

**Indigenous Peoples
and
United Nations Human Rights
Treaty Bodies**

**A Compilation of UN Treaty Body
Jurisprudence**

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I. Committee on the Elimination of Racial Discrimination

A. Concluding Observations

1. Nigeria, CERD/C/NGA/CO/18, 1 November 2005

18. The Committee is concerned about the persistence of discrimination against persons belonging to various ethnic groups in the fields of employment, housing and education, including discriminatory practices by people who consider themselves to be the original inhabitants of their region against settlers from other states. While noting the efforts taken by the State party to improve the representation of different ethnic groups in the public service, most notably by the Federal Character Commission, the Committee remains concerned about the reports of continuing practices of patronage and traditional linkages based on ethnic origin, leading to the marginalization of certain ethnic groups in Government, legislative bodies and the judiciary (arts. 2 and 5).

The Committee recommends that the State party continue to promote equal opportunities for all persons without discrimination in order to ensure their full enjoyment of their rights, in accordance with article 2, paragraph 2, and article 5 of the Convention. In this connection, the Committee urges the State party to strengthen its Affirmative Action Plans in favour of underrepresented or marginalized groups, including women, in its employment policies with regard to the public service, and to submit in its next periodic report more detailed information on achievements under these programmes.

19. The Committee is deeply concerned about the adverse effects on the environment of ethnic communities through large-scale exploitation of natural resources in the Delta Region and other River States, in particular, the Ogoni areas. It is concerned at the State party's failure to engage in meaningful consultation with the concerned communities, and about the deleterious effects of the oil production activities on the local infrastructure, economy, health and education. In this regard, the Committee also notes with concern that the Land Use Act of 1978 and the Petroleum Decree of 1969 are contrary to the provisions of the Convention. Furthermore, the Committee is alarmed at the reports of assaults, use of excessive force, summary executions and other abuses against members of local communities by law enforcement officers as well as by security personnel employed by petroleum corporations (arts. 2 and 5).

In the light of general recommendation XXIII (1997) on the rights of indigenous peoples, the Committee urges the State party to take urgent measures to combat "environmental racism" and degradation. In particular, it recommends that the State party repeal the Land Use Act of 1978 and the Petroleum Decree of 1969 and the adoption of a legislative framework which clearly sets forth the broad principles governing the exploitation of the land, including the obligation to abide by strict environmental standards as well as fair and equitable revenue distribution. The Committee reiterates that along with the right to exploit natural resources there are specific, concomitant obligations towards the local population, including effective and meaningful consultation. It further urges the State party to conduct full and impartial investigations of cases of alleged human rights violations by law enforcement officials and by private security personnel, institute proceedings against perpetrators and provide adequate redress to victims and/or their families.

26. The Committee invites the State party to consider ratifying:

... (b) The International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

2. Tanzania, CERD/C/TZA/CO/16, 1 November 2005

14. The Committee notes with concern the lack of information from the State party regarding the expropriation of the ancestral territories of certain ethnic groups, and their forced displacement and resettlement (art. 5).

The Committee recommends that the State party provide detailed information on the expropriation of the land of certain ethnic groups, on compensation granted and on their situation following their displacement.

16. The Committee also notes with concern the lack of information on certain vulnerable ethnic groups, notably nomadic and semi-nomadic populations, inter alia the Barbaig, Maasai and Hadzabe, on the difficulties they allegedly face due to their specific way of life and on special measures taken to guarantee the enjoyment of their human rights (arts. 5 and 2).

The Committee recommends that the State party provide detailed information on the situation of nomadic and semi-nomadic ethnic groups and on any special measures taken with a view to ensuring the enjoyment of their rights under the Convention, notably their freedom of movement and their right to participate in decisions which affect them.

3. Venezuela, CERD/C/VEN/CO/18, 1 November 2005

4. The Committee welcomes with satisfaction the rights and principles contained in the Constitution of the Bolivarian Republic of Venezuela of 1999, in particular the preamble, which establishes the multi-ethnic and multicultural nature of Venezuelan society, as well as article 21 and chapter VIII which guarantees the rights of indigenous peoples, such as the right to intercultural bilingual education, the right to traditional medicine and the right to participate in political life.

6. The Committee takes note of the establishment of specialized institutions to combat racial discrimination such as the Presidential Commission to Combat All Forms of Racial Discrimination and Other Discrimination in the Venezuelan Educational System, the National Coordination Group for Indigenous Health, which answers to the Ministry of Health and Social Development, and the Department of Indigenous Education of the Ministry of Education, Culture and Sport.

7. The Committee notes with satisfaction that indigenous peoples are represented in the National Assembly, which has at least three indigenous deputies with their respective alternates, elected by indigenous peoples in keeping with their traditions and customs.

8. The Committee notes with interest the existence of special courts to settle conflicts in accordance with the traditions and customs of indigenous peoples, as well as the post of Special Ombudsman on Indigenous Issues.

9. The Committee notes with satisfaction Presidential Decree No. 1795 of 27 May 2002 concerning protection of the languages of indigenous peoples. It notes that indigenous peoples may make use of their languages in their dealings with the authorities or, where appropriate, have an official interpreter, and that the Constitution has been translated into the Wayuu language.

11. The Committee welcomes the State party's ratification in 2002 of International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) concerning indigenous and tribal peoples in independent countries.

15. The Committee notes that the identity document issued to indigenous persons in accordance with the Regulations under the Organization Act on the Identification of Indigenous Persons includes the name of the ethnic group, the people and community to which such persons belong.

The Committee requests the State party to ensure that, in accordance with its general recommendation VIII, the identity document for indigenous persons be based upon self-identification by the individual concerned.

17. Bearing in mind the State party's efforts, the Committee reiterates its concern at the persistence of profound structural social and economic inequalities which have an impact on the enjoyment of human rights, particularly economic and social rights, and affect Afro-descendants and indigenous peoples.

The Committee encourages the State party to step up its efforts to improve the economic and social rights situation of Afro-descendants and indigenous people, such as the right to housing, the right to health and sanitation services, the right to work and the right to adequate nutrition, in order to combat racial discrimination and eliminate structural inequalities.

18. The Committee notes with great concern that between 1995 and 2003, 61 persons, most of whom were indigenous or Afro-descendants, were murdered in land conflicts, presumably by private armed groups (*sicarios*), and that this problem has worsened since 2001.

The Committee requests the State party to take efficient and urgent measures to end this violence, which mainly affects indigenous peoples and Afro-descendants, including the establishment of an independent monitoring mechanism to investigate such incidents in order to ensure that they do not go unpunished.

19. The Committee notes with concern that, according to the report by the State party, the indigenous peoples of the upper Orinoco and the Casiquiare and Guainia-Río Negro basins have problems of various kinds. More particularly, in the centres of illegal gold prospecting, there is evidence that indigenous children and adolescents are subjected to labour exploitation and the worst forms of child labour, including servitude and slavery, child prostitution, trafficking and sale.

The Committee recommends that the State party adopt urgent measures to tackle this situation, and that it submit information on the implementation of the measures taken.

20. While the Committee takes note of the State party's efforts to demarcate indigenous lands, such as the promulgation of the Indigenous Peoples Habitat and Lands, Demarcation and Protection Act, it is concerned that the effective ownership and use of indigenous lands and resources continue to be threatened and restricted by repeated aggression from individuals and private groups against indigenous peoples, in order to move them from their land.

In the light of general recommendation XXIII on the rights of indigenous peoples, the Committee recommends that the State party take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands, territories and resources. In this regard, the Committee invites the State party to provide information on the settlement of cases of conflicting interests relating to indigenous lands and resources, particularly those in which indigenous groups have been displaced from their lands.

4. Laos, CERD/C/LAO/CO/15, 18 April 2005

17. The Committee takes note of the delegation's explanations regarding the reluctance of the authorities to classify ethnic groups in the Lao People's Democratic Republic as minorities or indigenous peoples (arts. 1, 2 and 5).

The Committee recommends to the State party that it recognize the rights of persons belonging to minorities and indigenous peoples as set out in international law, regardless of the name given to such groups in domestic law.

It invites the State party to take into consideration the way in which the groups concerned perceive and define themselves. The Committee recalls that the principle of non-discrimination requires that the specific characteristics of ethnic, cultural and religious groups be taken into consideration.

18. The Committee notes that the State party has adopted a policy of resettling members of ethnic groups from the mountains and highland plateaux to the plains (art. 5).

The Committee recommends that the State party describe in its next periodic report the scope of the resettlement policies being implemented, the ethnic groups concerned, and the impact of these policies on the lifestyles of these groups and on their enjoyment of their economic, social and cultural rights. It recommends to the State party that it study all possible alternatives with a view to avoiding displacement; that it ensure that the persons concerned are made fully aware of the reasons for and modalities of their displacement and of the measures taken for compensation and resettlement; that it endeavour to obtain the free and informed consent of the persons and groups concerned; and that it make remedies available to them. The State party should pay particular attention to the close cultural ties that bind certain indigenous or tribal peoples to their land and take into consideration the Committee's general recommendation XXIII of 1997 in this regard. The preparation of a legislative framework setting out the rights of the persons and groups concerned, together with information and consultation procedures, would be particularly useful.

21. The Committee remains concerned at persistent allegations of conflict between the Government and members of the Hmong minority who have taken refuge in the jungle or mountainous areas of the Lao People's Democratic Republic since 1975. According to various corroborating reports, this group is living in difficult humanitarian conditions (art. 5).

The Committee calls on the State party to take all measures, if necessary with the support of the Office of the United Nations High Commissioner for Human Rights, the United Nations and the international community, to find a political and humanitarian solution to this crisis as quickly as possible and to create the necessary conditions for the initiation of a dialogue with this group. The Committee strongly encourages the State party to authorize United Nations agencies to provide emergency humanitarian assistance to this group.

22. The Committee is concerned at reports that serious acts of violence have been perpetrated against members of the Hmong minority, in particular allegations that soldiers brutalized and killed a group of five Hmong children on 19 May 2004 (art. 5).

The Committee recommends to the State party that it provide more precise information about the bodies responsible for investigating these allegations. It also strongly recommends that the State party allow United Nations bodies for the protection and promotion of human rights to visit the areas in which members of the Hmong minority have taken refuge.

5. Australia. CERD/C/AUS/CO/14, 14 April 2005

4. The Committee notes with satisfaction that significant progress has been achieved in the enjoyment of economic, social and cultural rights by the indigenous peoples. It welcomes the commitment of all Australian Governments to work together on this issue through the Council of Australian Governments, as well as the adoption of a national strategy on indigenous family violence.

5. The Committee notes with great interest the diversionary and preventative programmes aimed at reducing the number of indigenous juveniles entering the criminal justice system, as well as the development of culturally sensitive procedures and practices among the police and the judiciary.

11. The Committee is concerned about the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the main policy-making body in Aboriginal

affairs consisting of elected indigenous representatives. It is concerned that the establishment of a board of appointed experts to advise the Government on indigenous peoples' issues, as well as the transfer of most programmes previously provided by the ATSIC and the Aboriginal and Torres Strait Islander Service to government departments, will reduce the participation of indigenous peoples in decision-making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples (arts. 2 and 5).

The Committee recommends that the State party take decisions directly relating to the rights and interests of indigenous peoples with their informed consent, as stated in its general recommendation XXIII. The Committee recommends that the State party reconsider the withdrawal of existing guarantees for the effective representative participation of indigenous peoples in the conduct of public affairs as well as in decision- and policy-making relating to their rights and interests.

16. The Committee notes with concern the persistence of diverging perceptions between governmental authorities and indigenous peoples and others on the compatibility of the 1998 amendments to the Native Title Act with the Convention. The Committee reiterates its view that the *Mabo* case and the 1993 Native Title Act constituted a significant development in the recognition of indigenous peoples' rights, but that the 1998 amendments roll back some of the protections previously offered to indigenous peoples and provide legal certainty for Government and third parties at the expense of indigenous title. The Committee stresses in this regard that the use by the State party of a margin of appreciation in order to strike a balance between existing interests is limited by its obligations under the Convention (art. 5).

The Committee recommends that the State party refrain from adopting measures that withdraw existing guarantees of indigenous rights and that it make every effort to seek the informed consent of indigenous peoples before adopting decisions relating to their rights to land. It further recommends that the State party reopen discussions with indigenous peoples with a view to discussing possible amendments to the Native Title Act and finding solutions acceptable to all.

17. The Committee is concerned about information according to which proof of continuous observance and acknowledgement of the laws and customs of indigenous peoples since the British acquisition of sovereignty over Australia is required to establish elements in the statutory definition of native title under the Native Title Act. The high standard of proof required is reported to have the consequence that many indigenous peoples are unable to obtain recognition of their relationship with their traditional lands (art. 5).

The Committee wishes to receive more information on this issue, including on the number of claims that have been rejected because of the requirement of this high standard of proof. It recommends that the State party review the requirement of such a high standard of proof, bearing in mind the nature of the relationship of indigenous peoples to their land.

18. The Committee notes that 51 determinations of native title have been made since 1998 and that 37 of them have confirmed the existence of native title. It also acknowledges the provisions introduced by the 1998 amendments to the Native Title Act regarding indigenous land-use agreements, as well as the creation of the Indigenous Land Fund in 1995 to purchase land for indigenous Australians unable to benefit from recognition of native title (art. 5).

The Committee wishes to receive more detailed information, including statistical data, on the extent to which such arrangements respond to indigenous claims over land. Information on achievements at State and Territory levels may also be provided.

19. While noting the improvement in the enjoyment by the indigenous peoples of their economic, social and cultural rights, the Committee is concerned over the wide

gap that still exists between the indigenous peoples and others, in particular in the areas of employment, housing, health, education and income (art. 5).

The Committee recommends that the State party intensify its efforts to achieve equality in the enjoyment of rights and allocate adequate resources to programmes aimed at the eradication of disparities. It recommends in particular that decisive steps be taken to ensure that a sufficient number of health professionals provide services to indigenous peoples, and that the State party set up benchmarks for monitoring progress in key areas of indigenous disadvantage.

21. The Committee remains concerned about the striking overrepresentation of indigenous peoples in prisons as well as the percentage of indigenous deaths in custody. It has also been reported that indigenous women constitute the fastest-growing prison population (art. 5).

The Committee recommends that the State party increase its efforts to remedy this situation. It wishes to receive more information about the implementation of the recommendations of the Royal Commission on Aboriginal Deaths in Custody.

25. The Committee, while acknowledging the efforts undertaken by the State party to achieve reconciliation and having taken note of the 1999 Motion of Reconciliation, is concerned about reports that the State party has rejected most of the recommendations adopted by the Council for Aboriginal Reconciliation in 2000 (art. 6).

The Committee encourages the State party to increase its efforts with a view to ensuring that a meaningful reconciliation is achieved and accepted by the indigenous peoples and the population at large. It reiterates its recommendation that the State party consider the need to address appropriately the harm inflicted by the forced removal of indigenous children.

27. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized. It suggests that consultations of non-governmental organizations and indigenous peoples be organized during the compilation of the next periodic report.

6. Guatemala CERD/C/GTM/CO/11, 15 May 2006

4. The Committee welcomes the establishment of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), and the Office for the Defence of Indigenous Women's Rights within the Presidential Human Rights Commission.

5. The Committee welcomes the promulgation of the Framework Law concerning the Peace Agreements by which the Peace Agreements, and in particular the Agreement on Identity and Rights of Indigenous Peoples, become binding on the State.

6. The Committee welcomes the declaration by the delegation that it is the intention of the Supreme Court of Justice and the institutional policy of the judiciary to recognize the indigenous legal system.

7. The Committee welcomes the promulgation of the Mayan Language Act and of legislation with respect to the wearing of regional indigenous dress in schools.

8. The Committee welcomes the reform of chapter IV of the Municipal Code, particularly the recognition given to traditional indigenous authorities (alcaldías indígenas) for the first time as regular municipal authorities, in national legislation and the commitment by the State to promote and respect indigenous people's own forms of political and administrative organization.

9. The Committee welcomes Government Agreement No. 22-04, which provides for intercultural bilingual education as part of the national education system as well as measures for its practical implementation.

