specific protections in the constitution. Mr Akram said that the fabric of society in Pakistan is extremely complex and that he would like the Committee to try and appreciate this. Mr Akram added that as the Committee defines minorities differently to the Pakistani constitution, this could make understanding one another difficult.

Congo

Mr Okio of the Congolese delegation readily admits that Congo has not done everything it could and that there is still much work to be done in improving conditions for minorities. Mr Ewomsan was fervent in his assertion that it is not possible for any country to say that there is no racial discrimination in their countries (as Congo had stated in their previously submitted report). This is partly because the meaning of "racial discrimination" is so broad; it can mean race, colour, nationality or ethnicity. Mr Sicilianos suggested that Article 1 – which refers to the definition of racial discrimination – needs to be amended. He told the delegation that their view is too rigid and needs to be expanded.

Mr Diaconu commented that the Bantu use of Pygmies as subordinates and their position as masters (see paragraph 152 of Congo's report) clearly creates a master-slave relationship; this is a clear form of racial discrimination. Mr Cali Tzay was mostly concerned with the fact that the Pygmies do not have easy access to identity cards. He highlighted the fact that this would create many problems for them, for example the inability to travel. He said this was tantamount to them being treated as illegal aliens in their own land. Mr Cali Tzay also mentioned that there had been reports of identity cards being sold to Pygmies.

In terms of education, the delegation noted that the Pygmy population have the lowest schooling rates, and that this was because their nomadic lifestyle does not allow it and not necessarily because the Bantu have chased them away. It mostly depends on the seasonal cycles they follow which makes it difficult for them to enrol children in schools. He suggested that Congo considers an adjustment of school timetables as a methodological solution to the problem of education. Or they could think about distance teachers which keep in contact with nomadic students. Mr Thornberry said that the right to education is of utmost importance for such communities. He also proposed the possibility that maybe the school is not a very welcoming institution for these children that already feel like outsiders. There are elements of prejudice, bullying and isolation that must be taken into account.

Mr Okio said that integration, not assimilation is their goal, and that Congo respects their culture and differences. He added that they have no intention of wiping out these groups, or making them a “relict of the past.”

Turkey

Mr Gogus of the Turkish delegation referred to many reforms Turkey is implementing in order to improve the opportunities for education, employment etc. He said that the “Turkish citizens of Roma origin” (as he called it) were benefiting from many funds, for example lunch aid, housing assistance, books and other education related funds. He also said that special provisions in schools were offered in order to learn the traditional languages but that they were abandoned due to lack of interest and non-attendance. However, the Country Rapporteur Mr Thornberry said that the non-attendance at the Armenian schools was most probably more related to the fact that they did not want to pay for such a service which should be a right rather than a luxury.

Mr Thornberry also said that Article 216 of the Penal Code, although it can be used to protect the minority groups in Turkey, can also be used to make life difficult and said that its implementation in practice needs to be monitored. Almost all of the Committee members expressed concern with the fact that Turkey’s practices and legislation is still based around the 1923 Treaty of Lausanne model which refers to non-Muslims as minorities. The delegation’s response was that there is no internationally recognised concrete definition of minority and that minority rights are protected under Lausanne.

Finland

Mr Kosonen of the Finnish delegation said that the first Roma Policy Programme has been developed and that stage one was due for completion in June 2009. The results will show Finland’s efforts to increase equality and its encouragement of better participation of the Roma in everyday and political life in Finland. Mr Peter said that he could see that Finland is doing a lot for the Sami, but he wanted to know if any coordination efforts have been undertaken between the Finnish and Swedish governments as well as with Norway and Russia, as the Sami have populations in those places also. Mr Kosonen reassured Mr Peter that Sami land rights are currently being discussed at the Ministerial level in order to facilitate cross-boundary cultural exchanges and a coordinated policy.

Croatia

Mr Peter was the strongest critic of Croatia’s stance on the Roma. He particularly mentioned education and the fact that most Roma children are placed in the same classes and that the quality of education for them is much lower than that of the other Croatian children. In response, the Ambassador said that Croatia has introduced scholarships for secondary education for Roma children. The delegation also mentioned that the Croatian National Programme for the Roma was developed with the objective to provide assistance for housing and to help preserve their distinct cultures and traditions.

Situation of indigenous peoples

Congo

Mr Ewomsan (the Country Rapporteur) observed that the indigenous population are and have often been victims of stereotypes and that they may be treated as sub-humans and therefore are vulnerable to discrimination. In addition, property rights of indigenous peoples are almost non-existent. Mr Ewomsan also told the Committee that the indigenous groups

are paid less in jobs when they can find them, and they have the lowest school attendance rates.

Mr Mavoungou said that the indigenous peoples were the most marginalized, and that this section of society had not always benefited from the actions and decisions of the government. It was for this reason that it was of utmost importance for them to be getting support from the state. The problem was that they had not fit into the living structure that the Bantu had already adopted. The cultural factor and the fact that they are nomads have to be taken into consideration when questioning why they have failed to benefit on the whole. Mr Mavoungou reassured the Committee that they were trying to help them to take their rightful place in Congo. This issue had been raised and consulted on with a number of bodies including the International Labour Organization (ILO). Today, the primary goal was that the draft law on the protection and promotion of the rights of indigenous peoples of Congo be adopted and enacted as soon as possible. Mr Mavoungou asserted that the government was not trying to suppress the indigenous population, and that the law was trying to provide a legal framework through which they can express their identities.

In his concluding statements, Mr Ewomsan also noted that the absence of individual complaints from the indigenous groups was not necessarily a positive sign as the delegation had presented it in their report. He said that it usually means there is an absence of possibilities offered for vulnerable people to come forward to share their grievances and seek compensation.

Pakistan

The delegation told the Committee that the Federally Administered Tribal Areas (FATA) and North Western province (Saraiki) should be benefiting from the advantages of the adoption of international agreements. They should have equal access to natural wealth and resources. This region, bordering Afghanistan, is deeply involved in the so-called “war on terror”; it is for this reason that the government has to be extremely sensitive in taking any decision or action. Finally, Mr Akram said that the government of Pakistan wants to evolve a bottom-up system and not top-down.