10. The Committee notes with interest the follow-up to the institutionalization of B'eleje' B'atz Day (women's day in the Mayan calendar).

11. The Committee is concerned that the statistics in the State party's report on the country's indigenous peoples are incomplete and that the State party does not keep statistics relating to the population of African descent. The Committee recalls that such information is necessary to assess how the Convention is implemented in respect of these groups.

The Committee draws the attention of the State party to its General Recommendation 4 and to paragraph 8 of its guidelines regarding the submission of reports, and recommends to the State party that it include in its next periodic report updated disaggregated statistics on indigenous peoples and persons of African descent so that their situation can be more accurately assessed.

12. The Committee is deeply concerned at the extent to which racism and racial discrimination against the Maya, Xinca and Garifuna peoples is entrenched within the territory of the State party and at the inadequacy of public policies to eliminate racial discrimination. (art. 2, para. 1, and art. 2, para. 2).

The Committee urges the State party to adopt the proposed policy entitled "Towards harmonious intercultural coexistence", which is intended to eliminate racial discrimination. It likewise recommends the State party to undertake special measures as provided for in article 2.2 of the Convention in favour of indigenous peoples and persons of African descent, who have historically been subjected to discrimination. The Committee also recommends that coordination be intensified between the various bodies involved in combating racial discrimination, such as the Office for the Defence of Indigenous Women's Rights, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala and the Ministry of Education.

13. While the Committee recognizes that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination. (art. 4, subpara. (a)).

The Committee recommends that the State party adopt specific legislation classifying as a punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, and violent acts directed against indigenous peoples and persons of African descent in the State party.

14. While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).

The Committee reminds the State party of its General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), which calls on the State party to ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to the use of interpreters and bilingual counsel in court proceedings.

15. The Committee is concerned at violence, including domestic violence against indigenous women. (art. 5, subpara. (b)).

Bearing in mind its General Recommendation 25, the Committee recommends that the State party guarantee indigenous women access to the justice system. Furthermore, it recommends that the State party adopt the bill classifying sexual harassment as an offence, and that the commission of such an offence against an indigenous woman shall constitute an aggravating circumstance.

16. The Committee notes with concern the low level of participation, especially by indigenous women, in political life and in particular the lack of representation in Congress of the Xinca and Garifuna peoples. The Committee is likewise concerned by the absence of any specific reference to indigenous political participation in the Elections and Political Parties Act (art. 5, subpara. (c)).

The Committee, bearing in mind paragraph 4 (d) of its general recommendation 23, recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples, especially indigenous women, in public affairs and that it take effective measures to ensure that all indigenous peoples, particularly the Xinca and Garifuna, participate at all levels. It also urges that the Elections and Political Parties Act be amended with a view to promoting the political participation of all indigenous peoples.

17. The Committee is highly concerned at indigenous peoples' lack of access to land, the lack of respect shown for their traditional lands, such as community forests, and the problems in relation to the restitution of lands to indigenous peoples displaced as a result of armed conflict or economic development plans (art. 5, subpara. (d) (v)).

Bearing in mind its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 thereof, the Committee calls upon the State party to take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. In cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories. The Committee also urges it to ensure the effective implementation of the national land register law so that indigenous community lands can be identified and demarcated.

18. The Committee is concerned by reports of obstructions to the use of traditional sacred sites by indigenous peoples and conflicts arising from these tensions being handled by judicial officers as criminal matters. It has also been reported that a Commission examining a constitutional provision on sacred sites has been discontinued. (art. 5, subpara. (d) (vi))

The Committee requests the State party to examine the possibility of an alternative to criminal proceedings in handling these conflicts and urges it to ensure unobstructed enjoyment of this cultural right of the indigenous peoples.

19. The Committee notes with concern that mining licences have been granted by the Ministry of Energy and Mines to concession enterprises and regrets that indigenous peoples were not consulted or informed that the permission to exploit the subsoil of their territory had been awarded to such enterprises. The Committee likewise expresses its concern at the draft legislation on consultative procedures which, if adopted, would infringe indigenous peoples' right to participate in decisions affecting them. (art. 5, subpara. (d) (v)).

The Committee recommends that when taking decisions having a direct bearing on the rights and interests of indigenous peoples the State party endeavour to obtain their informed consent, as stipulated in paragraph 4 (d) of its general recommendation 23. The Committee also recommends that before adopting the draft legislation on consultative procedures, the State party include a clause referring to the right of indigenous peoples to be consulted whenever legislative or administrative measures are contemplated that may affect them with a view to securing their consent to such measures.

20. The Committee is concerned by the high illiteracy rate that exists within the indigenous population, especially in rural areas, where 65 per cent of indigenous women are illiterate. The Committee is also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls. (art. 5, sub para. (e) (v)).

The Committee urges the State party to take steps in the short and medium terms to implement measures to reduce illiteracy, especially in rural areas and among women and girls. The Committee recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.

21. While the Committee welcomes the information provided on the structure, composition and competence of the Ombudsman for Indigenous Peoples of the Office of the Human Rights Procurator (*Defensoría de los Pueblos Indígenas de la Procuraduría de los Derechos Humanos*), it regrets that no information has been provided on the results of the cases filed before this body. (art. 6).

The Committee recommends that the State party provide information on the results from the 28 complaints of racial discrimination that have been submitted including whether the victims have received due compensation.

23. The Committee is greatly concerned by attitudes of contempt and rejection displayed by the communication media towards indigenous peoples. The Committee also wishes to express its concern at the fact that community radio stations have a broadcasting range of less than 1 kilometre, thus restricting the enjoyment of this medium by indigenous communities. (art.7)

The Committee recommends that the State party take appropriate measures to combat racial prejudice that can lead to racial discrimination in the media. It also recommends that a multicultural approach be adopted in the local, community and free communication media, in terms of their content and supervisory structures, and ensure in particular the proper functioning of community radio stations so that they reach the largest possible number of indigenous communities.

7. Botswana, CERD/C/BWA/CO/16, 4 April 2006

8. The Committee reiterates its concern that some exceptions to the prohibition of discrimination provided under section 15 of the Constitution cannot be justified under the Convention. In particular, subsection 4 (b) authorizes exceptions in relation to non-citizens to an extent not compatible with the Committee's General Recommendation 30 (2004) on non-citizens. The Committee is also concerned that, by virtue of subsections 4 (c) and (d), the prohibition of non discrimination on the basis of ethnic origin or tribe does not apply in matters of personal and customary law, and that subsection 9 authorizes the implementation of discriminatory laws in force before the coming into operation of the Constitution.

The Committee recommends to the State party that it review section 15 of the Constitution in order to ensure its full compliance with articles 1 and 2, paragraph 1 (c) of the Convention. In this context, the State party should take into consideration the principle that, under the Convention, differential treatment constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and/or are not proportional to the achievement of this aim.

9. The Committee is concerned that the State party's objective to build a nation based on the principle of equality for all has been implemented in a way detrimental to the protection of ethnic and cultural diversity. The Committee notes in particular the State party's reluctance to recognize the existence of indigenous peoples on its territory. (Articles 2 and 5)

The Committee, recalling that the principle of non-discrimination requires that the cultural characteristics of ethnic groups be taken into consideration, urges the State party to respect and protect the existence and cultural identity of all ethnic groups within its territory. The Committee also invites the State party to review its policy regarding indigenous peoples and, to that end, to take into consideration the way in which the groups concerned perceive and define themselves. The Committee recalls in this regard its General Recommendations 8 (1990) on self-identification and 23 (1997) on the rights of indigenous peoples.

10. The Committee, while taking note of the willingness of the State party to ensure better representation in the House of Chiefs, remains concerned that Bill 34 (2004) amending sections 77 to 79 of the Constitution reproduces discriminatory rules relating to the participation of ethnic groups in this institution. (Articles 2 and 5)

The Committee notes the information provided by the delegation that the debate over this issue is not closed and recommends that the State party adopt necessary measures to ensure the participation of all ethnic groups in the House of Chiefs on an equal basis.

11. The Committee reiterates its concern about the discriminatory character of the Chieftainship Act, as recognized by the High Court of Botswana in the case of *Kamanakao and others versus Attorney General of Botswana*, of 23 November 2001. It notes with concern that the State party has not yet amended the Chieftainship Act and other laws where necessary, as ordered by the High Court. (Articles 2 and 5)

The Committee reiterates its recommendation to the State party that it amend the Chieftainship Act and other laws where necessary, in particular the Tribal Territories Act, in order to remove their discriminatory character against non-Tswana ethnic groups and in order to provide equal protection and treatment to all tribes.

12. The Committee notes with concern the discrepancy between the information provided by the State party that residents of the Central Kalahari Game Reserve have been consulted and have agreed to their relocation outside the Reserve, and persistent allegations that residents were forcibly removed, through, in particular, such measures as the termination of basic and essential services inside the Reserve, the dismantling of existing infrastructures, the confiscation of livestock, harassment

and ill-treatment of some residents by police and wildlife officers, as well as the prohibition of hunting and restrictions on freedom of movement inside the Reserve. (Articles 2 and 5)

The Committee reiterates its recommendation to the State party that it resume negotiations with the residents of the Reserve, including those who have been relocated, as well as non-governmental organizations, with a view to finding a solution acceptable to all. The Committee, while welcoming the delegation's statement that there is no legal impediment to such process, recommends that a rights-based approach be adopted during the negotiations. To that end, the State party should, in particular, (a) pay particular attention to the close cultural ties that bind the San/Basarwa to their ancestral land; (b) protect the economic activities of the San/Basarwa that are an essential element of their culture, such as hunting and gathering practices, whether conducted by traditional or modern means; (c) study all possible alternatives to relocation; and (d) seek the prior free and informed consent of the persons and groups concerned.

13. The Committee expresses concern about the repeal of section 14(3)c of the Constitution, which may impact on the on-going court case brought by some residents of the Central Kalahari Game Reserve against the Government to challenge their relocation from the Reserve. The Committee notes with concern the State party's position that there was no point in maintaining this provision since the residents of the Reserve had been persuaded to be relocated. (Articles 2 and 5)

The Committee recommends the State party to refrain from taking action that would prejudice the results of the on-going court case. In that context, the Committee draws the attention of the State party to the fact that special measures for the advancement of disadvantaged ethnic groups, such as section 14 (3) c of the Constitution, are fully compatible with the letter and spirit of the Convention. (Articles 1 paragraph 4, and 2 paragraph 2)

14. The Committee is concerned by the reported difficulties experienced by poor people, many of whom belong to San/Basarwa groups and other non-Tswana tribes, in accessing common law courts, due in particular to high fees, the absence of legal aid in most cases, as well as difficulties in accessing adequate interpretation services. (Article 5)

The Committee recommends to the State party that it provide adequate legal aid and interpretation services, especially to persons belonging to the most disadvantaged ethnic groups, to ensure their full access to justice. In that context, the Committee draws the attention of the State party to its General recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

16. The Committee, while welcoming the State party's willingness to provide primary education in the main mother tongues of non-Tswana tribes, notes with concern the difficulties of many children belonging to these tribes to benefit from the educational curricula on account of linguistic barriers. (Articles 5 and 7)

The Committee recommends that the State party implement its above policy, in particular in regions inhabited traditionally or in substantial numbers by persons belonging to non-Tswana tribes. The Committee also recommends that the State party consult with the concerned tribes in this regard.

17. The Committee is concerned by information according to which the school curricula do not include reference to the history, culture and traditions of non-Tswana ethnic groups. (Articles 5 and 7)

The State party is requested to provide information, in its next periodic report, about measures adopted in the field of education aimed at encouraging knowledge of the history, culture and traditions of all tribes.

22. The Committee recommends to the State party that it invite the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, for a visit on its territory.

8. Guyana, CERD/C/GUY/CO/14, 4 April 2006

8. The Committee is concerned about the lack of disaggregated statistical data on the number and economic situation of indigenous peoples in Guyana and about their equal enjoyment of the rights guaranteed in the Convention. In the absence of such statistical information, the Committee finds it difficult to assess the extent of racial and ethnic discrimination within the territory of the State party.

The Committee requests that the State party provide in its next periodic report statistical information on the economic situation of members of indigenous peoples and their communities, as well as on their enjoyment of the rights protected under article 5 of the Convention, disaggregated by, *inter alia*, gender, age, and rural/urban population.

10. The Committee notes that the Amerindian Act of 2006 systematically refers to the indigenous peoples of Guyana as “Amerindians”. (Art. 2)

The Committee recommends that the State party, in consultation with all indigenous communities concerned, clarify whether “Amerindians” is the preferred term of these communities, that it consider the criteria laid down in article 1 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as in the Committee’s General Recommendation No. 8, in defining indigenous peoples, and that it recognize the specific rights and entitlements accorded to indigenous peoples under international law

11. While noting with favour that the State party has adopted several measures aimed at improving the situation of indigenous people in fields such as employment, housing and education, the Committee is concerned about the absence of a national strategy or plan of action which systematically address any inequalities that members of indigenous communities face in the enjoyment of their rights. (Art. 2)

The Committee recommends that the State party adopt a comprehensive national strategy or plan of action providing for special measures, in accordance with article 2 (2) of the Convention, for the purpose of guaranteeing indigenous people the full and equal enjoyment of human rights and fundamental freedoms, and that it allocate sufficient funds for that purpose.

13. The Committee is concerned about the absence of statistical data on the representation of ethnic minorities, including indigenous women, in public offices and government positions. (Article 5 (c))

The Committee urges the State party to ensure that all ethnic minorities have adequate opportunities to participate in the conduct of public affairs at all levels, including Parliament and the Government. Taking into account

paragraph 8 above, the Committee particularly requests the State party to provide in its next periodic report updated statistical information, disaggregated by ethnic group, gender and rural/urban population, on the percentage, functions and seniority of minority representatives, including Afro-Guyanese and indigenous people, holding public offices and government positions.

14. While noting that the Constitutional Amendment Act of 2000 establishing the Ethnic Relations Commission does not require the representation of any particular ethnic group on the Commission, the Committee is nevertheless concerned about the absence of any indigenous representatives on that Commission. (Art. 5 (c))

The Committee recommends that the State party ensure that the ethnic composition of the Ethnic Relations Commission be as inclusive as possible, and that the representatives of indigenous communities be consulted, and their informed consent sought, in any decision-making processes directly affecting their rights and interests, in accordance with the Committee's General Recommendation No. 23.

15. The Committee notes with deep concern that, under the Amerindian Act (2006), decisions taken by the Village Councils of indigenous communities concerning, *inter alia*, scientific research and large scale mining on their lands, as well as taxation, are subject to approval and/or gazetting by the competent Minister, and that indigenous communities without any land title ("untitled communities") are also not entitled to a Village Council. (Art. 5 (c))

The Committee urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation. In particular, it urges the State party to recognize and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.

16. The Committee is deeply concerned about the lack of legal recognition of the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy and about the State party's practice of granting land titles excluding bodies of waters and subsoil resources to indigenous communities on the basis of numerical and other criteria not necessarily in accordance with the traditions of indigenous communities concerned, thereby depriving untitled and ineligible communities of rights to lands they traditionally occupy. (Art. 5 (d) (v))

The Committee urges the State party to recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources, and to safeguard their right to use lands not exclusively occupied by them, to which they have traditionally had access for their subsistence, in accordance with the Committee's General Recommendation No. 23 and taking into account ILO Convention No. 169 on Indigenous and Tribal Peoples. It also urges the State party, in consultation with the indigenous communities concerned, (a) to demarcate or otherwise identify the lands which they traditionally occupy or use, (b) to establish adequate procedures, and to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.

17. The Committee notes with concern the extensive exception to the protection of property in Article 142(2)(b)(i) of the Constitution of Guyana, authorizing the

compulsory taking of the property of Amerindians without compensation “for the purpose of its care, protection and management or any right, title or interest held by any person in or over any lands situated in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community.” (Art. 5(d) (v) and 6).

The Committee recommends that the State party afford non-discriminatory protection to indigenous property, in particular to the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy. It also recommends that the State party confine the taking of indigenous property to cases where this is strictly necessary, following consultation with the communities concerned, with a view to securing their informed consent, and to provide these communities with adequate compensation where property is compulsorily acquired by the State, as well as with an effective remedy to challenge any decision relating to the compulsory taking of their property.

18. While noting the State party’s special recruitment measures for the Armed Forces and the police in favour of indigenous people and other applicants from the hinterland areas, the Committee remains concerned about the ethnic composition of the Armed Forces and the police of Guyana which are predominantly recruited from the Afro-Guyanese population. (Art. 5 (e) (i))

The Committee encourages the State party to continue and intensify its efforts aimed at ensuring a balanced ethnic representation in the composition of its Armed Forces and police, i.e. by implementing the recommendations of the Disciplined Forces Commission charged to address existing imbalances, by extending its special recruitment policy to all ethnic groups that are under-represented, in particular the Indo-Guyanese, and by providing incentives for members of under-represented ethnic groups to join the forces.

19. The Committee is deeply concerned that, despite the State party’s efforts mentioned in paragraph 6 above, the average life expectancy among indigenous peoples is low, and that they are reportedly disproportionately affected by malaria and environmental pollution, in particular mercury and bacterial contamination of rivers caused by mining activities in areas inhabited by indigenous peoples. (Art. 5 (e) (iv))

The Committee urges the State party to ensure the availability of adequate medical treatment in hinterland areas, in particular those inhabited by indigenous peoples, by increasing the number of skilled doctors and of adequate health facilities in these areas, by intensifying the training of health personnel from indigenous communities, and by allocating sufficient funds to that effect. Furthermore, it recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.

20. While noting with favour that the State party provides school uniforms to all indigenous children free of charge and that indigenous students are the only ethnic group for which special scholarship programmes exist, the Committee is nevertheless deeply concerned about the low secondary school and university attendance by indigenous children and students, as well as about the reported lack of qualified teachers, textbooks and classrooms at schools in areas predominantly inhabited by indigenous peoples. (Art. 5 (e) (v)).

The Committee urges the State party to ensure equal quality of teaching for, and increase school and university attendance by, indigenous children and adolescents and to that end, to the maximum of its available resources, intensify the training of, and provide incentives for, hinterland teachers, proceed with the construction of schools in hinterland areas, ensure the availability of culturally appropriate textbooks, including in indigenous languages, in schools with indigenous pupils, and further increase the outreach of scholarship programmes for indigenous pupils and students.

23. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

27. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized, including in indigenous languages.

9. Mexico, CERD/C/MEX/CO/15, 4 April 2006

4. The Committee welcomes the adoption of the new article 2 of the Constitution, stipulating that Mexico is a single, indivisible and multicultural nation originally based on its indigenous peoples.

6. The Committee welcomes the enactment of the General Act on the Linguistic Rights of Indigenous Peoples in 2003 and the establishment of the Institute of Indigenous Languages.

7. The Committee welcomes the establishment of the National Commission for the Development of Indigenous Peoples in 2003.

8. The Committee welcomes the recognition of the jurisdiction of 'indigenous judges' in certain States of Mexico.

10. The Committee takes note with satisfaction of the close cooperation between the Office of the High Commissioner for Human Rights in Mexico and the State party in efforts to combat racial discrimination, especially in relation to indigenous peoples.

12. While the Committee takes note of the explanations supplied by the State party in relation to the constitutional reforms of 2001 as regards indigenous rights, it regrets that those reforms have not been followed through in practice. The Committee also regrets that the indigenous peoples were not consulted during the reform process. (Art.2)

The Committee recommends that the State party should put into practice the principles set out in the constitutional reform in relation to indigenous matters in close cooperation with the indigenous peoples.

13. The Committee expresses concern at the failure to implement article 10 of the Law on Linguistic Rights of Indigenous Peoples under which indigenous persons are entitled to use interpreters in the administration of justice. (Art.5 (a))

The Committee, bearing in mind General recommendation 31 (Section B, paragraph 5e)), recommends that the State party should guarantee the right of indigenous peoples to use interpreters and court-appointed defence counsel who are familiar with the language, culture and customs of the indigenous communities.

14. The Committee notes with concern that under Article 2, section VII of the Constitution, the right of the indigenous peoples to elect their political representatives is limited to the municipal level. (Art. 5(c))

The Committee reminds the State party of article 5 (c) of the Convention, and recommends that it should guarantee in practice the right of the indigenous peoples to participate in government and in the management of public affairs at every level.

15. The Committee reiterates its concern that indigenous communities have no legal security with regard to land tenure, particularly in the Huasteca region, where the indigenous communities' struggle for recognition of their ownership of land and the granting of titles has resulted in dozens of deaths over the past three decades. (Art.5 (d)(v))

The Committee reminds the State party of its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. The Committee also recommends that the State party should ensure the effective implementation of the programme for dealing with hot spots, which is designed to settle conflicts caused mainly by disputes over land ownership. The Committee requests the State party to supply information in its next periodic report on progress made in this area.

16. The Committee remains concerned at the situation of migrant workers who originate principally from indigenous communities in Guatemala, Honduras and Nicaragua, particularly as regards women, who are victims of such abuses as long working days, lack of health insurance, physical and verbal ill-treatment, sexual harassment, and threats that they will be handed over to the migration authorities because they are undocumented. (Art.5 (e) (i))

Bearing in mind general recommendation No. 30 on non-citizens, the Committee recommends that the State party should ensure the proper implementation in practice of programmes for migrant workers, such as the Programme of Documentation for the Legal and Migratory Security of Guatemalan Farm Workers, the Regularization of Migration Programme, the Programme for upgrading migrant holding centres, the Plan of Action for Cooperation in Migratory Matters and Consular Protection with El Salvador and Honduras and the Agricultural day labourers' programme. The Committee calls on the State party to include in its next periodic report information on progress made in relation to the situation of migrant workers in the State party.

17. While the Committee welcomes the criminalization of forced sterilization under article 67 of the General Health Law, it reiterates its concern at the reproductive health situation of indigenous men and women in Chiapas, Guerrero and Oaxaca as far as the alleged practice of forced sterilization is concerned. (Art.5 (e) (iv))

The Committee urges the State party to take all necessary steps to put an end to practices of forced sterilization, and to impartially investigate, try and punish the perpetrators of such practices. The State party should also ensure that fair and effective remedies are available to the victims, including those for obtaining compensation.

18. The Committee is concerned at the racial discrimination which exists against indigenous peoples in the media, including through projection of stereotyped and demeaning representations of indigenous peoples. (Arts.4 and 7)

The Committee recommends that the State party should take appropriate steps to combat racial prejudice leading to racial

discrimination in the media, both public and private. The Committee also recommends that in the area of information the State party should foster understanding, tolerance and friendship among the various racial groups in the State party, including the adoption of a code of media/journalistic ethics in this field.

10. El Salvador, CERD/C/SLV/CO/13, 4 April 2006

4. The Committee welcomes the study entitled *Profile of the Indigenous Peoples*, prepared with the support of the World Bank, which, as the State party indicated, will serve as a basis for the formulation of government policy in this area.

5. The Committee notes with satisfaction article 62, paragraph 2, of the State party's Constitution, which provides that the indigenous languages spoken in El Salvador shall be preserved, disseminated and respected. The Committee also takes note of the project for the revitalization of the Nahuat language, and the fact that the Universal Declaration of Human Rights has been translated into Nahuat and Pipil.

7. The Committee notes once again the discrepancy between the assessment made by the State party, according to which society in El Salvador is ethnically homogeneous, and reliable reports indicating that indigenous peoples such as the Nahua-Pipil, the Lencas and the Cacaotera live in the country. The Committee points out that information on the composition of the population is needed to assess the implementation of the Convention and monitor policies affecting minorities and indigenous peoples.

The Committee draws the State party's attention to its general recommendation IV (1973), as well as paragraph 8 of its guidelines for the submission of reports, and again requests the State party to supply disaggregated statistical information on the ethnic composition of the population of El Salvador in its next periodic report.

10. The Committee notes that the State party indicates that it has not ratified International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, on the grounds that some of its provisions conflict with El Salvador's domestic legislation.

The Committee urges the State party to take the necessary legislative steps to enable it to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (art. 2, para. 2).

11. The Committee notes with concern the vulnerability of the indigenous peoples in respect of enjoyment of their economic, social and cultural rights, particularly as regards land ownership and access to drinking water.

The Committee encourages the State party to step up its efforts to improve the enjoyment of economic, social and cultural rights by the indigenous peoples, and especially to take steps to guarantee them land ownership and access to drinking water. The Committee invites the State party to take account of its general recommendation XXIII, on the rights of indigenous peoples (art. 5).

13. The Committee notes with concern the low level of indigenous participation in government, in the management of public affairs at all levels and in the public service in El Salvador.

The Committee recommends that the State party should ensure that indigenous people participate in government and the management of public affairs at all levels, and enjoy equal access to the public service (art. 5 (c)).

14. The Committee notes with concern that the indigenous peoples have no access to their places of worship in the same way as followers of other religions.

The Committee encourages the State party to take the necessary steps to facilitate unrestricted access by indigenous people to pre-Hispanic centres to hold their religious ceremonies (art. 5 (vii)).

15. The Committee notes that, according to the State party, it is difficult to identify indigenous people, since they sometimes prefer not to identify themselves as such. It also notes that, according to some reports, this is due in large part to the events of 1932 and 1983, when large numbers of indigenous people were murdered. The Committee is seriously concerned that the persons responsible for those acts have not been identified, tried and punished.

The Committee urges the State party to take account of the recommendations made by the Human Rights Committee in its concluding observations on El Salvador (2003), to the effect that the General Amnesty Act should be amended to make it compatible with international human rights instruments. The Committee also encourages the State party to put into effect the recommendations made by the Inter-American Commission on Human Rights and adopt a programme of reparation and where possible material compensation for the victims, thus creating a climate of trust that will enable the indigenous people to assume their identity without fear (art. 6).

16. The Committee notes with concern the difficulties facing indigenous groups in securing access to justice owing to the high cost of judicial procedures and the lack of judicial services in remote areas.

The Committee invites the State party to take all appropriate measures to rectify this situation, including possible exemption for the indigenous peoples from payment of legal fees, taking into consideration the provisions of its general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, especially paragraphs 6-9 of the recommendation (art. 6).

21. The Committee recommends that the reports of the State party should be made public as soon as they are submitted and that the Committee's observations thereon should also be published, including in indigenous languages.

11. Denmark, CERD/C/DEN/CO/17, 18 August 2006.

19. The Committee, while welcoming the municipalities' obligation to offer mother tongue teaching to bilingual students coming or originating from the European Union and European Economic Area countries, as well as from the Faroe Islands and Greenland, regrets that in 2002, the municipalities' obligation to do so for bilingual students from other countries was repealed and that municipalities no longer receive financial support for such purpose. (articles 5 (e) (v) and (vi))

The Committee recommends that the State party review its policy, taking into consideration its obligation under the Convention not to discriminate against persons on the basis of their national or ethnic origin nor against any particular nationality. The Committee recalls that differential treatment based on nationality and national or ethnic origin constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

20. The Committee notes with concern that the Supreme Court decision of 28 November 2003 relating to the case of the Thule Tribe of Greenland, did not consider the Thule Tribe as a distinct indigenous people despite the tribe's perception to the contrary, on the ground that today they share the same conditions as the rest of the Greenlandic people.

The Committee, drawing the attention of the State party to its General Recommendations 8 (1990) on identification with a particular racial or ethnic group and 23 (1997) on indigenous peoples, recommends that the State party pay particular attention to the way in which indigenous peoples identify themselves.

12. Norway, CERD/C/NOR/CO/18, 18 August 2006

6. The Committee welcomes the adoption of the Finnmark Act in 2005 which sets out procedures to enhance the Saami people's right to participate in the decision-making processes regarding management of land and natural resources in the areas they occupy.

11. The Committee welcomes the establishment of the bilingual (Saami and Norwegian) Inner Finnmark District Court on 1 January 2004.

17. The Committee is concerned that the Finnmark Act does not address the special situation of the East Saami people. (Article 5 and article 2.2)

The Committee recommends that the State party make further steps in conformity with article 2.2 of the Convention and its general recommendation 23 on the rights of indigenous peoples, to adopt special and concrete measures to ensure the adequate development and protection of certain highly vulnerable indigenous groups namely, the East Saami people, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms, in particular to recognize and respect their distinct culture, history, language and way of life an enrichment of the State's cultural identity and to promote its preservation. It also requests the State party to provide further information on the Finnmark Commission and on the draft Nordic Saami Convention in its next periodic report.

13. South Africa, CERD/C/ZAF/CO/3, 22 August 2006

12. The Committee notes the lack of information on how the Traditional Leadership and Governance Framework Act of 2003 addresses the status of customary law and traditional leadership, vis-à-vis both national and provincial legislation (article 2 (c)), in relation to the elimination of racial discrimination.

The Committee recommends that the State party include detailed information in its next periodic report on the role of traditional leadership and on the status of customary law, including on the measures adopted to ensure that the application of such laws does not have the effect of creating or perpetuating racial discrimination.

19. The Committee is concerned with the situation of indigenous peoples, *inter alia* the Khoi, San, Nama, Griqua communities, and, in particular, hunter-gatherer, pastoralist and nomadic groups, and notes the absence of information on the specific measures adopted by the State party to ensure the enjoyment of all rights by those indigenous communities (article 5 (e)).

In the light of General Recommendation 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide detailed information in its next periodic report on the situation of the indigenous peoples and on any special measures, pursuant to articles 1 paragraph 4 and 2 paragraph 2 of the Convention, taken with a view to ensuring the enjoyment of their rights under the Convention, including their freedom of movement, and their right to participate in decisions affecting them.

22. While noting the constitutional rights to receive education in the language of one's own choice, the Committee wishes to point out the lack of information on the implementation of these rights as well as on the measures taken with regard to the promotion of constitutionally recognized languages, *inter alia*, the Khoi, San, Nama and sign languages. The Committee also notes the absence of information on the

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (article 5 (e)).

The Committee recommends that the State party provide information on all languages recognized in the Constitution, especially their use in education, and on the measures to promote indigenous languages, as well as on the status, activities and resources of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

B. Decisions and Letters

1. Suriname: Decision 1(67), CERD/C/DEC/SUR/4, 18 August 2005 (Early Warning & Urgent Action Procedure)

1. The Committee recalls that in its decision 3 (66) of 9 March 2005, it expressed concern about the fact that a revised version of the draft Mining Act, which was approved by the Council of Ministers of Suriname at the end of 2004, may not be in conformity with the Committee's recommendations adopted in March 2004 following the consideration of the first to tenth periodic reports of Suriname.

2. The Committee deeply regrets that it has not received any comment under the follow-up procedure from the State party on the above assessment of the draft law, as requested in decision 3 (66).

3. The Committee expresses deep concern about information alleging that Suriname is actively disregarding the Committee's recommendations by authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.

4. Drawing once again the attention of the State party to its general recommendation XXIII (1997) on the rights of indigenous peoples, the Committee urges the State party to ensure that the revised draft Mining Act complies with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's 2004 recommendations. In particular, the Committee urges the State party to:

(a) Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;

(b) Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;

(c) Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.

5. The Committee recommends once again that a framework law on the rights of indigenous and tribal peoples be elaborated and that the State party take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for that purpose.

6. The Committee recommends to the State party that it extend an invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

7. The Committee urges the Secretary-General to draw the attention of the competent United Nations bodies to the particularly alarming situation in relation to

the rights of indigenous peoples in Suriname and to request them to take all appropriate measures in this regard.

2. New Zealand, Decision 1 (66). CERD/C/DEC/NZL/1. 27 April 2005 (Early Warning & Urgent Action Procedure)

1. The Committee has reviewed, under its early warning and urgent action procedure, the compatibility of the New Zealand Foreshore and Seabed Act 2004 with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in the light of information received both from the Government of New Zealand and a number of Maori non-governmental organizations and taking into account its general recommendation XXIII (1997) on indigenous peoples.

2. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party at its 1680th meeting on 25 February 2005, and also appreciates the State party's written and oral responses to its requests for information related to the legislation, including those submitted on 17 February and 9 March 2005.