Mr de Gouttes said that he is concerned about the fact that the indigenous groups are excluded socially, politically, and economically and these rights are denied. In addition, they are also victims of first generation human rights abuses - that of personal physical harm.

Suriname

Mr Murillo Martinez said that there has been a growing trend of Maroons and other indigenous groups using international human rights bodies to assess and improve their situations in Suriname. He said that this is an indicator of the weakness of domestic measures in place. He also said that illiteracy rates are very high and asked about the situation of access to education – this was echoed by many of the Committee members.

Also, in the construction of the hydroelectric dam and on the expansion of mining territories, several of the Committee members asked about the consultation processes in place to ensure that the indigenous peoples’ land rights are not compromised. The Ambassador responded saying that Krutus (“great gatherings” for villagers) are being held more and more often and that most – if not all – mining projects go through the construction company’s screening process in order to assess the environmental impact on the indigenous peoples’ lands.

(Right to) development

Tunisia

Mr Diaconu asked what were the disadvantaged areas mentioned in the state report (paragraph 265, page 37) and what measures had been taken to ensure their economic and social development, and whether special measures were necessary to cover any potential minorities within those areas. In response, Mr Jemal highlighted various social programmes that have been implemented by the state, particularly the National Solidarity Fund (26/26), established in 1992 primarily to provide assistance to the most disadvantaged areas and to improve the income of people living in these areas so that they could benefit from credit, loans and subsidies.

Bulgaria

Mr de Gouttes asked whether there was any assessment of the National Plan of Action for the Decade to Integrate Roma. Mr Tehov said that measures to increase employment among the Roma were implemented as part of the Plan of Action to increase the integration of the Roma, within the context of the Ministry of Labour and Social Policy, aiming to entice people of Roma origin to sign up to these programmes. He stated that their unemployment were often due to lack of education, and that efforts were needed to increase the integration of vulnerable groups such as the Roma and members of the Turkish community, who were in some regions less fortunate and suffered from negative social conditions.

Congo

Mr Ewomsan expressed concern toward the fact that the rights of indigenous peoples in Congo are not recognised, especially land rights as legislation declared that land is owned by the government. He asked what position the Congolese delegation has on this matter. He also said that a report by the African Commission documented that the economic and social rights of these people are limited for various reasons, such as living in remote areas and facing prejudices and stereotypes and when they have access to jobs, they are paid less than others. Mr Kemal also reiterated the issue of land rights, and the fact that indigenous peoples are not allowed to live in Bantu villages. Mr Cali Tzay added that when a Pygmy owned land - various Pygmy families do live near cities - Bantu families come to take over their lands because it is a custom to do so.

Pakistan

The Federally Administered Tribal Areas (FATA) was discussed at length, and while it was recognized that this was a very sensitive area, Committee members indicated that it was no longer good for these areas to be governed as they were under the 1947 agreement. They were part of Pakistan and should benefit from the financial and other advances made since that time. People should also be able to have control over their natural wealth and resources, and that was especially true with regard to the Balochi and Siraiki peoples, underscored Mr Peter.

Suriname

The Committee had serious concerns on Suriname's mining legislation. In particular the Committee experts raised questions on how the current mining law actually ensured that the District Commissioner involved and consulted the indigenous communities concerned before granting concessions; and the situation of the draft law on the granting of concessions to indigenous lands. Speaking of these concerns, the delegation said that Suriname was aware that its neighbours in South America had legislation in this area. It should be understood, however, that in Suriname the problem was more complex, as these

land rights were for both the Maroons and indigenous communities, some of whom were living in the same areas. Mr MacDonald said it was worth noting that the state had signed a memorandum of understanding with the Amazon Conservation Team (ACT), a non-governmental organization, to help demark the territories of tribal people. They were currently engaged in several capacity-building workshops with indigenous peoples, Maroons and government representatives.

Finland

Mr Kosonen noted that the Committee had on several occasions expressed its concern over Finland's non-ratification of ILO Convention No.169 concerning indigenous and tribal peoples, and in particular had recommended that Finland solve the question of land use by Sami and ratify this ILO Convention expeditiously. He said that this question was still complex and difficult but it was the government's intention to draft a bill on the issue based on a common view of all stakeholders.

Discrimination based on descent (caste)

Tunisia

Mr Avtonomov in his opening remarks said the Berber-speaking population appeared "officially invisible" as they were not included in the report's official statistics. Mr Diaconu also noted that there was no mention in the report of the status and treatment of inhabitants coming from black sub-Saharan Africa.

Congo

Country Rapporteur Mr Ewomsan asked why no statistics were in the report on indigenous peoples. Mr Kemal said he has read reports by different regional organisations working in Congo which indicates that the condition of the indigenous people, in particular the Pygmies, was one of grave concern. Mr Diaconu noted that paragraph 152 of the report speaks of ancient tradition of Bantus' treatment of indigenous people in a master and slave relationship, and stressed that discrimination based on descent is a form of racial discrimination especially if generations upon generations are subjected to this.

Pakistan

The issue of Scheduled Castes also came up prominently in the discussion. Committee members had particularly called for statistics and studies on the problems faced by such persons, including bonded labour. Mr Peter said that the Dalit question and particularly the situation of Hindus is a serious concern of the Committee. The fact that they have no access to their rightful lands and the issue of bonded labour is also of great concern. Mr Peter mentioned statistics referring to illiteracy (total illiteracy 74%, and only about 3% literacy of women). He also said that the Dalit issue is often underplayed. He asked the delegation to indicate more clearly how this issue is being addressed and to provide more information on bonded labour and illiteracy.

Mr Akram informed the Committee that Islam forbids distinctions made on race, colour or creed. He said that it is because of the colonial heritage that Pakistan must deal with these challenges. He also said that no one is denying that these issues exist; Pakistan accepts there are challenges faced by the Dalits, such as bonded labour, but he also said that all people who are victims of poverty also face these challenges. The state has outlawed bonded labour and tries to give maximum support to the Scheduled Castes; the government is making every effort with regards to poverty alleviation. While noting the delegation's position that it was a

matter of poverty, not caste-discrimination, the Committee nevertheless felt that it was an issue that was seen in the region and one that had to be addressed. Mr Peter further added that the issue of caste and descent-based discrimination is also about freedom, access to employment and direct segregation.