3. The Committee remains concerned about the political atmosphere that developed in New Zealand following the Court of Appeal's decision in the *Ngati Apa* case, which provided the backdrop to the drafting and enactment of the legislation. Recalling the State party's obligations under article 2, paragraph 1 (d), and article 4 of the Convention, it hopes that all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage.

4. While noting the explanation offered by the State party, the Committee is concerned at the apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the *Ngati Apa* decision, which might have accommodated Maori rights within a framework more acceptable to both the Maori and all other New Zealanders. In this regard, the Committee regrets that the processes of consultation did not appreciably narrow the differences between the various parties on this issue.

5. The Committee notes the scale of opposition to the legislation among the group most directly affected by its provisions, the Maori, and their very strong perception that the legislation discriminates against them.

6. Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.

7. The Committee acknowledges with appreciation the State party's tradition of negotiation with the Maori on all matters concerning them, and urges the State party, in a spirit of goodwill and in accordance with the ideals of the Waitangi Treaty, to resume dialogue with the Maori community with regard to the legislation, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment, where necessary.

8. The Committee requests the State party to monitor closely the implementation of the Foreshore and Seabed Act, its impact on the Maori population and the developing state of race relations in New Zealand, and to take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

9. The Committee has noted with satisfaction the State party's intention to submit its fifteenth periodic report by the end of 2005, and requests the State party to include full information on the state of implementation of the Foreshore and Seabed Act in the report.

3. Suriname: Decision 3 (66), CERD/C/DEC/SUR/1. 27 April 2005 (Follow Up Procedure).

1. At its sixty-fourth session, which took place from 23 February to 12 March 2004, the Committee considered the first to tenth periodic reports of Suriname and welcomed the opportunity to engage, for the first time, in a constructive dialogue with the State party.

2. In the concluding observations which it adopted following examination of these reports, the Committee recommended "legal acknowledgement by the State party of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources", and that "the State party strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions" (A/59/18, paras. 190 and 192).

3. The Committee also adopted the following conclusion and recommendation:

"The Committee notes that, under the draft Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached, the matter will be settled by the executive, and not the judiciary. More generally, the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons.

"The Committee recommends that indigenous and tribal peoples should be granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage." (A/59/18, para. 193)

4. The revised version of the draft Mining Act, which was approved by Suriname's Council of Ministers at the end of 2004 and is likely to be scheduled for adoption by the National Assembly within the next few months, may not be in conformity with the Committee's recommendations.

5. The Committee therefore invites the State party to comment on the above assessment of the draft law, and recommends that such comments be submitted to it before 11 April 2005.

6. The Committee wishes to draw once again the attention of the State party to its general recommendation XXIII (1997) on the rights of indigenous peoples. It also reiterates the conclusions and recommendations it adopted following the examination of the first to tenth periodic reports of Suriname. It recommends to the State party that it ensure the compliance of the revised draft Mining Act with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with recommendations formulated by the Committee.

7. The Committee wishes to pursue the constructive dialogue it has engaged in with Suriname in 2004, and stresses that its request for clarification is made with a view to ensuring the implementation of the Convention in cooperation with the State party.

4. United States of America, 19 August 2005, Letter (Follow Up Procedure)

The Committee wishes to inform you that, at its 67th session held from 2 to 19 August 2005, it considered on a preliminary basis the requests submitted by the Western Shoshone National Council, and by the Western people of the Timbisha Shoshone Tribe, Winnemucca Indian Colony and Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous people in the United States of America.

The Committee appreciates the frank and open preliminary discussion which took place on Monday 8 August 2005, between representatives of the United States of America and the Committee's Working Group on Early Warning and Urgent Action Procedure, together with the Committee's Coordinator on Follow-up and other Committee members.

The Committee notes with interest the assurances given by the State party that its fourth and fifth periodic reports, which were due on 20 November 2003, are being prepared, and that comprehensive information relating to the follow-up given to the Committee's 2001 Concluding observations (A/56/18, para. 380-407) will be included in these periodic reports. It regrets, however, that the State party is not in a position to undertake to submit the reports by a specific date.

The Committee, bearing in mind paragraph 400 of its 2001 Concluding observations following the examination of the United States of America's initial, second and third periodic reports, notes with concern the allegation that the Western Shoshone indigenous people are being denied their traditional rights to land and that past and new actions adopted by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to this community.

The Committee, in particular, has received information concerning reinvigorated federal efforts to open a nationwide nuclear waste repository on Western Shoshone land; passage of controversial legislation allowing for distribution of compensation for the alleged extinguishment of Western Shoshone title over land; alleged legislative efforts to privatize Western Shoshone lands for transfer to multinational extractive industries and energy developers; and alleged seizures of Western Shoshone livestock and imposition of heavy trespass fines against Western Shoshone people.

In light of the above information, the Committee considers that the opening of a substantial dialogue with the State party on these issues would help to clarify the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, the date of which is so far uncertain.

In order to facilitate this dialogue, and in accordance article 9 (1) of the Convention and article 65 of its rules of procedure, the Committee draws the attention of the State party to the following list of questions:

- 1) Has the 1863 Treaty of Ruby Valley been abrogated in whole or in part, and, if so, following which process? According to information received, the State party considers that this Treaty was not intended to acknowledge Shoshone title to lands covered by it, a reading of the legal situation contested by the Western Shoshone people. Please comment on the divergence of views, and explain how the State party reconciles its position with the principle that Indian treaties shall be construed in favor of the Indians.
- 2) The State party reportedly maintains that the Western Shoshone people lost their rights to ancestral lands, as identified in the 1863 Treaty, as a result of "gradual encroachment" by non- Native Americans. Has such "gradual encroachment" been demonstrated in relation to Western Shoshone land? How does the State party reconcile this position with its obligations under article 5 (d) (v) of the Convention to guarantee the right of everyone, without discrimination, to own property alone as well as in association with others?
- 3) Please provide information on the decisions of the Indian Claims Commission (ICC) regarding Western Shoshone ancestral land, and, bearing in mind article 5 (a) and (c) of the Convention, indicate to what extent Western Shoshone people were informed about the proceedings before the ICC and whether they were parties and/or participated in them.
- 4) Please report on the content of the 2004 Western Shoshone Claims Distribution Act, and on how the State party has reacted to the protests

formulated by Western Shoshone people against this legislation. Is the proposed compensation included in the Bill fair and adequate?

- 5) Please outline the scope of Western Shoshone access to judicial process to assert their title to land and other rights related to its use and occupation.
- 6) The imposition of grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting and fishing as well as arrests are reported to be inflicted on the Western Shoshone people while using what they claim as their ancestral lands. Please comment on this information, and explain the reasons why, if confirmed, these actions have been carried out.
- 7) Please inform the Committee on action taken by the State party to respond to the Committee's concern with regard to plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, and with placing their land up for auction for privatization.
- 8) How does the State party deal with land and resources having cultural and spiritual significance for indigenous peoples? In this regard, please provide information on the draft Bill H.R. 2869 "Northern Nevada Rural Economic Development and Land Consolidation Act 2003", and the reasons for its presentation, as well as on legislative discussions, if any, regarding the reform of the General Mining Law of 1872, 17 Stat. 91 (1872).
- 9) Please also provide information on the reported decision of the State party to expand mining activities in the Mount Tenabo area and to store nuclear waste in Yucca Mountain.
- 10) Which measures has the State party adopted in order to follow-up on the Committee's recommendation that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights? In this regard, please explain whether discussions have been undertaken with the Western Shoshone people with a view to finding solutions acceptable to them.

Please allow me, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue opened with your Government in 2001, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

In this perspective, the Committee wishes to receive responses to these issues by 31 December 2005, so that they can be examined at its 68th session, to be held from 20 February to 10 March 2006.

5. Botswana, 10 March 2005, Letter (Follow Up Procedure)

The Committee wishes to inform you that it considered, at its 66th session in March 2005, the preliminary responses provided by the Republic of Botswana in its letter dated 10 February 2005, regarding the implementation of paragraph 301 of the Committee's previous concluding observations on Botswana, adopted in August 2002 (A/57/18).

The Committee welcomes with appreciation the extensive and substantial information provided by the Republic of Botswana, as requested by the Committee in its letters dated 20 August and 23 September 2004. It appreciates the willingness of the State party to pursue a dialogue with the Committee in a constructive manner.

The Committee notes with a particular interest the useful information provided by the State party on the history of Botswana, and its implications regarding territories, tribes, and representation in the House of Chiefs. While understanding that traditions and customs constitute an important heritage of Botswana, the Committee wishes to stress, however, that the State party should also take into consideration the obligations it has undertaken under the International Convention on the Elimination of all Forms of Racial Discrimination.

The Committee reiterates its views that the Tribal Territories Act, the Chieftainship Act and Sections 77 to 79 of the Constitution, as currently drafted, have a discriminatory effect, in particular against those ethnic groups which are subordinate to a dominant tribe on a Tribal territory, and are not represented on an equal basis in the House of chiefs. It notes that the High Court of Botswana, in a decision adopted on 23 November 2001, declared that the Chieftainship Act was discriminatory and ordered that its section 2 be amended in order to give equal protection and treatment to all tribes under that Act.

The Committee welcomes efforts made by the State party to ensure better representation in the House of Chiefs, and notes its willingness to enhance territorial representation rather than ethnic representation in this House.

The Committee wishes to stress however that whatever system is chosen, it should not discriminate between groups, and should not lead to a situation where some groups are recognized while others are not, or where the interests of some groups are taken into consideration while interests of other groups are not.

In this regard, the Committee wishes to stress that the Convention prohibits direct as well as indirect discrimination, and draws the attention of the State party to its General Recommendation XXIV, according to which criteria for recognition of groups should be consistently applied. It further notes that, according to some information, non-Tswana speaking regions all rejected the proposed Bill.

The State party indicates that it is currently redrafting those aspects of Section 2 of the Chieftainship Act which had been declared discriminatory by the High Court, and that the draft Bill on the House of Chiefs will be amended accordingly. The Committee wishes to be kept closely informed about the ongoing reform process, and requests that copies of the new draft Bills be transmitted to it as soon as they are available. It would also like to receive more detailed information clarifying what the terms “dominant tribe” and “historical agreement of all concerned”, by which a paramount chief rules over all tribal groupings living in Tribal territories, actually mean.

Please allow us, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue renewed with your Government in 2002, and to underline that the Committee’s observations and request for further information is made with a view to ensuring the implementation of the Convention in cooperation with your Government.

6. United States of America, DECISION 1 (68), CERD/C/USA/DEC/1, 11 April 2006 (Early Warning & Urgent Action Procedure)

1. At its 67th session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

2. Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its 68th session.

3. Responding to the Committee’s letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the

matter.

4. The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its 68th session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure.

B. Concerns

5. The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

6. The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002).

7. The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources, and expresses particular concern about:

(a) Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.

(b) Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end.

(c) The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;

(d) The conduct and / or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

(e) The reported intimidation and harassment of Western Shoshone people by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which gravely disturb the enjoyment of their ancestral lands.

(f) The difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

C. Recommendations

8. The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

9. The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

10. The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

(a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

(b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;

(c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

11. In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.

7. Suriname, Decision 1(69), CERD/C/DEC/SUR/3, 18 August 2006 (Early Warning & Urgent Action Procedure)

1. The Committee, recalling its Decisions 3 (66) of March 2005 and 1 (67) of August 2005 on Suriname, reiterates its deep concern about information alleging that the State party has authorized additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.

2. Drawing once again the attention of the State party to its General Recommendation 23 (1997) on the rights of indigenous peoples, the Committee strongly recommends the State party to:

- Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;
 - Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;
 - Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specifically created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage;
 - Elaborate a framework law on the rights of indigenous and tribal peoples and take advantage of the technical assistance available under the advisory services and technical assistance Programme of the Office of the United Nations High Commissioner for Human Rights for that purpose;
 - Extend an invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people for a visit on its territory.
3. The Committee requests that detailed information on the above-mentioned issues be included in the eleventh to thirteenth periodic reports of the State party, to be submitted in a single document on 14 April 2007. The Committee also wishes to receive, as previously requested, detailed information on the current status of the revised draft Mining Act and its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's 2004 concluding observations.
4. The Committee draws the attention of the High Commissioner for Human Rights as well as the competent United Nations bodies, in particular the Human Rights Council, to the particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname, and invites them to take all appropriate measures in this regard.

8. Brazil, 18 August 2006. Letter (Early Warning & Urgent Action Procedure)

The Committee wishes to inform you that its 69th session held from 31 July to 18 August 2006, it considered on a preliminary basis the request submitted by the Conselho Indígena de Roraima, the Indigenous Peoples Law and Policy Program of the University of Arizona, the Rainforest Foundation and the Forest Peoples Programme, asking the Committee to act under its follow-up procedure as well as under its early warning and urgent action procedure on the situation of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples of Raposa Serra do Sol indigenous lands of the state of Roraima, Brazil.

The Committee recalls the provisions of paragraph 15 of its Concluding observations adopted following the examination of the fourteenth to seventeenth periodic reports of Brazil in 2004 (CERD/C/64/CO/2):

“While the Committee takes note of the State party's objective to complete the demarcation of indigenous lands by 2007 and considers it an important step towards securing the rights of indigenous peoples, it remains concerned at the fact that effective possession and use of indigenous lands and resources continues to be threatened and restricted by recurrent acts of aggression against indigenous peoples.

In the light of general recommendation 23 on the rights of indigenous peoples, the Committee recommends that the State party complete the demarcation of indigenous lands by 2007. Furthermore, the Committee recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources. In this connection, the Committee invites the State party to submit

information on the outcome of cases of conflicting interests over indigenous lands and resources, particularly those where indigenous groups have been removed from their lands.”

The Committee has received information concerning the demarcation and titling process in Raposa Serra do Sol. It notes with appreciation that a Presidential Decree, signed on 15 April 2005, ratified the administrative delimitation and demarcation of Raposa Serra do Sol Indigenous land, located in the Municipalities of Normandia, Pacaraima and Uiramutã, in the State of Roraima, for the permanent possession of the Ingaricó, Macuxi, Patamonia, Taurepang and Wapichana indigenous groups. It notes however that the Presidential Decree which reportedly called for the removal of non-indigenous settlers present in the area of Raposa Serra do Sol, at the latest by 15 April 2006, has not been implemented to date, and that the land has still not been formally registered at the Federal level, as a final step of the demarcation and titling procedure.

The Committee notes with concern allegations according to which the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana peoples of Raposa Serra do Sol are being exposed to violent attacks on their person, property and institutions and that there is a pattern of escalating racial hatred and violence towards them. The Committee is particularly concerned about information that indigenous schools and missions have been burned, villages and food supplies destroyed, indigenous families displaced and left homeless, bridges permitting sole access to indigenous areas in Raposa Serra do Sol set on fire and vandalized, and people threatened, beaten, kidnapped and shot by non-indigenous settlers. According to the information received, the hatred and violence has also been supported by some local government and law enforcement officials.

In light of the above information, the Committee considers that the opening of a substantial dialogue with the State party on these issues would help to clarify the situation before the submission and examination of the eighteenth to twentieth periodic reports of Brazil, to be submitted in a single document on 4 January 2008.

In order to facilitate this dialogue, and in accordance with article 9(1) of the Convention and article 65 of its rules of procedure, the Committee would like to receive the State party's comments on the above allegations. It also draws the attention of the State party to the following list of questions:

- 1) Please provide information on measures taken by the State party to implement the Presidential Decree of 15 April 2005. What difficulties, if any, have been encountered in this regard?
- 2) Please comment on the information according to which legal challenges against the recognition of indigenous lands have resulted in judicial rulings promoting third-party property interests, in contradiction with constitutional and legislative provisions protecting indigenous lands.
- 3) What measures has the State party adopted to protect the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana peoples in Raposa Serra do Sol? Have those responsible for acts of violence been prosecuted and punished? Please inform the Committee on the number of complaints, prosecutions and sentences in this regard.

Please allow me, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue with your Government, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

In this perspective, the Committee wishes to receive additional information on these issues by 31 December 2006, so that it can be examined at its 70th session, to be held from 19 February to 9 March 2007.