On the marginalization of certain groups in Pakistan, people in the country differed not only in culture but also in language, said Mr Peter. For instance, although the Siraikis were one of the major indigenous groups, they had been denied their own province and had not been provided with representation at the regional level. They had no seats at the national and provisional assemblies, despite the fact that they constituted the third largest minority in Pakistan. The same could be said for the Balochis. Unlike the Siraikis, they had some formal competencies, but these were said to only be in theory and not in practice. He asked the delegation to further comment on this issue.

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

Tunisia

The Committee noted some good progress in Tunisia with regards to the fact that the cases of multiple discrimination based partly on gender is diminishing in number. However, CERD's chairperson Ms Dah said that although Tunisia has been a good example for women's rights in Africa, the fact that there are no women in the delegation is something she would like to see rectified for their next meeting.

Congo

Mr Ewomsan noted that many layers of multiple discrimination are occurring in Congo. Sexual violence and rape among Pygmies is considered normal, an issue the Congolese delegation must tackle. Mr Kemal also expressed his concern on the issue of exploitation of Pygmy women and the rape and renting that occur (as has been documented by NGOs). The delegation responded simply by saying that there are a number of draft laws to protect women from sexual violence.

Pakistan

Mr Akram said that there have been cases of violence against Balochi women, but he was cautious to add that none of this happens with the consent of the government, whether through neglect or active endorsement. He also said that in tribal areas where customs and traditions have existed over centuries they have found that they are very difficult to replace. Mr Peter also said that the information on this issue in Pakistan's report is not substantial enough.

Turkey

Mr Gogus said that combating violence against women is a high priority in Turkey; he also added that a committee has been established to monitor killings in the name of custom (honour killings) and that Turkey has visions of being one of the pioneers for women's rights in the world.

Suriname

Mr de Gouttes highlighted the problem of multiple discrimination against young women in indigenous tribes who are being sexually exploited in areas where mining is taking place, and told the delegation that there needs to be more information on this issue.

Finland

Mr Kemal, the Country Rapporteur told the Committee that it is common that the Roma women in Finland who wear their traditional dress are discriminated against in their possibilities for employment, and even their access to public places has been denied for the same reason.

Croatia

Mr Diaconu echoed the assertions of the delegation in saying that the anti-discrimination act has actually had positive effects for the issues being tackled in multiple discrimination; for example in highlighting the fact that Roma women in particular often face discrimination by employers. Mr Peter also voiced his concern about the number of Roma minors becoming wives from a very early age and the fact that the delegation presented the fact that Roma girls (between the ages of 14-17) giving birth in clinics as something positive. He said that they should be in school, not having children at such early ages. He told the delegation that he was worried that the Roma are being left without education and correct support simply due to the fact that they are Roma. The delegation's response was simply that early marriages are a Roma tradition wherein some groups practice an entirely different religion.

Anti-racism legislation

Tunisia

Mr Avtonomov noted with satisfaction the wide range of human rights instruments that had been adopted by Tunisia and asked whether the state party intends to ratify the amendment to Article 8 of ICERD. Mr de Gouttes asked for clarity on paragraph 79 of the report, where the criminal code provides that terrorist offences are treated similar to offences of racial incitement, apparently linking racial discrimination in several situations to terrorism. The delegation responded that both offences had different sentencing procedures. Mr Thornberry queried Article 2 of the report which stated that no private acts of discrimination existed, and declared that this needs examination as a significant area of concern.

Bulgaria

Mr de Gouttes observed that Bulgaria has an extensive list of laws outlawing racial discrimination but the state report itself lacked information on practical examples to back up their applicability. He asked whether the government intended to include within its criminal legislation texts, racial motives, as an aggravating circumstance.

Congo

Mr Ewomsan asked if there were sanctions for racial discrimination and stated that the non-criminalisation of this was in itself a prejudice as Pygmies still suffer from slavery and other violations. Mr Diaconu encouraged the Congolese government to adopt and apply the draft law for the promotion and protection of the rights of indigenous peoples, underscoring that it was likely to provide solutions to the people. Mr de Gouttes called attention to the fact that the Pygmies as an indigenous people was at the centre of the Committee's entire concern with regards to Congo, and emphasised the need to see this draft law and some statistics of the population. Mr Peter remarked the existing powerful opposition to the draft bill on the indigenous people and asked what the motives behind the objection of the bill is: Are their interests economic or sociological? He also asked what the strategy of the government towards this bill was, was it to "civilise" the indigenous peoples or respect them as they are and guarantee their rights. Mr Cali Tzay stated that if this law was adopted,

Congo will be the first country who gave rights to indigenous people, which would mean a boost for guarantees to other indigenous peoples around the world.

Mr Danielson asked whether the national courts are able to review Congo's legislation in light of international conventions such as ICERD having primacy (paragraph 49-50 of report) and whether the Committee could be given examples of case law. Mr Thornberry asked if Congo has considered ratifying ILO Convention 169 on indigenous peoples to assist them in this respect.

Pakistan

Pakistan's limited membership to international agreements, in particular those related to human rights, was alarming, underscored Country Rapporteur Mr Peter. This cast doubt on the state's ability to address this issue adequately, said Mr Peter.

Turkey

Country Rapporteur Mr Thornberry voiced his concerns on the lack of a single comprehensive provision criminalizing and defining racial discrimination in Turkish law; reports that Article 216 of the new Penal Code, prohibiting racist speech, was being used to prosecute foreign journalists for "insulting Turkishness"; and whether legal aid was available for individuals bringing complaints of racial discrimination. Mr Gogus highlighted that no violation of Article 14 of the European Convention on Human Rights, which regulated non-discrimination, had been found by the European Court of Human Rights on complaints filed against Turkey on the grounds of racial discrimination. Despite this statement, the Committee experts cited a number of examples of ethnic discrimination rulings against Turkey by that court, including violations of freedom of association with regard to the Kurdish community and violations of property rights with regard to the Orthodox Christian community.

Mr Thornberry asked the delegation whether there have been any anti-minority broadcasts, and if so, how the authorities have reacted to those. He reminded the delegation that this is important as hate speech can aggravate a situation, as seen in the case of Hrant Dink. In terms of concrete cases, Mr Gogus said the Turku Toplamcigi Dernegi who demonstrated in 2006 about the Kurdish population are now under investigation and that the singer who sings about the Dink murder is currently on trial. Mr de Gouttes also added that Article 216 of the Penal Code gives rise to an interpretation problem, and that there are two restrictions at play here: in reference to "groups" and to "disturbing public order/peace." The delegation said that in order for a discriminatory act to be considered for punishment, it needs concrete elements (i.e. can not be abstract) and the dangers posed must be real. This brought up concerns within the Committee who then mentioned issues of burden of proof and effectiveness.

Suriname

The Surinamese delegation readily accepted that there is a critical need for a strong legal framework to protect and promote the rights of the indigenous people. Mr MacDonald referred to the updated situation of the two judgments rendered by the Inter-American Court of Human Rights by which Suriname was ordered to take a number of definite actions as a remedy for violations that took place in the Moiwana Village and for the Saramaka People. The Committee stated that it found it necessary to return to its urgent action procedure to address the situation of the two ethnic groups in the country. Noting the inadequacy of the national mechanisms available, one expert stressed the need to establish a local, reliable institution to address such complaints given the huge increase in expense

and time in seeking redress from international organs, such as the Inter-American Court. Mr Murillo Martinez said he would also like to hear information on the results of the National Action Plan to Combat Poverty on the indigenous communities and on the Maroons. It was noted that a new draft law was established that would create the Forest and Nature Conservation Authority.

Finland

Mr Kosonen of the Finnish delegation said that Finland has recently set up a project to implement the plan for a national system of monitoring racial and ethnic discrimination. The purpose is to improve the quality and quantity of the information available on, for example, victim surveys, official statistics, the socio-economic statistics, the well being of minorities etc. The Committee noted that a report on the new Sami Language Act submitted to the Sami Parliament called "realisation of Sami language act since 2004-2007" showed no real improvement.

Croatia

Mr de Gouttes said that he noted all of the positive efforts being made in Croatia, particularly on the Constitutional Act on national minorities and on criminal legislation which helps to facilitate punishing racial and discriminatory acts. Mr Maderic stated that the Minority Rights Act had instituted the establishment of the Council for National Minorities, which was charged with the advancement, preservation and protection of the status of minorities in society.

Montenegro

Mr Lahiri noted that the 2007 Constitution was a very forward-looking document incorporating a broad prohibition of "direct or indirect discrimination on any ground." In that respect, he wondered why the new Constitution used the restrictive term "minority national community" instead of "minority."

Anti-racism and human rights education

Tunisia

Mr Jamal said that universities do teach pre-Islamic and Semitic languages as part of their efforts to educate the population on diversity in Tunisia. He also said that this encourages unity as well as playing a role in the prevention of hate and fanaticism. As the mission of schools is to promote modern teaching, the Enlightenment is also part of the history, literature and philosophy curriculums. Mr Chagraoui highlighted further developments; the revision of Tunisian school books to ban any descriptions which deem women inferior, the publication of a handbook in 2003 by the Ministry of Higher Education entitled "The teaching of human rights in universities - selected texts" which defines international human rights standards as well as those within Tunisia, and organising various conferences such as one on dialogue of religions as efforts to highlight tolerance and dialogue.

Bulgaria

The Bulgarian delegation said that there have been seminars for judges and that the Human Rights Commission for the Protection Against Discrimination organised some regional seminars which were especially aimed at police officers, some 120 policepersons attended. Mr Droganov said that the main objective was to improve institutional knowledge on discrimination and human rights to prevent offences.

Congo

Mr Ewomsan noted that August 9th, the International Day of the World's Indigenous People, was also a day of celebration of solidarity with indigenous peoples by the Congolese government.

Pakistan

The Ministry of Education said in 2009 that minorities should be able to receive education of their own religions in educational institutes if they so want to. Human rights education is a serious focus for Pakistan, Mr Akram said. The National Commission for Child Welfare and Development had developed training manuals for use by the judiciary, prison staff, and police officials with regard to the treatment of juvenile detainees in accordance with Pakistan's international obligations, said Mr Akram. Also, in cooperation with Norway and Switzerland, the government of Pakistan launched a project titled "Human Rights Mass Awareness for Education," which incorporated child rights into the curriculum and into teachers' training materials. The government was also pursuing the reform of Madrassahs.

Turkey

Mr Gogus said that since 2001 Turkey has been pursuing many reforms. He said that the second phase of these reforms include numerous training programmes aiming mostly at government officials charged with implementing those laws. Security forces composed of the police, military police and members of the judicial branch, notably judges, prosecutors and lawyers from all levels, had received training on human rights issues. He also mentioned that the Ministry of Justice is continuing to organise training and education for police forces and prison guards. Mr Gogus added that there is a new scheme that makes it easy for people to report aggressive behaviour by policemen, wherein they have "number plates" at the back of their helmets which make it easy for people to identify them.

Suriname

The delegation stated that for some years now the availability of sufficient number of judges had been problematic. That was why in 2004 the government started a course to train lawyers to become judges, and the Ministry of Justice was momentarily in the midst of selecting a new group of applicants for a new training session that would most likely start this year.

Finland

Mr Kosonen highlighted that, in 2007 and 2008, different key ministries ran an Empowering Programme for NGOs as part of the National Awareness-Raising Campaign on Anti-Discrimination. Altogether 13 NGOs, among them several organisations representing the Roma, Sami and immigrant groups, had received training. Several programmes on improving attitudes of employers to minorities were also launched. For example, the Diversity in Employment Programme had been carried out under the framework 2007 European Year of Equal Opportunities for All. One expert was concerned that the measures to combat discrimination in Finland all appeared to target victim groups, such as the Roma or immigrants. In that context, it was questioned what measures were done, other than in schools, as noted, to raise public awareness about discrimination.

Croatia

The Croatian delegation mentioned that Croatia was one of the first countries in the European Union to provide training to the police force as part of combating hate crimes against vulnerable minority groups. He also said that eight crime commissions have been announced over the last two years.