9. Peru, 18 August 2006, Letter (Early Warning & Urgent Action Procedure)

The Committee wishes to inform you that on 16 August 2006, in the course of its 69th session, it considered on a preliminary basis the request submitted by the

Comisión jurídica para el autodesarrollo de los pueblos originarios andinos (CAPAJ), asking the Committee to act under its Early Warning and Urgent Action Procedures on the situation of the Aymara people located on the grasslands of the Altiplano in Peru.

The Committee appreciates the frank and open preliminary discussion which took place on Tuesday 15 August 2006 between yourself and its Working Group on Early Warning and Urgent Action Procedure on the issues raised in the request.

The Committee recalls the provisions of paragraph 5 of its concluding observations adopted following the examination of Peru's twelfth and thirteenth periodic reports in 1999 (CERD/C/304/Add.69) in which the Committee:

“5. ...takes note with interest that Peru supports Agenda 21, adopted at the United Nations Conference on Environment and Development, one chapter of which deals with the role of indigenous communities and environmental preservation. Peru also took part in the establishment of a Special Commission on Indigenous Affairs in Amazonia and supported the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.”

Bearing in mind the support of Peru for Agenda 21, the Committee notes with concern allegations according to which the Vilavilani project in Tacna, which involves the drainage of surface and underground water from the grasslands of the Altiplano, has led to the desertification and salinisation of the ancestral lands of the Aymara people, thus causing considerable prejudice to its members.

During your meeting with the members of the Working Group on Early Warning and Urgent Action Procedure of the Committee, you acknowledged that the project had adversely affected the indigenous communities of the Altiplano. You conveyed to the Working Group, however, your Government's view according to which, following the conduct of an environmental impact evaluation, the Vilavilani project had been subjected to some technical adaptations and was therefore no longer causing prejudice to the concerned indigenous communities.

In light of this preliminary information, the Committee considers that the opening of a substantial dialogue with the State party on these issues would help to clarify the situation further. In order to facilitate this dialogue, and in accordance with article 9(1) of the Convention and article 65 of its rules of procedure, the Committee would welcome your Government's detailed comments on the above-mentioned allegations. It also draws in particular your attention to the following list of questions:

1. Please provide the Committee with environmental impact evaluations and any other technical information that you may find relevant for the Committee to have a full understanding of the factual situation, in particular please provide information regarding the provisional closure of water wells and the reasons for such a decision.
2. Please provide information on measures taken by the State party to compensate the indigenous communities adversely affected by the Vilavilani project;
3. Please comment on the information according to which the water drained from the surface and undergrounds of the grasslands of the Aymara people is not only used for the provision of water supplies to local households but is also used for agricultural and industrial developments including the production of energy and the activities of mining companies.
4. Please provide detailed information on the conclusions or recommendations, if any, taken by the “Comisión investigadora de las presuntas irregularidades en el Proyecto Especial Tacna – INADE”;

The Committee wishes to receive your Government's responses on these issues by 31 December 2006, so that they can be examined at its 70th session, to be held from 19 February to 9 March 2007.

10. United States, 18 August 2006, Letter (Early Warning & Urgent Action Procedure)

I have the honour to refer to the Committee's Decision 1 (68) on the United States of America, adopted on 8 March 2006, expressing the Committee's concern that past and current actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected. You may recall that the Committee also requested that the State party provide it with information on action taken to implement this decision by 15 July 2006.

Following receipt of updated information on this issue from representatives of the Western Shoshone peoples, the Committee would be very grateful for clarification regarding the status of your Government's response and in particular the date upon which it may be expected. The Committee looks forward to pursuing a constructive dialogue with Your Government on the implementation of the Convention and to receiving a response at your earliest convenience.

The Committee recalls the State party's assurances given in August 2005, that its fourth and fifth periodic reports, which were due on 20 November 2003, were being prepared, and that comprehensive information relating to the above subject matter would be included in these periodic reports. It regrets, however, that to date, the State party has not submitted its overdue reports.

11. Nicaragua, 18 August 2006, Letter (Early Warning & Urgent Action Procedure)

Spanish Only

12. Democratic Republic of Congo, 18 August 2006, Letter (Early Warning & Urgent Action Procedure)

French Only

13. Laos, 18 August 2006, Letter (Follow Up Procedure)

I wish to inform you that the Committee on the Elimination of Racial Discrimination considered, at its 69th session held from 31 July to 18 August 2006, the additional report submitted by the Government of the Lao People's Democratic Republic, pursuant to rule 65 (1) of the rules of procedure of the Committee (CERD//C/LAO/CO/15/Add.1).

The Committee welcomed the timely submission of the responses to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 10, 21 and 22 of the concluding observations (CERD/C/LAO/CO/15, 9 March 2005), adopted following the consideration of the sixth to fifteenth periodic reports of the State party. The Committee particularly appreciated the willingness thereby demonstrated by the State party to pursue the constructive dialogue renewed with the Committee in 2005 after a lapse of twenty years.

In this spirit, the Committee would like to draw the State party's attention to the following issues regarding which it would welcome comments and responses of the State party in its 16th and 17th periodic reports, to be submitted in a single document on 24 March 2007.

- **Paragraph 10 of the Concluding observations.** The Committee noted with satisfaction the revision of article 176 of the penal code, criminalizing acts of discrimination based on ethnicity. It encourages the State party to take further steps to ensure that all elements of the definition of racial discrimination provided by article 1 of the Convention, in particular the elements of race, colour, descent, and national origin, are expressly included in the prohibition of racial discrimination. The Committee would also like to be

informed about the definition of racial discrimination used in areas of law other than penal law.

- **Paragraph 21 of the Concluding observations.** The Committee took note of the State party's information, but remains concerned that it did not receive any clear response in relation to its recommendation that the State party establish a dialogue with members of the Hmong minority who have taken refuge in the jungle or the mountainous areas of its territory since 1975 and that United Nations agencies be granted access to them. The Committee notes with concern receipt of updated information alleging that acts of violence are committed against this group of people and that the situation still requires urgent attention. It therefore recommends that the State party extend an invitation to the United Nations independent expert on minority issues for a visit to the areas in which members of the Hmong minority have taken refuge.

- **Paragraph 22 of the Concluding observations.** The Committee noted the explanation provided by the State party, and wishes to draw the attention of the State party to its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. It further stresses that investigations into allegations of acts of violence against members of ethnic minorities by law enforcement officials should be carried out by independent bodies, including when no complaint has been formally lodged by the alleged victims.

- The Committee also welcomed the additional information provided by the State party on issues of economic and social development. In this regard, the Committee would welcome the inclusion in the next report of more detailed data on the specific economic and social situation of ethnic minorities.

The Committee takes this opportunity to stress that it would be grateful if it could also be informed about the follow-up given by the State party's authorities to the Committee's letter dated 11 March 2005, relating to the detention of Mr. Tho Moua, Mr. Thoua Cha Yang and Mr. Pa Phue Khang, three Lao citizens who accompanied foreign journalists on their visit to the Lao People's Democratic Republic in June 2003.

Allow me, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue opened with your Government in 2005, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

14. Australia, 18 August 2006, Letter (Follow Up Procedure)

I wish to inform you that the Committee on the Elimination of Racial Discrimination considered, at its 69th session held from 31 July to 18 August 2006, the additional report submitted by the Government of Australia, pursuant to rule 65 (1) of the rules of procedure of the Committee (CERD/C/AUS/CO/14/Add.1).

The Committee welcomed the timely submission of the responses to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 10, 11, 16 and 17 of the concluding observations (CERD/C/AUS/CO/14, March 2005), adopted following the consideration of the thirteenth and fourteenth periodic reports of the State party. The Committee thus appreciates the opportunity provided to continue the dialogue with the State party.

In this spirit, the Committee would like to draw the State party's attention to the observations mentioned below. The Committee requests that comments and responses on action taken from the State party on these issues be included in its 15th to 17th periodic reports, to be submitted in a single document on 30 October 2008.

Paragraph 10 of the Concluding observations. The Committee takes note of the State party's commitment to reform the Human Rights and Equal Opportunity Commission in order to improve its structure and processes. The

Committee, while stressing again the importance of its recommendation as included in Paragraph 10 of its concluding observations, wishes to be informed about comprehensive changes in the mandate and structure of the Commission.

Paragraph 11 of the Concluding observations. The Committee takes note of the new forms of consultation of indigenous peoples carried out by the Australian authorities, in particular the Regional Partnership Agreements and the Shared Responsibility Agreements. It remains concerned, however, that the abolition of ATSIC resulted in an overall lessening of the participation of indigenous peoples in decisions concerning them. The Committee further reiterates its recommendation that the State party, due to the specific situation of indigenous peoples, should take decisions directly relating to their rights and interests with their informed consent, and draws again the attention of the State party to its General recommendation 23 (1997) in this regard. The Committee takes this opportunity to reiterate the importance of a continuous dialogue between governmental authorities and indigenous peoples, and recommends that the State party ensure that relevant fora are available for such dialogue.

Paragraph 16 of the Concluding observations. The Committee notes that the State party, in September 2005 announced proposed reforms to the native title system to ensure that native title processes work more effectively and efficiently, and that it undertook extensive consultation with indigenous people in this regard. The Committee would be grateful if it could receive more detailed information on the content of the proposed reforms, their current status, the measures adopted to consult indigenous peoples in an effective manner, as well as about the outcomes of these consultations.

Paragraph 17 of the Concluding observations. The Committee takes note of the detailed information provided by the State party. It requests that the State party, bearing in mind the Committee's concern and recommendation included in paragraph 17 of its Concluding observations, provide it with an update on this matter in its next periodic report. In particular, the Committee wishes to receive more detailed information on the reasons why the Australian authorities find it inappropriate to alter the principles relating to the standard of proof required to establish native title.

The Committee takes this opportunity to encourage the State party to extend an invitation to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples for a visit to its territory.

Allow me, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue with your Government, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

II. Human Rights Committee

A. Concluding Observations

1. Brazil, CCPR/C/BRA/CO/2, 1 December 2005

6. The Committee is concerned about the slow pace of demarcation of indigenous lands, the forced evictions of indigenous populations from their land and the lack of legal remedies to reverse these evictions and compensate the victimized populations for the loss of their residence and subsistence (arts. 1 and 27).

The State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.

10. The Committee is concerned about the low level of participation of women, Afro-Brazilians and indigenous peoples in public affairs and their disproportionately limited presence in the political and judicial life of the State party (arts. 2, 3, 25 and 26).

The State party should take appropriate measures to ensure the effective participation of women, Afro-Brazilians, and indigenous peoples in political, judicial, public and other sectors of the State party.

2. Thailand CCPR/CO/84/THA, 8 July 2005

17. While acknowledging the delegation's assurances that the Provincial Admission Board is in the process of being established, the Committee notes with concern the lack of a systematic adjudication procedure for asylum-seekers. The Committee is also concerned that the relocation plan of March 2005 requires all refugees from Myanmar in the State party to move to the camps along the border and that those who do not comply will be considered illegal migrants and will face forcible deportation to Myanmar. Furthermore, the Committee is concerned about the deplorable situation of the Hmong people in Petchabun Province, the majority of them women and children who are not considered refugees by the State party and are facing imminent deportation to a State where they fear they will be persecuted. Finally, the Committee notes with concern that the current screening and expulsion procedures contain no provisions guaranteeing respect for the rights protected by the Covenant (arts. 7 and 13).

The State party should establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect. The State party should observe its obligation to respect a fundamental principle of international law, the principle of non-refoulement.

22. Notwithstanding the corrective measures taken by the State party, most notably through the Central Registration Regulations 1992 and 1996, to address the issue of statelessness among ethnic minorities, including the Highlanders, the Committee remains concerned that a significant number of persons under its jurisdiction remain stateless, with negative consequences for the full enjoyment of their Covenant rights, as well as the right to work and their access to basic services, including health care and education. The Committee is concerned that their statelessness renders them vulnerable to abuse and exploitation. The Committee is also concerned about the low levels of birth registration, especially among Highlander children. (arts. 2 and 24).

The State party should continue to implement measures to naturalize the stateless persons who were born in Thailand and are living under its jurisdiction. The State

party should also review its policy regarding birth registration of children belonging to ethnic minority groups, including the Highlanders, and asylum-seeking/refugee children, and ensure that all children born in the State party are issued with birth certificates.

24. The Committee expresses its concern about the structural discrimination by the State party against minority communities, in particular the Highlanders with regard to citizenship, land rights, freedom of movement and the protection of their way of life. The Committee notes with concern the treatment of the Highlanders by law enforcement officials, in particular their forced eviction and relocation in the context of the 1992 Master Plan on Community Development, Environment and Narcotic Crop Control in Highland Areas, which gravely affected their livelihood and way of life, as well as the reports of extrajudicial killings, harassment and confiscation of property in the context of the “war on drugs” campaign. The Committee is also concerned about the construction of the Thai-Malaysian Gas Pipeline and other development projects which have been carried out with minimal consultation with the concerned communities. In addition, the Committee is concerned about violent suppression of peaceful demonstrations by law enforcement officers in contravention of articles 7, 19, 21 and 27 of the Covenant (arts. 2, 7, 19, 21 and 27).

The State party should guarantee the full enjoyment of the rights of persons belonging to minorities that are set out in the Covenant, in particular with respect to the use of land and natural resources, through effective consultations with local communities. The State party should respect the rights of persons belonging to minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language in community with other members of their group.

3. United States, CCPR/C/USA/CO/3/, 25 September 2006

37. The Committee notes with concern that no action has been taken by the State party to address its previous recommendation relating to the extinguishment of aboriginal and indigenous rights. The Committee, while noting that the guarantees provided by the Fifth amendment apply to the taking of land in situations where treaties concluded between the federal government and Indian tribes apply, is concerned that in other situations, in particular where land was assigned by creating a reservation or is held by reason of long possession and use, tribal property rights can be extinguished on the basis of the plenary authority of Congress for conducting Indian affairs without due process and fair compensation. The Committee is also concerned that the concept of permanent trusteeship over the Indian and Alaska native tribes and their land as well as the actual exercise of this trusteeship in managing the so called Individual Indian Money (IIM) accounts may infringe the full enjoyment of their rights under the Covenant. Finally, the Committee regrets that it has not received sufficient information on the consequences on the situation of Indigenous Native Hawaiians of Public Law 103-150 apologizing to the Native Hawaiians Peoples for the illegal overthrow of the Kingdom of Hawaii, which resulted in the suppression of the inherent sovereignty of the Hawaiian people. (articles 1, 26 and 27 in conjunction with Article 2, paragraph 3 of the Covenant).

The State party should review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population. It should take further steps in order to secure the rights of all indigenous peoples under articles 1 and 27 of the Covenant to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.

4. Norway, CCPR/C/NOR/CO/5, 25 April 2006

5. The Committee welcomes the Agreement entered into by the State party and the Sameting on 11 May 2005 setting out procedures for consultation between central government authorities and the Sameting, as well as the adoption of the Finnmark Act, which is in furtherance of articles 1 and 27 of the Covenant.

5. Canada, CCPR/C/CAN/CO/5, 20 April 2006

8. The Committee, while noting with interest Canada's undertakings towards the establishment of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (arts. 1 and 27).

The State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights. The Committee would also like to receive more detailed information on the comprehensive land claims agreement that Canada is currently negotiating with the Innu people of Quebec and Labrador, in particular regarding its compliance with the Covenant.

9. The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue (arts. 1 and 27).

The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant.

10. The Committee, while noting the responses provided by the State party in relation to the preservation, revitalization and promotion of Aboriginal languages and cultures, remains concerned about the reported decline of Aboriginal languages in Canada (art. 27).

The State party should increase its efforts for the protection and promotion of Aboriginal languages and cultures. It should provide the Committee with statistical data or an assessment of the current situation, as well as with information on action taken in the future to implement the recommendations of the Task Force on Aboriginal Languages and on concrete results achieved.