National human rights commissions / ombudspersons

Tunisia

Mr Avtonomov welcomed the adoption of Law 2008/37 as previously recommended by CERD, which harmonised the mandate of the Higher Committee for Human Rights and Fundamental Freedoms. Mr Sicilianos asked whether the independence of the Higher Committee for Human Rights was provided for fully, for its composition was decided by the President. He also recommended that this body apply for accreditation to competent international human rights bodies. Mr de Gouttes requested more details on the activities of the Ombudsperson, in particular any grievances on ethnic or racial issues. Chairperson Ms Dah also suggested in her closing remarks that the National Commission on Human Rights should be present at the next report presentation to allow the Committee to quantify and measure the progress that had been made.

Bulgaria

Mr de Gouttes asked for a preliminary view of the work of the new Commission on Human Rights within the National Police Department. He also asked if the Bulgarian Commission for the Prevention of Racial Discrimination had referred to the ICERD in any cases. Mr Tehov replied that this specialised Commission has now been organised into a permanent body. Mr Tehov provided information on Ombudspersons. It had received seven complaints between May 2005 and December 2008. These were mainly concerned with property and housing problems, and allegations of discrimination in education, in the provision of Social Services, as well as labour rights and employment.

Congo

Mr Ewomsan asked the delegation to provide information on the status of Ombudspersons. Mr de Gouttes enquired as to why the Human Rights Commission has not held an inaugural session to date as stated in paragraph 33. He asked what the difficulties are and whether its membership is in line with the Paris Principles. The delegation said that this was the case because when the body was set up all the necessary provisions related to the appointment of members had not been taken. Unfortunately, this was due to slow administrative procedures in certain bodies that were responsible for appointing representatives to the Commission.

Pakistan

The delegation informed the Committee that the government set up a high powered National Commission for Minorities (in 1993) under the chairmanship of Minister for Minorities and, upon recommendation of the National Commission, several important decisions have been passed. In addition, a full fledged Ministry of Minorities was established in 2004, entrusted with safeguarding the rights of minorities. The government also established in 1983 the Office of the Federal Ombudsman to deal with mal-administration and corruption. The Office was independent, established under law and was appointed for a term of five years by the President. The delegation said that, as of November 2008, the Ministry of Human Rights was separated from the Ministry of Law and Justice. The groundwork had also been completed, said Mr Akram, for the establishment of an independent Human Rights Commission. In this regard, the bill for the National Human Rights Commission was tabled in the National Assembly of Pakistan on 17 December 2008. Legislation was expected in the next couple of months and the Commission was likely to be established by July 2009.

Turkey

The delegation said that in the first half of 2008, a total of 2,356 people applied to the Human Rights Presidency complaining about 2,767 violations, of which 45 were claims of discrimination. In none of those applications, claims of discrimination on the basis of race, colour, language, religion or political opinion had been made. Efforts were under way for the establishment of a national human rights institution in line with the Paris Principles, and an Ombudsman system, Mr Gogus said.

Finland

On the Ombudsman for Minorities, Mr Kosonen thanked the Committee for their contribution to the development of that institution and drew attention to the extension of the Ombudsman's mandate last year. It now included the making and conducting of independent surveys into ethnic discrimination, and acting as the national monitoring body on human trafficking. The Committee asked for details on the mandate and activities of the Ombudsman for the Åland Islands and results of the first study on discrimination on the Åland Islands. Country Rapporteur Mr Kemal observed, with regard to the Ombudsman for Minorities, that the European Commission against Racism and Intolerance had expressed concern that the close ties between that body and the Ministry of Labour with regard to both resources and operating conditions might limit the effectiveness of that institution.

Croatia

In compliance with the Anti-Discrimination Act, Croatia had also for the first time established a central anti-discrimination body – the Office of the Ombudsman, Mr Maderic said. Three specialized ombudspersons in Croatia – the children's ombudsperson, the disabilities' ombudsperson and the gender equality ombudsperson – were authorized to take action under the provisions of the law pertinent to their jurisdictions. Mr Diaconu raised concerns that the government-appointed members to the Council of National Minorities might raise doubts about the Council's representativeness.

A representative for the Ombudsman's Office in Croatia also made a statement, noting that the Ombudsman's Office was not an instrument of international law, but a European-law entity. However, it was a very strong tool for the suppression of all forms of racial or ethnic discrimination. It also deals with discrimination based on other grounds such as religion or national origin, which often intersects with racial discrimination. The Office had the power to mediate in cases of discrimination, to conduct research, to give recommendations to the government on legislation, and to report to Parliament. The Office was too young to issue a critical assessment of the delegation's presentation at this time. One point that was stressed was the need for capacity building of the Office, in particular the need for additional resources.

Montenegro

Mr Nimani spoke of the introduction of the new constitutional category of the Protector of Human Rights and Freedoms (Ombudsman) as an autonomous and independent body taking measures for the protection of human rights and freedoms. He also mentioned the establishment of the Judicial Council as an independent and autonomous body that ensured the independence and autonomy of courts and judges.

Racial discrimination on the Internet

Finland

Mr Prosper, Mr Diaconu and Mr de Gouttes expressed their concern and interest on this matter in the Finnish case. They said that it was all too common in Finland that racist and xenophobic stereotypes are being found on the Internet (the delegation called it “cyber-crime”). Mr Kosonen said that the Ministry of the Interior is planning the implementation of a button which will be on all forums and discussion pages. This will make it easier for people to lodge complaints on certain users and comments being made; he said these would all be on police files and that the idea had been approved by the government.

Immigration law/policy

Tunisia

Mr Sicilianos noted that there is currently no national law on refugees in Tunisia although it has ratified the Convention relating to the Status of Refugees and acceded to the Protocol relating to the Status of Refugees, as well as ratified the OAU Convention on Refugees in Africa. He also asked whether non-refoulement was always respected and about allegations of delays in issuing permits and additional requirements regarding administrative measures dealing with refugees and asylum requests. Mr Kemal inquired as to whether there are a large number of irregular immigrants using Tunisia as a transit to Europe and if so, what protection mechanisms these vulnerable people have if apprehended.