22. The Committee notes with concern that the Canadian Human Rights Act cannot affect any provision of the Indian Act or any provision made under or pursuant to that Act, thus allowing discrimination to be practised as long as it can be justified under the Indian Act. It is concerned that the discriminatory effects of the Indian Act against Aboriginal women and their children in matters of reserve membership have still not been remedied, and that the issue of matrimonial real property on reserve lands has still not been properly addressed. While stressing the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them and welcoming the initiatives taken to that end, the Committee observes that balancing collective and individual interests on reserves to the sole detriment of women is not compatible with the Covenant (arts. 2, 3, 26 and 27).

The State party should repeal section 67 of the Canadian Human Rights Act without further delay. The State party should, in consultation with Aboriginal peoples, adopt measures ending discrimination actually suffered by Aboriginal women in matters of reserve membership and matrimonial property, and consider this issue as a high priority. The State party should also ensure equal funding of Aboriginal men and women associations.

23. The Committee is concerned that Aboriginal women are far more likely to experience a violent death than other Canadian women. While noting the State party's numerous programmes aimed at addressing the issue, the Committee regrets the lack of precise and updated statistical data on violence against Aboriginal women, and notes with concern the reported failure of police forces to recognize and respond adequately to the specific threats faced by them (arts. 2, 3, 6, 7 and 26).

The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.

24. The Committee is concerned by information that severe cuts in welfare programmes have had a detrimental effect on women and children, for example in British Columbia, as well as on Aboriginal people and Afro-Canadians (arts. 3, 24 and 26).

The State party should adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups.

6. Honduras, CCPR/C/HND/CO/1/CRP.1, 25 October 2006 (Spanish only)

19. El Comité está preocupado por varios problemas que afectan a las comunidades indígenas, en particular en lo que se refiera a la discriminación en materia de salud, trabajo y educación, así como al derecho de estas comunidades a las tierras. Le preocupa la falta de inclusión en la Ley de reforma Agraria de un artículo específico sobre reconocimiento de títulos sobre tierras ancestrales indígenas. (Artículo 27 del Pacto)

El Estado Parte debería garantizar a los miembros de las comunidades indígenas el pleno goce del derecho a tener su propia vida cultural. Debería tomar las medidas necesarias para resolver el problema relativo a las tierras ancestrales indígenas.

7. Democratic Republic of Congo, CCPR/C/COD/CO/3, 26 April 2006

26. While noting the State party's comments on the Government's policy of preserving the cultural identity of the various ethnic groups and minorities (paragraph 294 of the report), the Committee is concerned at the marginalization, discrimination and at times persecution of some of the country's minorities, including pygmies (article 27 of the Covenant).

The State party is urged to provide detailed information in its next report on measures envisaged or taken to promote the integration of minorities and the protection of their rights and to guarantee respect for their cultures and dignity.

8. Paraguay, CCPR/C/PRY/CO/2, 24 April 2006

22. While welcoming the campaign launched by the State party to promote child registration, the Committee is concerned that there are still many unregistered children, especially in rural areas and within indigenous communities (articles 16, 24 and 27 of the Covenant).

The Committee recommends that State party step up child registration throughout the country and keep the Committee informed on this matter.

23. While noting initiatives taken by the State party to restore ancestral land to indigenous communities, the Committee is concerned about the lack of significant progress in putting these initiatives into practice (article 27 of the Covenant).

The State party should speed up the effective restitution of ancestral indigenous lands.

B. Jurisprudence under Optional Protocol I

1. Communication No. 1184/2003 : Australia. 27/04/2006.

Submitted by: Corey Brough (represented by counsel)

Alleged victim: The author

State party: Australia

Date of communication: 4 March 2003 (initial submission)

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Corey Brough, an Australian citizen, born on 22 April 1982, currently residing in Australia. He claims to be a victim of a violation by Australia (1) of articles 7, 10 and article 2, paragraph 3, of the Covenant. Although not specifically invoked by the author, the communication also seems to raise issues under article 24, paragraph 1, of the Covenant. The author is represented by counsel, Mrs. Michelle Hannon.

Factual background

2.1 The author is an Aboriginal. He suffers from a mild mental disability, with significant impairments of his adaptive behaviour, his communication skills and his cognitive functioning. (2)

2.2 On 12 February 1999, the author was detained in Kariong Juvenile Detention Centre, due to the revocation of his parole order. On 5 March 1999, the Bidura Children's Court convicted him of burglary, assault and causing bodily harm, and sentenced him to 8 months imprisonment. On 21 March 1999, the author participated in a riot at Kariong, to draw attention to "the mistreatment and brutalisation by Kariong staff." During that riot, one prison staff was taken hostage by the author.

2.3 On 22 March 1999, the Director General of the Department of Juvenile Justice applied to the Gosford Children's Court for the author to be referred to an adult correctional facility, pursuant to section 28 (A) (3) of the Children (Detention Centres) Act 1987. This was granted by the Court, and the author was transferred to Parklea Correctional Centre, where he was placed in the clinic. He protested against his transfer to an adult prison and asked for a return to a juvenile detention facility.

2.4 On arrival at Parklea, the author was segregated from other inmates, under section 22 (1) of the New South Wales Correction Centres Act 1952, on the ground that his association with other inmates constituted a threat to the personal safety of inmates and to the security of the Correctional Centre.

2.5 During an assessment of his psycho-medical condition, the author stated that he had no reservations against being placed in an adult facility. Although he was not at risk of self-harm, according to the records, he was placed in a "safe cell" (a facility for inmates who are at risk of self-harm) (4) in a segregation area, to protect him from other prisoners.

2.6 The author soon experienced difficulty in coping with long periods of being locked in the safe cell. On 30 March 1999, a first instance of self harm was recorded. The author told a prison officer that "if I don't get out of here, there will be another black death" (meaning suicide of an Aboriginal).

2.7 On 1 April 1999, after breaking a plate and shredding his mattress with a broken fragment, the author was moved from his safe cell to a "dry cell", (5) where he was confined for 48 hours.

2.8 On 7 April 1999, the author was observed obscuring one of the surveillance cameras. Officers came to his cell to remove all items that could be used to obscure the camera lenses and, when he refused to take off his clothes, they allegedly assaulted him below the rib area and removed his clothes except his underwear. The officers' report on the incident reveals that four officers used reasonable force to restrain the author, who kicked one of the officers in the head during the struggle. He was allegedly confined to his cell for 72 hours, with lights on day and night. On 9 April, the author's pillow and blanket were returned to him.

2.9 On 13 April 1999, the author attempted to break his cell lights to scratch the lens of a surveillance camera. There was a scuffle between the author and six to eight officers, resulting in minor injuries sustained by both the author and the officers.

2.10 On 15 April 1999, the author was placed in a dry cell, while the lights and camera in his safe cell were being repaired. The records indicate that he was returned to his safe cell that day. In the afternoon, he was allowed out of his cell for half an hour of exercise. When asked to return to his safe cell, he refused and a minimum amount of force was used to secure him. His clothes were removed and he was left with his underwear. Later, he was observed trying to hang himself with a noose made out of his underwear. Officers entered the cell and, when the author resisted, forcibly removed the noose. The Inmate Discipline Action Form of 17 April 1999 indicates that the author pleaded guilty to a charge of failing to comply with a reasonable order, and that he was sentenced to confinement to his cell for 48 hours.

2.11 The author was administered anti-psychotic medication ("Largactil"), without it being clear whether his condition had been assessed prior to the prescription of the drug. On 16 April 1999, the general practitioner at Parklea prescribed 50 mg of "Largactil" for the author each day until he could be examined by a psychiatrist. This treatment continued after the examination took place.

2.12 L. P., a caseworker of the Aboriginal Deaths in Custody Watch Committee, who visited the author several times in March and April 1999, reportedly observed that he was anxious, nervous, and insufficiently equipped with clothes and blankets to protect him from the cold.

2.13 New segregation orders were issued on 15 and 28 April 1999, on the ground that the author's association with other inmates constituted a threat to the personal safety of the staff and to the order and discipline within the Correctional Centre.

2.14 A psychiatric assessment of the author dated 16 April 2002 states: "Unfortunately, Mr. Brough was not able to provide me with a history which in my view was determinative of [...] any emotional reaction which could be described as post traumatic following a period of about a month being isolated under 24 hour bright lights."

The complaint

3.1 The author claims that he is a victim of violations of articles 2, paragraph 3, 7, 10 and, implicitly, of article 24, paragraph 1, of the Covenant, as he was transferred to an adult correctional facility despite his age, as the conditions of his detention at Parklea Correctional Centre amounted to cruel, degrading and inhuman treatment, and since he did not have access to an effective remedy. He alleges that his transfer to an adult

institution violated article 10, paragraphs 2 (b) and 3, of the Covenant, since having regard to his age, disability and status as an Aboriginal, he was placed in a particularly vulnerable position which required special care and attention.

3.2 As regards the conditions of his detention, the author argues that the Committee found violations of article 7 and/or article 10 of the Covenant in what he considers to be similar cases. (6)

3.3 The author claims that his segregation and confinement for 72 and 48 hours, respectively, as punishment for his conduct, the absence of facilities in his cell, the lack of appropriate heating, the removal of his blanket and clothes, his camera surveillance and 24 hour exposure to artificial light, the use of force causing him physical injuries, and the prescription of medication without his free consent were unnecessary to ensure his safety or to secure order in the detention centre. The cumulative effect of these measures amounted to a violation of article 7, read in conjunction with article 10, of the Covenant.

3.4 By reference to a 1991 report of the Royal Commission into Aboriginal Deaths in Custody, the author submits that Aboriginal people are over-represented in the New South Wales prisons and that segregation, isolation and restriction of movement within prisons have more deleterious effects on Aboriginal than on other inmates, given the importance they attach to a high degree of mobility and to access to their family and community.

3.5 The author claims that he still suffers from the effects of his confinement in the safe cell. He sometimes wakes up sweating with his heart racing and experiences panic attacks when he is alone in his cell.

3.6 The author submits that article 2, paragraph 3, of the Covenant creates a substantive right which can be relied upon independently of other Covenant rights. The State party's failure to provide him with an effective remedy to secure his rights under articles 7 and 10 of the Covenant thus amounted to a violation of article 2, paragraph 3. In support, the author refers to the Committee's concluding observations on the State party's third and fourth periodic reports, in which it expressed its concern that "[t]here are still areas in which the domestic legal system does not provide an effective remedy to persons whose rights under the Covenant have been violated." (7)

3.7 The author argues that, in the absence of available effective domestic remedies, he cannot be expected to pursue futile claims. (8) In accordance with the Committee's jurisprudence, (9) victims depending on legal aid are not obliged to bring a complaint before superior courts in order to satisfy the requirement in article 5, paragraph 2 (b), if they have been advised that no reasonable prospects of appeal exist. The author submits that legal aid is no longer available to him.

3.8 The author notes that remedies to challenge prison discipline decisions are limited under Australian law. Common law remedies, such as duty of care on the part of custodial authorities, false imprisonment or habeas corpus, provide very limited relief for inmates who wish to challenge their conditions of detention. Judicial review is unavailable in cases where the nature of the conduct in question is administrative or managerial, rather than punitive or judicial. (10)

3.9 Although specific guarantees for prisoners exist in New South Wales under the Crimes (Administration of Sentences) Act 1999 and the Crimes (Correctional Centres Routine) Regulation 1995, complaints under these provisions can only be brought to

the Minister or Commissioner, but not in a court of law. A complaint to the Minister would not provide the author with an enforceable right to compensation or any other form of relief and cannot, therefore, be considered an effective remedy.

3.10 As regards the complaint procedure under the Human Rights and Equal Opportunity Commission Act 1986 (Cth), the author states that this procedure applies only to acts or practices of the Commonwealth and not to acts of the New South Wales prison staff. The author also submits a report dated 7 May 2002 by a specialist on personal injury law, which states that he could not successfully make a claim in negligence, based on his treatment at Parklea.

State party's observations on admissibility and merits

4.1 On 3 May 2004, the State party challenged the admissibility and, subsidiarily, the merits of the communication, arguing that the author has failed to exhaust domestic remedies, that his communication is an abuse of the right of submission, that his allegations are unsubstantiated, incompatible with the provisions of the Covenant, and without merit.

4.2 On the facts, the State party submits that it has no record of the alleged incident of 1 April 1999. However, a very similar incident occurred on 13 April 1999, when the author was observed tearing his mattress and smashing his mug and cell light. He assaulted an officer who had entered to remove the items and was subsequently charged with assault and sentenced to two months imprisonment. The records for 14 April 1999 note that the author had insinuated that he would harm himself if he remained in such conditions.

4.3 The State party describes the events following 28 April 1999 as follows: On 11 May 1999, the author assaulted correctional officers while being strip-searched before being brought to court. On 17 May 1999, the Bidura Childrens' Court sentenced him to two two-month prison terms for assault and failure to appear in court. On 8 June 1999, he was released from Parklea and transferred to Minda Juvenile Justice Centre. He tried to escape from custody while at Bidura Children's Court on 17 October 1999. On 26 February 2000, he was transferred to Kariong High Security Unit after refusing to attend his trial for armed robbery. On 28 February 2000, the Director-General of the Department of Juvenile Justice requested the Bidura Children's Court to issue an order under section 28 (A) of the Children (Detention Centres) Act 1987, to keep the author in prison until completion of his trial. This application was initially refused, but a fresh application was granted by the Wyong Children's Court on 10 March 2000. The author committed further suicide attempts. At the time of submission of the State party's observations, he served a sentence for armed robbery.

4.4 On admissibility, the State party argues that the author has not substantiated any failure by the Australian authorities to treat him with humanity and with respect for his dignity. His claims under articles 7 and 10 are therefore unsubstantiated under article 2 and inadmissible *ratione materiae* under article 3 of the Optional Protocol.

4.5 For the State party, the author did not substantiate his claim under article 2, paragraph 3, of the Covenant, for purposes of admissibility, as he could have complained to the prison management at Parklea, the Minister or Commissioner for Corrective Services and the New South Wales Ombudsman, or to domestic courts about his treatment in prison. By reference to the Committee's jurisprudence (11) and to the wording of article 2, paragraph 3, the State party argues that due to its accessory character, its free-standing invocation by the author is inadmissible *ratione materiae* under article 3 of the Optional Protocol. Even if he based his claim on article 2, paragraph 3, read together with articles 7 and 10, it would have to be rejected

because of the inadmissibility of his claims under articles 7 and 10 of the Covenant. (12)

4.6 While conceding that the author was unable to access the Human Rights and Equal Opportunity Commission, the State party reiterates that other effective remedies were available to him, i.e. a complaint to the Minister or the Commissioner for Corrective Services, to Official Visitors appointed by the Minister for Corrective Services, with wide powers to address problems, and to the Inspector-General of Corrective Services, or an application for review of segregation or protective custody exceeding 14 days by the Serious Offenders Review Council. (13) The latter may order the suspension of the segregation or protective custody or the removal of the inmate to a different correctional centre. (14) These remedies are consistent with international standards, such as article 36 of the Standard Minimum Rules for the Treatment of Prisoners and Principles 33 (1) and (4) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. As such, they must be exhausted before a complaint can be brought before a judicial authority.

4.7 Regarding judicial remedies, the State party refers to recent jurisprudence that courts may examine purely administrative decisions by prison authorities, but that they will not interfere if the decisions are found to have been bona fide, if they have no punitive character, and if they are a reasonable use of the power of management. (15) Prisoners subject to unlawful treatment may seek relief like any other person aggrieved by action of a public official. Whether the author could have produced sufficient evidence for an action for breach of duty of care by a prison officer or Governor, (16) who may only be sued for damages if his action was both malicious and without reasonable and probable cause, was doubtful in view of the considerable evidence from various prison officers, welfare officers, medical officers and nurses. However, lack of evidence on the author's part was immaterial to the question of whether effective remedies were available. (17)

4.8 For the State party, the author could have filed a complaint with the NSW Ombudsman, who can investigate a complaint and send a report and recommendations to the principal officer of the appropriate authority.