Congo

Mr de Gouttes said the government should consider a proper national law on refugees. Mr Ewomsan mentioned that many refugees are in Congo but that specific tensions exist between local residents and Rwandan refugees. He asked what the status of these refugees are and whether they have access to jobs. Mr Prosper also asked whether refugees finding employment was the exception or the rule, and if any statistics existed in this regard. Ambassador Okio gave an example of Rwandan construction workers being much sought after for their skills even by the government.

Pakistan

Mr Peter asked given the many in-country refugees why the government had not found it necessary to ratify the 1951 Convention relating to the Status of Refugees, and subsequently the 1967 Protocol relating to the Status of Refugees.

Turkey

Turkey's reservations to the 1951 Refugee Convention and the 1967 Protocol meant that Turkey only accepts refugees coming from Europe and asylum-seekers coming from other regions. They are processed under a law on temporary stay dating from several decades back. What then were Turkey's plans to eliminate that distinction, Mr Thornberry asked. Mr Gogus stated that Turkey was on a major migration route with nearly 700,000 irregular migrants that had been apprehended in Turkey in the period between 1995 and 2007. In 2008 alone, a total of 56,876 irregular immigrants had been apprehended. The majority of these were nationals of Afghanistan, Pakistan, Iraq and Palestine. As to the number of refugees in 2008, out of 9,045 asylum applications registered, 3,555 had been granted refugee status. The children of refugees and asylum-seekers were entitled to the same rights as children of Turkish citizens with regard to compulsory primary education, said Mr Gogus. Regarding the procedures related to foreigners awaiting expulsion, Mr Gogus pointed out that irregular immigrants awaiting expulsion were provided with shelter in restitution centres, similar to other European countries' practices.

Finland

Issues of concern to the Committee were the procedure for naturalization and statistics on grants of citizenship. The delegation highlighted the government's Migration Policy Programme adopted in October 2006, focusing on promoting work-related immigration. Mr Kemal identified as a concern, issuance of temporary residence permits or "B" permits, especially to asylum seekers coming from Iraq, Afghanistan and Somalia. Such persons were not entitled to family reunion, municipal health care and were not allowed to work. With regard to concerns expressed on guarantees of legal protection in the accelerated procedure for processing asylum applications in the new Aliens Act, Mr Kemal observed that apparently the new procedures had a 100 percent rejection rate for applications and asked for clarification in this regard.

Croatia

The key concerns of the Committee related to the application of the Convention stemming from the 1991-1995 war, particularly with reference to the return and reintegration of Croatian Serb refugees. Committee experts raised questions on reports of persons who had traditionally lived on the territory of Croatia but have difficulties in obtaining citizenship, in particular Roma and Bosnians. On questions related to the return of refugees, the delegation said that Croatia had received a lot of criticism in past years about the situation, in particular on the return of property. However, today the situation was quite different.

Montenegro

Mr Nimani highlighted that in the late 1990s Montenegro had hosted 130,000 displaced persons from the territory of the former Yugoslavia, almost one quarter of its population. After gaining independence, Montenegro had decided to allow displaced and internally displaced persons to temporarily keep their status and rights and had established the Bureau for the Care of Refugees with the task of caring for those individuals. Mr Nimani said the Law on Asylum had been adopted and the institutional infrastructure for its implementation established, soon to be followed by the construction of the Centre for Asylum-Seekers. So far, six asylum applications had been processed. In November 2008, the government also adopted the Law on Foreign Nationals, which had been harmonized with the Schengen Convention. The delegation said that the government had adopted the Strategy for the Permanent Solution of the Problem of Refugees and Internally Displaced Persons in 2005, with the objective of finding a permanent solution within three years in full observance of international principles and taking into account Montenegro's economic capacity. The term "refugee" was used to refer to people displaced from the former Yugoslav republics – Bosnia and Herzegovina and Croatia – while the term "internally displaced persons" was used to refer to people from Kosovo.

Racism in the administration of justice

Tunisia

Mr de Gouttes noted that paragraph 101 (p17) of the state report cites 104 abuses of authority by the police authorities between 2000-2005, and asked whether these abuses of authority had been based on ethnic and/or religious discrimination.

Bulgaria

Mr de Gouttes enquired on how minority groups were represented in the National Assembly and the Police Force, and what policy was being followed to prevent discrimination in recruitment. The delegation said that full investigations had been carried out into an allegation of police brutality and the European Court had determined that there had been certain violations, although there had been no violation with regards to the ethnic background of the person involved, thus the case fell outside the remit of the Committee.

Congo

Mr Prosper referred to access to justice and the treatment of Pygmies in detention centres as unacceptable. Police abuse has been reported. He also said that for the Pygmy people no recourse to justice was available: they do not even go to the police station. Mr Cali Tzay said information received on treatment in detention of Pygmies, especially when in controversy with a Bantu family, normally means that the case is lost against Bantus as masters of Pygmies, and that this was of grave concern to him. Echoing Mr Ewomsan and Mr Prosper's concern that the absence of complaints was being taken as a positive sign by the delegation, Mr de Gouttes affirmed that in jurisprudence the absence of complaints could be due to such factors as poor knowledge by citizens, lack of confidence in police force, fear of reprisal and fear of complexity of justice system. Mr Martinez suggested that perhaps the government should promote knowledge of customary law, a system where indigenous law coexists with the law of the state, so that these minorities have the option of their own justice systems.

Pakistan

The delegation stated that in 2002, the government introduced a new police law, which established a code of conduct for law enforcement officials. Article 3 of the new Order makes a police officer duty-bound to behave in public and all sections of society with equal decorum and courtesy and assist public without discrimination. Moreover, the Police Order 2002 provides for the establishment of a Public Safety Commission at the federal level and Public Safety and Public Complaints Commissions at provincial and district levels, to ensure that complaints against police are handled promptly at local levels. At least one third of total membership of Public Safety Commissions at all levels consists of women and half of the total membership goes to civil society.

Turkey

Mr de Gouttes said that the lack of concrete cases of complaints in Turkey should not be presented as a positive sign; he said that this could be an indicator of racism or inaccessibility to the justice system.