4.9 The State party disputes that the author's treatment amounts to torture or cruel, inhuman or degrading treatment or punishment within the meaning of article 7 and 10, paragraph 1, arguing that he was not subjected to any particular hardship beyond what is strictly unavoidable in a closed environment. (18) He failed to demonstrate any physical or mental harm sustained by him, in the absence of evidence of injuries or of a direct link between his emotional state and his confinement to a safe cell. (19) Rather than being punitive, the measures imposed on him sought to protect him from further self-harm, to protect other prisoners, and to maintain the security of the correctional facility. They were proportionate and consistent with articles 7 and 10 of the Covenant, with applicable domestic law and with the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

(a) The author's segregation and confinement to a safe cell was an inevitable security precaution, given that he had been involved in a riot at Kariong, (20) and fell short of solitary confinement within the meaning of clause 171 (21) of the 1995 Crimes (Correctional Centres Routine) Regulation; it was in conformity with the NSW Department of Corrective Services Operational Procedures Manual, (22) since the author was provided with daily exercise, food and water, and access to an Aboriginal delegate.

(b) The temporary removal of the author's clothes, blanket and pillow and the camera surveillance in his cell were necessary to observe and protect him from further self-harm. He was not exposed to the cold; his cell was sufficiently heated.

(c) There is no record of the use of lights for periods of more than 24 hours. Parklea officers may have considered the use of lights necessary to monitor the author, after he had tried to obscure the camera lenses in his cell.

(d) Physical force was used by officers on 7 and 15 April 1999, but only after the author had refused to comply with their orders, and was restricted to the minimum extent necessary, as reflected by the reported absence of injuries.

(e) The prescription of "Largactil" was intended to control the author's self-destructive behaviour; he later consented to the use of this medication.

(f) There is no record of the author being confined for 72 hours as of 7 April 1999. Rather, Parklea Clinical records indicate that he attended a case management meeting on 9 April 1999. Similarly, there is no record that he was subject solitary confinement in a dry cell for 48 hours on 1 April 1999, or on 13 April 1999, when another incident occurred.

Author's comments

5.1 On 30 July 2004, the author commented on the State party's observations. He maintains that the measures imposed on him were disproportionate to the aim of protecting him, considering his age, disability and his Aboriginal status:

(a) The removal of his clothes was humiliating and degrading and subjected him to excessive cold, as his cell was not properly heated. The fact that his clothes had been removed, on 15 April 1999, before he had tried to hang himself with a noose made out of his underwear showed that such removal was not intended to protect him from self-harm, but rather to punish him for his refusal to return to his cell. Parklea psychological assessments indicated that he was not suicidal but experiencing difficulty in coping with confinement conditions.

(b) For the author, the absence of evidence for the continued use of lights in his cell does not rebut his claim. The fact that the State party could not exclude that the lights had been used for observation purposes showed that it did not fully investigate the claim. Such use was unnecessary, given his constant video surveillance; it was a punitive measure to cause humiliation and sleep deprivation.

(c) The author disputes the absence of records of injuries sustained by him. The NSW Health Department Incident/Assault Report confirmed small lacerations to his middle back and a laceration to the little finger of his right hand as a result of the incident of 13 April 1999. There were also records of bruises on his head, allegedly resulting from the incident on 11 May 1999, when he had assaulted two officers while being strip-searched.

(d) The author submits that he consented to the continued use of "Largactil" because he had been told that he would only be let out of the safe cell if he agreed to take the prescribed medicine.

(e) With regard to the State party's contention that no record exists of the alleged incident of 1 April 1999, or his subsequent confinement for 48 hours and for 72 hours on 7 April 1999, respectively, the author refers to the prison officer's report dated 1 April 1999, stating that he broke a dinner plate and used a fragment to cut the mattress, as well as to the Prison's Inmate Discipline Action Forms dated 4 and 11 April 1999, recording that he pleaded guilty to the charge of failing to comply with prison routine on 1 April 1999 and was confined to his cell for 48 hours, and that he pleaded guilty to the charge of assaulting a prison officer on 7 April 1999 and was confined to his cell for 72 hours as punishment.

5.2 On the issue of exhaustion of domestic remedies, the author reiterates that administrative (23) and judicial remedies available to him would be ineffective. While complaints within the prison are received by the prison governor, the very person who authorized his conditions of detention, complaints to the Ombudsman could only result in the adoption of a report or recommendation to the Government, without providing any enforceable right or recourse. The travaux préparatoires of article 2, paragraph 3 (b), of the Covenant indicate the drafters' intention that States parties should progressively develop judicial remedies. More than 20 years after ratification of the Covenant in 1980, Australia should have complied with this obligation.

5.3 The author argues that the State party failed to rebut the expert advice he produced on the limited availability of civil remedies submitted by him. Legal action based on a breach of duty of care, under section 263, paragraphs 1 and 2, of the Crimes (Administration of Sentences) Act 1999 (NSW), would require (1) that the author's treatment was malicious, which is difficult to establish, as most of the impugned measures are permitted under domestic law; (2) that it was without reasonable and probable cause; and (3) that harm or injury be established. Any course of action requiring damage to be established would be futile, given that the psychiatrist was unable to determine the exact nature of any damage caused to the author as a result of his treatment.

5.4 While damages could be recovered in negligence only for a recognizable psychiatric injury (not for emotional distress), the author submits that his deprivation of human contact for considerable periods, his humiliation by removal of his clothes, exposure to the cold and to constant lightning, and the physical assaults against him resulted in anxiety, distress, recurring nightmares and panic attacks related to his time in the safe cell. In these circumstances, no medical evidence of distinct psychological or emotional injury arising from his treatment is required to establish a breach of articles 7 and 10 of the Covenant.

Additional observations by the State party

6.1 On 29 July 2005, in response to the Committee's request to provide detailed information on the deadlines for, and de facto accessibility of, the administrative and judicial remedies that the author had allegedly failed to exhaust, the State party made an additional submission on admissibility. It argues that the author could have availed himself of several administrative remedies during his period of segregation. Such remedies would have been easily accessible and could have provided effective and timely relief, in view of the inevitable delays in judicial proceedings. In addition, he could have brought a common law action in tort within three years from the date when the breaches of articles 7 and 10 of the Covenant had allegedly occurred.

6.2 The State party submits that all prisoners in New South Wales adult correctional facilities have access to Official Visitors, who are appointed by the Minister for Corrective Services to visit correctional centres at least once per month and to receive complaints from prisoners. The Governor of the correctional centre must notify all inmates of the date and time of such visits and inform them about the possibility to complain to Official Visitors. Under the Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995, the Official Visitor is required to clarify the details of a case and to submit an Official Visitor's record form to the Commissioner of Corrective Services. He is also required to bring the complaint to the attention of the Governor of the correctional facility. The Regulation does not specify a deadline for bringing complaints to Official Visitors.

6.3 Moreover, the author could have requested permission to speak with the Governor of the correctional centre or with the Minister or the Commissioner for Corrective Services. Such requests must be conveyed to the Governor without unreasonable delay; the Governor is required to give the inmate an opportunity to speak on the matter or, respectively, to convey the request to the person with whom the inmate wished to speak during that official's next visit to the correctional facility.

6.4 The State party adds that an inmate may also directly complain, in writing, about his treatment in the correctional centre to the Minister or the Commissioner for Corrective Services. The complaint must be placed in a sealed envelope addressed to the Minister or the Commissioner and must not be opened, or its contents read or inspected. Although the Minister could not intervene personally, all complaints received by him were referred to the appropriate body, e.g. the Commissioner, who had the power to overrule or reverse any previously made decision.

6.5 The author also had the possibility of complaining to the Inspector-General of Corrective Services, whose mandate terminated on 30 September 2003. The Inspector-General was appointed by the Governor of New South Wales and was independent from the Department of Corrective Services. He was given full access to offenders held in custody, as well as to the premises and records of the Department, with a view to investigating and resolving complaints about the Department's conduct. This function could be exercised on his own initiative, at the request of the Minister for Corrective Services or in response to a complaint. Although no deadline for filing a complaint was specified, the Inspector-General had discretion to decide not to investigate complaints relating to incidents which had occurred too long ago or for which satisfactory alternative means of redress existed. He could recommend disciplinary action or criminal proceedings against officers of the Department.

6.6 As regards the author's period of segregation, the State party submits that, under the Crimes (Administration of Sentences) Act 1999, any prisoner whose segregation exceeds fourteen days has the right to appeal to the Serious Offenders Review Council. Prisoners must be informed of their right to appeal and must sign a form stating that they have been so informed. Upon review, the Council may confirm, amend or revoke a segregation order. Pending the final outcome of a case, it may also order the suspension of the segregation or the prisoner's removal to another correctional centre.

6.7 Lastly, regarding judicial remedies, the State party reiterates that Australian courts consider themselves competent to deal with prisoners' challenges to the lawfulness of their confinement, including actions brought against acts in breach of a duty of care causing harm or injury to prisoners. The relevant cause of action was based on the tort of negligence in common law, subject to the Civil Liability Act 2002 (NSW), which provided for exclusion of personal liability for certain persons under certain circumstances. In accordance with the Crown Proceedings Act 1988 (NSW), the respondent party in proceedings commenced in common law tort against a government agency, which was not a separate legal entity, was the State of New South Wales. However, the author had failed to bring a court action in common tort negligence.

Author's comments

7.1 On 14 September 2005, the author commented on the State party's additional observations, denying that any of the above administrative or judicial remedies would in practice have been available to him or that they would have provided him with an effective remedy at the relevant time. He had never been advised of possible complaint mechanisms upon being admitted to Parklea Correctional Facility. In

addition, the treatment complained of was to a large extent compatible with the relevant Australian laws and regulations.

7.2 The author submits that he was never told whether or when an Official Visitor would visit Parklea during his time of incarceration. This had deprived him of an opportunity to complain to the Official Visitor who was, in any event, required not to "interfere with the management of discipline of the correctional centre, or give any instructions to correctional centre staff or inmates." (24)

7.3 The author contends that the Governor of Parklea Correctional Centre dismissed his repeated complaints about the conditions of his detention by replying: "You are not in a boy's home anymore. This is the way we run the place." Or: "Nothing will be done about it; this is how we run the place and how you will be treated." Given that the decision whether or not to act on a complaint was within the Governor's discretion, (25) such a complaint was not an effective remedy. This was reflected by the fact that the author's file revealed that the Governor had approved of his segregation and confinement on six occasions during the relevant period.

7.4 The author claims that he had not been informed about the possibility of making a complaint to the Minister or Commissioner for Corrective Services, whether through the Governor or whether directly in writing. The fact that the Governor was not required to refer a complaint to the Minister or Commissioner but could dispose of the matter personally, (26) the purely recommendatory powers of the Commissioner, as well as the author's difficulties to read and write and the absence of pens, pencils or paper in his dry cell, showed that such complaints were not an effective remedy.

7.5 Although a lawyer from the Sydney Regional Aboriginal Corporation Legal Service filed a complaint with the Minister for Juvenile Justice on the author's behalf, following his release from segregation, no remedial action was taken on that complaint.

7.6 The author further submits that he was never informed about the possibility of complaining to the Inspector-General. Since the Inspector-General had discretion not to pursue complaints for which alternative means of redress existed, he could have dismissed his application on the ground that the author had already complained about his treatment to the Governor.

7.7 Similarly, he had never been advised that he could appeal his segregation to the Serious Offenders Review Council, nor had he signed a form stating that he had been so informed. Such an appeal would not have been an effective remedy, given that he was not a serious offender at the time of his segregation and that the Council had no competence to deal with issues other than segregation, such as, for example, his physical and medical treatment.

7.8 The author argues that, although he was aware that the Governor had authorized his treatment, as evidenced by his Department of Corrective Services file, he took all reasonable steps within the capacity of a 16 year old Aboriginal child with an intellectual disability to seek a change of his treatment, i.e. by complaining to his Aboriginal Deaths in Custody officer and to the Governor of the correctional centre.

7.9 By reference to the expert advice dated 7 May 2002 , the author reiterates that any court action for breach of duty of care would have been futile.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee considers that the author has failed to substantiate, for purposes of admissibility, that the prison officers' attempts to secure him in April and May 1999 involved excessive use of force in violation of articles 7 and 10 and that his continuous camera surveillance was incompatible with these provisions.

8.3 With regard to the author's claim that his transfer to Parklea Correctional Centre on 22 March 1999 violated his rights under article 10, paragraph 3, the Committee notes that the State party has not invoked its reservation, to the effect that the obligation to segregate in article 10, paragraphs 2 (b) and 3, "is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned." However, the Committee need not consider whether the State party's reservation to article 10, paragraph 2 (b) and 3 applies, since the author's claims under these provisions are inadmissible on other grounds:

(a) As regards his claim that his transfer to Parklea Correctional Centre on 22 March 1999 violated article 10, paragraph 2 (b), the Committee recalls that this provision protects the right of accused juvenile persons to be separated from adults and to be brought as speedily as possible for adjudication. However, the author had the status of a convicted rather than an accused juvenile person at the time of his transfer to Parklea, since he was convicted of burglary, assault and causing bodily harm on 5 March 1999. His claim under article 10, paragraph 2 (b), is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol.

(b) As regards the claim under article 10, paragraph 3, the Committee notes that the author was in fact segregated from other inmates upon arrival at Parklea, where he was placed in a safe cell. The author has therefore not substantiated, for purposes of admissibility, how his transfer to Parklea Correctional Centre breached his right to be segregated from adult prisoners, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8.4 As regards the author's claims relating to the periods of his solitary confinement, the removal of his clothes and blanket, his continued exposure to artificial light, and the prescription of Largactil, the Committee considers that he has sufficiently substantiated these claims, for purposes of admissibility. In particular, it considers that he has rebutted the State party's denial that he was placed in solitary confinement in a dry cell for 48 and 72 hours on 1 and 7 April 1999, respectively, by reference to Parklea Prison's Inmate Discipline Action Forms dated 4 and 11 April 1999, which confirm these alleged periods of solitary confinement.

8.5 With regard to exhaustion of domestic remedies, the Committee notes the State party's argument that the author has not exhausted administrative, judicial or other remedies available to him. It also notes the author's challenge to the effectiveness of complaints to the prison authorities or to the Ombudsman, as well as his doubts about the availability and the prospect of success of a court action for negligence.

8.6 The Committee recalls that the requirement, in article 5, paragraph 2 (b), of the Optional Protocol, to exhaust "all available domestic remedies" not only refers to

judicial but also to administrative remedies, unless the use of such remedies would be manifestly futile or cannot reasonably be expected from the complainant.

8.7 As regards the possibility of complaining to the Ombudsman, the Committee recalls that any finding of this body would only have hortatory rather than binding effect so far as the authorities are concerned. It concludes that such a complaint cannot be considered an effective remedy, (27) which the author was required to exhaust, for purposes of article 5, paragraph 2 (b), of the Optional Protocol.

8.8 As regards the possibility of filing a complaint with the Minister for Corrective Services or with the Serious Offenders Review Council, the Committee notes the author's uncontested claim that he had not been informed about these or any other administrative remedies and that he was barely able to read or write at the time of his segregation at Parklea.

8.9 The Committee also recalls that the author made several attempts to change the conditions of his incarceration by complaining to his Aboriginal Deaths in Custody officer and to the Governor of the correctional centre. It also notes the author's contentions as to the Governor's replies to his complaints and observes that the effect of these replies was to discourage the author from submitting further complaints to the prison authorities. Given the author's age, his intellectual disability and his particularly vulnerable position as an Aboriginal, the Committee concludes that he made reasonable efforts to avail himself of existing administrative remedies, to the extent that these remedies were known to him and insofar as they can be considered to have been effective.

8.10 The decisive question is therefore whether or not effective judicial remedies were available to, and have not been exhausted by, the author. In this regard, the Committee recalls the State party's contention that Australian courts will not interfere with administrative decisions of prison authorities, if such decisions are found to have been bona fide and if they constitute a reasonable use of power of management. It also recalls that the State party has argued, and the author has conceded, that most of the measures imposed on the author were consistent with the relevant domestic law. It is therefore hardly conceivable that the author could successfully have challenged the decisions of the Parklea authorities at court.