Suriname

Mr Murillo Martinez said that there is a great need to modify the legal provisions currently in place in Suriname as they make it difficult for the Samaka to claim their land rights and to enjoy and live their lives according to their own customary laws. Mr Cali Tzay and Mr Prosper both called Suriname's justice administration into question. The delegation said they unfortunately had to inform the Committee that the constitutional court has not yet been established, and that the draft legislation is currently with the national parliament.

Finland

Out of the total of 669 racist offences reported to the police in 2005, courts processed 17 cases and sentenced 25 persons. Of these, 12 were sentenced for discrimination, and the punishment of 13 persons was increased on the basis of a racist motive. The most common racist offence was assault, which accounted for about 40 percent of all alleged racist

offences. In most cases (over 70 percent) the victims of racist offences were foreigners or persons with a foreign background. Half of the racist offences were committed in the province of southern Finland, where a large percentage of the aliens in Finland reside.

The Ministry of the Interior also set up, in September 2008, a project to implement the plan for a national system for the monitoring of racism and ethnic discrimination. The project would commission studies on discrimination, including victim surveys, and would improve the production of official statistics, including regarding the numbers of discrimination cases processed in the courts, as well as socio-economic statistics on the well-being of minorities and immigrants. The project was steered by a broad-based working group consisting of 30 different stakeholders, including key government departments, research organisations and representatives of civil society.

Croatia

Mr Diaconu said that different sources retained that Croatian Serbs still formed the vast majority of those prosecuted and convicted on war crime charges, and the monitoring mission of the Organization for Security and Cooperation in Europe (OSCE) demonstrated an inconsistent approach towards Croat and Serb defendants in relation to prosecution for such crimes.

Montenegro

While noting the statement that Montenegro did not have a climate of impunity, Country Rapporteur Mr Lahiri noted there was sufficient evidence to indicate that there were ingrained habits and the working methods of the police and judiciary impacted negatively on the situation of disadvantaged groups.

References to Durban Review Conference

The United Nations High Commissioner for Human Rights stated in her opening address to CERD that there had been a lot of talk about withdrawal by states and non-participation of the United States. In this regard, she had just been contacted by the United States Ambassador who said that President Barack Obama was sending a team to assess whether the United States would participate. The Committee also adopted a document at its opening meeting containing its contribution to the Durban Review Conference, in which it requested addressing the issue of whether complementary standards were necessary to strengthen and update the Convention.

Tunisia

Mr Lindgren Alves said during Tunisia's presentation that it is a country that exemplifies a conciliation of Islam and Enlightenment and so can play a significant role in the upcoming Durban Review Conference, where the issue of defamation is highly relevant. Mr de Gouttes also stressed that CERD noted that Tunisia has strongly stated to "refuse intolerance and xenophobia" particularly in light of preparation for the Conference.

Pakistan

It was noted during Pakistan's report that its current discussions with other countries in preparation for the Durban Review Conference left an impression that Pakistan was trying to put in place an international anti-blasphemy provision in the context of the Conference. The delegation stated that this was incorrect and that Pakistan remained fully committed to the freedom of opinion and expression. Explaining the defamation of religions issues, the

delegation said that Pakistan believed that defamation of religions could lead and had actually led to violence against the followers of religions. They had seen instances of that in the context of incitement to violence as described in the ICERD and the International Covenant on Civil and Political Rights. The end result was the creation of a kind of Islamophobia in which Muslims were stereotyped as terrorists. That did not mean they opposed freedom of expression; it merely meant that there was a level at which such expression led to incitement such as the propaganda campaign led by the Nazis in the Second World War against the Jews.

Consideration of state reports that our partner organisations are interested in

Pakistan

With regard to critical information about Pakistan, Committee expert Mr Lahiri cited – to the government delegation’s surprise – a shadow report provided by a non-governmental organization which set out that "well over half the territory under Pakistan's control had passed out of the control of the civil government." The NGO report also contained information about Pakistan's use of chemical weapons, the burning of persons in hot coal tar and other torture practices. Mr Lahiri stated that those documents had come to the Committee via the regular channels and regular practice.

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

NGO briefings/reports

Several Committee members commented on the absence of NGO presence and attributed possible reasons to the sessions of the Human Rights Council and its new Universal Periodic Review (UPR) processes. NGOs from Turkey and Pakistan also stated during their briefings the difficulty in obtaining a visa for Switzerland, in spite of applying five months in advance. Due to these difficulties, some colleagues were unable to attend.

The NGOs present from Bulgaria were the Bulgarian Helsinki Committee and the European Roma Rights Centre, COHRE and EOA.¹ In the case of Bulgaria, NGOs also shared their view on the Written Response of the state to the List of Questions issued by the Country Rapporteur. The NGO who conducted Turkey’s briefing was Minority Rights Group International.² The European Roma Rights Centre and Edirne Roma Association³ and Kurdish Human Rights Project⁴ also submitted reports. The NGOs present on behalf of Pakistan were the International Dalit Solidarity Network (IDSN)⁵ and Justice and Peace Netherlands, who submitted an alternative report jointly prepared by TRDP, NCJP, PILER, IDSN and Justice and Peace Netherlands.⁶ A report was also submitted by Minority Rights Group International.⁷ In the case of Bulgaria, Pakistan, Turkey and Suriname’s state reports, NGOs held briefing sessions with members of the Committee where they presented their alternative reports,

¹ http://www2.ohchr.org/english/bodies/cerd/docs/ngo/BHC_ERRC_Bulgaria_CERD74.pdf

² <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/MRGITurkey74.pdf>

³ http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf

⁴ <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/KHRPTurkey74.doc>

⁵ http://www2.ohchr.org/english/bodies/cerd/docs/Pakistan_LoI_CERD74.pdf

⁶

http://www2.ohchr.org/english/bodies/cerd/docs/ngo/Alternative_report_TRDP_NCJP_PILER_IDSN_Justice_and_Peace_Netherlands.pdf

⁷ <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/MRGIPakistan74.doc>

expressed their various concerns about gaps in the reports of the state parties, and put forward potential recommendations for the Committee's consideration, as well as provided updated information on the situation in the countries. NGOs were allocated a total of one hour to give oral interventions. The First Peoples' Coalition held a briefing on Suriname. European Roma Rights Centre and Centre for Roma Initiatives⁸ and Human Rights Action⁹ submitted reports on Montenegro's situation.

No NGO reports were submitted or briefings held for the state reports of Tunisia, Congo, Finland and Croatia. A Tunisian NGO was however present throughout the state presentation. The government of Congo mentioned consultations with civil society on various aspects of their state report and various Committee members also referred to receiving information but none was provided for general viewing. Mr Avtonomov noted that the preparation of the state report for Finland had involved open discussions with NGOs although no alternative reports were submitted.

Extension of Committee Sessions

At its opening meeting, the Committee heard an update from the High Commissioner for Human Rights Ms Pillay on developments in the area of human rights of relevance to the Committee. She informed the Committee of the approval by the General Assembly of the Committee's request to extend its two annual sessions by one week each in the next biennium.

Follow up to Concluding Observations

Ms Pillay also stated that at the eighth Inter-Committee Meeting held in December 2008, a proposal had been created for the establishment of a working group or task force with regards to follow-up to concluding observations. It would hold the specific objective of identifying best practices and possible areas of harmonisation. An overall analysis would be made on the basis of the findings of each Committee.

Overdue State Report - Gambia

The Committee also reviewed the country situation in Gambia, in the absence of a delegation, under the Committee's review procedure for state parties whose reports were more than five years overdue, and adopted concluding observations in the absence of a report. Gambia had not submitted a report for 30 years, since its first review in 1980, and it had not responded to any of the Committee's letters or requests for information since then. The concluding observations reiterated that reporting was an obligation of state parties under the Convention and that non-compliance in that regard "created serious obstacles to the effective functioning of the system established to monitor the implementation of the Convention at the national level." Gambia was urged to prepare and submit, without further delay, its overdue reports under the Convention.

Early Warning and Urgent Action Procedures

At its final meeting, the Committee heard a presentation by the Chair of the Working Group on Early Warning and Urgent Action Procedures, Mr Patrick Thornberry, who provided details of follow-up on a number of situations in Australia, Canada, El Salvador, India, Indonesia, Lao, Nepal, Peru and Tanzania. All of those cases involved indigenous peoples.

⁸ http://www2.ohchr.org/english/bodies/cerd/docs/ngos/CRI_Montenegro_CERD74.pdf

⁹ http://www2.ohchr.org/english/bodies/cerd/docs/ngos/HRAMontenegro_74.pdf

The Working Group had a discussion with representatives of the Australian Mission on issues raised before the Committee in relation to the Northern Territory Emergency Response and the suspension of the Racial Discrimination Act. The Working Group also met with the Canadian Permanent Mission to the UN in Geneva relating to issues, such as increased development of indigenous territories in British Columbia without the informed consent of the indigenous peoples. Mr Thornberry drew attention to the situation of the Hmong minority in Lao as perhaps the most urgent.

Forum on Minorities

Committee Expert Thornberry also presented his report on his attendance at the Forum on Minorities, where there had been one major item on the agenda – draft recommendations on the question of education and minorities. He stated that this draft was still in the process of finalisation and should be presented by the Independent Expert Gaye McDougal to the Human Rights Council at its next meeting. The draft should also be circulated to the treaty bodies for consideration and possibly eventual inclusion as a General Recommendation.

Special measures as per CERD General Recommendation XXXII¹⁰

The CERD on 20th February 2009 continued its open thematic debate, which begun on 4 and 5 August 2008, on the obligation of state parties to undertake special measures (sometimes known as affirmative action) as set out in Articles 1 (paragraph 4) and 2 (paragraph 2) of the ICERD to promote disadvantaged racial or ethnic groups within their territories.

Before the Committee for discussion was a document on possible elements for a general recommendation by the Committee on this issue. There was no participation by other stakeholders as in previous open thematic debates due to a large demonstration in Geneva which hampered transport services. Mr Thornberry, Committee Expert and Special Rapporteur on Affirmative Action, introducing possible elements for a general recommendation on special measures, noted that the document was quite general and that it still remained for the Committee to take a decision on whether it wanted to proceed with a general recommendation on this topic.

He suggested that a broad introduction might provide a statement of reasons why the Committee had decided to issue the General Recommendation. A conceptual section could usefully clarify the understanding of special measures in light of the overall aim of the Convention. A second section could contain an analysis of the Convention, and a specific analysis of all the relevant terms in Articles 1 and 2 that had implications for the concept of special measures, including specific grounds for discrimination and intersectionality issues, including double and multiple discrimination. Mr Thornberry said further concepts to be explored included positive action required by the Convention as distinct from special measures under the Convention; race-based action and needs-based action; and proportionality of such measures. A final section might add some operational precisions, such as the participation of groups in the design of special measures and models of good practice.

In the ensuing discussion, several Committee members raised a number of issues, including the need to clarify when special measures were called for, how they were to be drafted – i.e. that they be necessary, legitimate, and temporary – and how they were applied in practice,

¹⁰ This section was excerpted from the press release of the CERD 74th session, issued by the UN Office at Geneva on 20 February 2009 (available at <http://www.unog.ch>).

for example that they had to be proportionate. There was also discussion on the need to distinguish between special measures and inherent rights. Inherent rights included the right to territory, land and the use of one's own language. Enabling indigenous people to enjoy those rights, for example, could never constitute special measures. It was noted that there was actually quite a bit of consensus among Committee members on this issue, including that special measures were by definition temporary – and it seemed that concerned target groups of such measures, including indigenous peoples, the Roma and Sinti, had agreed on their temporary nature as well.

Responding to those comments, Mr Thornberry wished to clarify that, while there was a difference between inherent rights and special measures, this did not mean that it might not be necessary to establish special measures on behalf of indigenous peoples in areas that warranted it. At the end of the meeting, it was agreed that a draft General Comment be prepared by Mr Thornberry and Mr Sicilianos, who served as co-rapporteur on this issue.

To access and download any of the following items referred to in this report, visit the CERD section of the website of the Office of the High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/cerd/index.htm> and click on the link to “sessions.”

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Alternatively contact the IMADR International Secretariat for further information:

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