8.11 As regards the possibility of bringing a court action based on the tort of negligence in common law, the Committee acknowledges the State party's argument that lack of evidence on the author's part does not have a direct bearing on the question of whether or not effective judicial remedies were available to him. However, the lack of evidence for a recognizable psychiatric injury does have a bearing on the question of whether or not it would have been futile for the author to exhaust such remedies. In this regard, the Committee observes that to be contrary to articles 7 and 10 of the Covenant, treatment of a person deprived of liberty must not necessarily cause any recognizable psychiatric injury to that person, as seems to be the standard required for establishing a tort in negligence under Australian law. It considers that the author has sufficiently shown, and the State party has not refuted, that the emotional distress and anxiety allegedly suffered by the author would have constituted insufficient grounds for filing a court action based on a breach of duty of care.

8.12 Against this background, the Committee considers that, although in principle judicial remedies were available, in accordance with article 2, paragraph 3, of the Covenant, it would have been futile for the author, in the circumstances of his case, to commence court proceedings. It therefore concludes that he was not required, for

purposes of article 5, paragraph 2 (b), of the Optional Protocol, to exhaust these remedies.

8.13 The Committee concludes that the communication is admissible insofar as the author's claims raise issues under articles 7 and 10 of the Covenant, and to the extent that they relate to the periods of his solitary confinement, the removal of his clothes and blanket, his continued exposure to artificial light, and the prescription of Largactil to him.

Consideration of the merits

9.1 The Committee takes note of the author's allegation that his placement in a safe cell, as well as his confinement to a dry cell on at least two occasions, was incompatible with his age, disability and status as an Aboriginal, for whom segregation, isolation and restriction of movement within prison have a particularly deleterious effect. It notes the State party's argument that these measures were necessary to protect the author from further self-harm, to protect other inmates, and to maintain the security of the correctional facility.

9.2 The Committee recalls that persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. (28) Inhuman treatment must attain a minimum level of severity to come within the scope of article 10 of the Covenant. The assessment of this minimum depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.

9.3 The State party has not advanced that the author received any medical or psychological treatment, apart from the prescription of anti-psychotic medication, despite his repeated instances of self-harm, including a suicide attempt on 15 December 1999. The very purpose of the use of a safe cell "to provide a safe, less stressful and more supervised environment where an inmate may be counselled, observed and assessed for appropriate placement or treatment" was negated by the author's negative psychological development. Moreover, it remains unclear whether the requirements not to use confinement to a safe cell as a sanction for breaches of correctional centre discipline or for segregation purposes, or to ensure that such confinement does not exceed 48 hours unless expressly authorized, were complied with in the author's case. The Committee further observes that the State party has not demonstrated that by allowing the author's association with other prisoners of his age, their security or that of the correctional facility would have been jeopardized. Such contact could have been supervised appropriately by prison staff.

9.4 Even assuming that the author's confinement to a safe or dry cell was intended to maintain prison order or to protect him from further self-harm, as well as other prisoners, the Committee considers that the measure incompatible with the requirements of article 10. The State party was required by article 10, paragraph 3, read together with article 24, paragraph 1, of the Covenant to accord the author treatment appropriate to his age and legal status. In the circumstances, the author's extended confinement to an isolated cell without any possibility of communication, combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket, was not commensurate with his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal. As a consequence, the hardship of the imprisonment was manifestly incompatible with his condition, as demonstrated by his inclination to inflict self-

harm and his suicide attempt. The Committee therefore concludes that the author's treatment violated article 10, paragraphs 1 and 3, of the Covenant.

9.5 As regards the prescription of anti-psychotic medication ("Largactil") to the author, the Committee takes note of his claim that the medication was administered to him without his consent. However, it also takes note of the State party's uncontested argument that the prescription of Largactil was intended to control the author's self-destructive behaviour. It recalls that the treatment was prescribed by the general practitioner at Parklea Correctional Centre and that it was only continued after the author had been examined by a psychiatrist. In the absence of any elements which would indicate that the medication was administered for purposes contrary to article 7 of the Covenant, the Committee concludes that its prescription to the author does not constitute a violation of article 7.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 10 and 24, paragraph 1, of the Covenant.

11. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including adequate compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken an obligation to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Ivan Shearer did not participate in the adoption of the present decision.

Notes

1. The Covenant and the Optional Protocol to the Covenant entered into force for the State party respectively on 13 November 1980 and 25 December 1991. Upon ratification of the Covenant, the State party entered the following reservation: "Article 10 : In relation to paragraph 2 (a), the principle of segregation is accepted as

an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned. [...]."

2. See Clinical Psychological Assessment, 19 October 2000, prepared by S.H., PhD, Associate professor and Head, Department of Behavioural Sciences in Medicine, University of Sydney, at p. 5.

3. Section 28 (A) (2) of the New South Wales Children (Detention Centres) Act (1987) reads: "(2) In any criminal proceedings against a child to whom this section applies a court may remand the child to a prison pending the commencement of the hearing of the proceedings or during any adjournment of the hearing, but only if: (a) the person by whom the proceedings were commenced or the Director-General applies for such remand, and (b) the child is not released on bail under the Bail Act 1978, and (c) the court is of the opinion that the child is not a suitable person for detention in a detention centre.

4. Para. 12.19.2 of the New South Wales Department of Corrective Services Operational Procedure Manual provides that "(a) [t]he use of a safe cell is a short term management strategy. The purpose is to provide a safe, less stressful and more supervised environment where an inmate may be counselled, observed and assessed for appropriate placement or treatment. (b) The safe cell is not a punishment area and is not to be used as a sanction for breaches of Correctional Centre discipline or for segregation purposes. [...] (d) No inmate is to be held in a safe cell for longer than 48 hours without the approval of the Regional Commander."

5. The State party defines a 'dry cell' as "a secure cell used for the short term containment of inmates, and is used only in the case where [inmates are] unable to provide a urine sample or are suspected of concealing contraband in their bodies."

6. The author refers to Communications No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994; No. 28/1978, *Weisz v. Uruguay*, Views adopted on 29 October 1980; No. 8/1975, *Weismann v. Uruguay*, Views adopted on 3 April 1980; No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002.

7. Human Rights Committee [69], Concluding observations on the third and fourth periodic reports of Australia, 28 July 2000.

8. In this regard, the author refers to Communication No. 229/1987, *Reynolds v. Jamaica*, Views adopted on 8 April 1991; Communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991; Communication No. 240/1987, *Collins v. Jamaica*, Views adopted on 1 November 1991.

9. See Communications No. 619/1995, *Fray Deidrick v. Jamaica*, Views adopted on 9 April 1998, at para. 6.1, and No. 680/1996, *Gallimore v. Jamaica*, Views adopted on 23 July 1999, at para. 6.5.

10. The author refers to *Vezitis v. McGeechan* (1974) 1 NSWLR 718.

11. The State party quotes from Communication No. 75/1980, *Fanali v. Italy*.

12. Reference is made to Communications No. 363/1989, *RLM v. France*, Decision on admissibility adopted on 6 April 1992; No. 348/1989, *GB v. France*, Decision on admissibility adopted on 1 November 1991; and No. 347/1988, *SG v. France*, Decision on admissibility adopted on 1 November 1991.

13. See Crimes (Administration of Sentences) Act 1999 (NSW), section 19 (1).

14. See *ibid.*, section 20 (1).

15. *Christopher Murielle et al. v. David Moore and Eric Holt* [2000], NZSC 23.

16. See Crimes (Administration of Sentences) Act 1999 (NSW), section 263 (1) and (2).

17. The State party refers to, inter alia, Communications No. 224/1987, *A and SN v. Norway*, Decision on admissibility adopted on 11 July 1988, at para. 6.2, and No. 397/1990, *PS v. Denmark*, Decision on admissibility adopted on 22 July 1992.

18. The State party refers to Communication No. 265/1987, *Voulanne v. Finland*, Views adopted on 7 April 1989.

19. By reference to Communication No. 353/1988, Grant v. Jamaica, Views adopted on 31 March 1994 (at para. 8), the State party argues that the author's claims are not supported by the psychological reports submitted by him.

20. See section 10 of the then applicable Crimes (Administration of Sentences) Act (1999): The Commissioner may direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to: (a) the personal safety of any other person, or (b) the security of a correctional centre, or (c) good order and discipline within a correctional centre."

21. Regulation 171 of the then applicable Crimes (Correctional Centres Routine) Regulation (1995) states: "(1) An inmate must not: (a) be put in a dark cell, or under mechanical restraint, as a punishment, or (b) be subjected to: (i) solitary confinement, or (ii) corporal punishment, or (iii) torture, or (iv) cruel, inhuman or degrading treatment, or (c) be subjected to any other punishment or treatment that may reasonably be expected to adversely affect the inmate's physical or mental health. [...] (2) For the purposes of sub-clause (1) (b) (i): (a) segregating an inmate from other inmates under section 10 of the Act, and (b) confining an inmate to cell in accordance with an order under section 53 of the Act, and (c) keeping an inmate separate from other inmates under this Regulation, and (d) keeping an inmate alone in a cell, where the medical officer considers that it is desirable in the interest of the inmate's health to do so, are not solitary confinement."

22. Section 14.1.6 (on "Segregation of Aboriginal Inmates") of the then applicable Manual reads: "It is undesirable that an Aboriginal inmate should be placed in segregation. Segregation should only occur where there is no other means of managing the inmate in the circumstances. However, where segregation action is necessary, the Governor shall: (i) ensure that the inmate is provided with daily exercise, appropriate clothing, food water, and access to visits; (ii) ensure that the segregation cell has adequate lighting, sanitation facilities and heating; (iii) ensure that the relevant Regional Aboriginal Officer is informed; (iv) provide the segregated inmate with access to a member of the Aboriginal Inmate Committee or appropriate Aboriginal delegate. This access may assist inmates who are experiencing problems, which could lead to physical or mental ham. This procedure accords with Recommendations 181 and 183 of the Royal Commission into Aboriginal Deaths in Custody."

23. The author claims that the ineffectiveness of administrative remedies was acknowledged by the Committee in Communication No. 900/1999, C. v. Australia.

24. Regulation 133(3) of the Crimes (Administration of Sentences) (Correctional Centre Routine) Regulations 1995 (NSW).

25. Ibid., Regulation 135(3).

26. Ibid., Regulation 136(3).

27. See Communication No. 900/1999, C. v. Australia, Views adopted on 28 October 2002, at para. 7.3.

28. General Comment 21, 1992 [44], Article 10, at para. 3.

2. Communication No. 879/1999: Canada. 04/08/2005. CCPR/C/84/D/879/1999.

Submitted by: George Howard (represented by counsel, Peter Hutchins of Hutchins, Soroka & Dionne)

Alleged victim: The author

State Party: Canada

Date of communication: 9 October 1998 (initial submission)

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 9 October 1998, is Mr George Howard, born 5 June 1946, a member of the Hiawatha First Nation which is recognized under the law of the State party as an Aboriginal people of Canada. He claims to be a victim of a violation by Canada of his rights under articles 2, paragraph 2, and 27 of the Covenant. He is represented by counsel. The Optional Protocol entered into force for Canada on 19 August 1976.

The facts as presented

2.1 The author's Hiawatha community forms part of the Mississauga First Nations. These First Nations, among others, are parties to treaties concluded with the Crown, including a 1923 treaty ("the 1923 Williams treaty") dealing, *inter alia*, with indigenous hunting and fishing rights. It provided, in return for compensation of \$500,000, that the Mississauga First Nations "cede, release, surrender, and yield up" their interests in specific described lands, and further, "all the right, title interest, claim demand and privileges whatsoever of the said Indians in, to, upon or in respect of all other lands situated in the Province of Ontario to which they ever had, now have, or now claim to have any right, title, interest, demand or privileges, except such reserves as have been set apart for them by His Majesty the King." **(1)**

2.2 On 18 January 1985, the author took some fish from a river close to, but not on, his First Nation's reserve. He was fined after having been summarily convicted in the Ontario Provincial Court for unlawfully fishing out of season. The court rejected arguments of a constitutional right to fish based on the protection in section 35 of the Constitution Act 1982 concerning "existing aboriginal and treaty rights of the aboriginal peoples of Canada". It held that the author's First Nations ancestors had surrendered fishing rights in the 1923 treaties and that no such rights subsisted thereafter. On 9 March 1987, the Ontario District Court rejected the author's appeal.

2.3 On 13 March 1992, the Ontario Court of Appeal dismissed the author's appeal from the District Court, holding that the 1923 treaty had extinguished the fishing rights previously held by the author's First Nation, and that the First Nation's representatives had known and understood the treaty and its terms. On 12 May 1994, the Supreme Court rejected the author's further appeal, holding that by "clear terms" the First Nations surrendered any remaining special right to fish.

2.4 In 1990, the Canadian Supreme Court held in another case that "existing rights" within the meaning of section 35 of the Constitution Act were satisfied by evidence of continuity of the exercise of a right, even if scanty at times, unless there was evidence of a clear and plain intention by the Crown to extinguish the right. **(2)** Thereafter, the Ontario government committed itself to negotiate arrangements with indigenous people as soon as possible on the issue of hunting, fishing, gathering and trapping.

2.5 On 7 March 1995, the so-called "Community Harvest Conservation Agreements" (CHCAs) were signed by the Ontario Government and the Williams Treaties First Nations, allowing for the exercise of certain hunting and fishing rights. Under these agreements, which were renewable yearly, First Nations were permitted to hunt and fish outside the reserves, for subsistence, as well as for ceremonial and spiritual purposes, and barter in kind.

2.6 On 30 August 1995, the newly elected Ontario government exercised its right to terminate the CHCAs, wishing "to act in a manner consistent with" the Supreme Court's decision in the author's case.

2.7 In September 1995, the First Nations affected by the termination sought interim and permanent injunctions against the Ontario government. The Ontario Court of Justice rejected the claims, holding that the government had properly exercised its right, under the agreements, to terminate them with notice of 30 days. The author contends that the Court made it "very clear" that the outcome of further proceedings would go against the applicants, and that it was therefore pointless to pursue further costly remedies.

2.8 On 16 January 1997, the Supreme Court rejected the author's motion for a rehearing of his case. The author had argued that developments in the Supreme Court's jurisprudence to the effect that a clear intent to extinguish fishing rights had to accompany a surrender of interest in land in order to be valid **(3)** warranted a re-examination of his case.

The complaint

3.1 The author complains generally that he and all other members of his First Nation are being deprived of the ability to exercise their aboriginal fishing rights individually and in community with each other and that this threatens their cultural, spiritual and social survival. He contends that hunting, fishing, gathering and trapping are essential components of his culture, and that denial of the ability to exercise it imperils transmission of the culture to other persons and to later generations.

3.2 Specifically, the author considers that the Supreme Court judgement in his case is incompatible with article 27 of the Covenant. Referring to the Committee's General Comment 23, he argues that the federal government of Canada failed in its duty to take positive measures of protection by not intervening in his favour in the judicial proceedings. Neither the Covenant nor other applicable international law were referred to or considered in the proceedings. The decision, moreover, has resulted in the denial of essential elements of culture, spiritual welfare, health, social survival and development, and education of children. The author argues that the Williams Treaties are the only treaties that fail to protect indigenous hunting and fishing rights, but instead aim at explicitly extinguishing them, and that the Supreme Court's decision in this case is an anomaly in its case law. Referring to the Committee's decision in Kitok v. Sweden, **(4)** the author argues that, far from being "necessary for the continued visibility and welfare of the minority as a whole", the restrictions in question imperil the very cultural and spiritual survival of the minority.

3.3 The author contends that the unilateral abrogation of the CHCAs violates article 27 of the Covenant. The author submits that article 27 imposes "an obligation to restore fundamental rights on which cultural and spiritual survival of a First Nations depends, to a sufficient degree to ensure the survival and the development of the First Nation's culture through the survival and development of the rights of its individual members". Although providing some relief, the contractual nature of the CHCAs, and the facility for unilateral termination, failed to provide adequate measures of protection for the author and the precarious culture of the minority of which he is a member.

3.4 The author also alleges violations of article 27 and article 2, paragraph 2, of the Covenant in that the federal and provincial governments are only prepared to consider monetary compensation for loss of the aboriginal rights, rather than restore the rights themselves. Payment of money is not an appropriate "positive measure" of protection, deemed to be required by article 2, paragraph 2.

3.5 The author adds that his claim as described above should be interpreted in the light of article 1, paragraph 2, of the Covenant, as the status of First Nations as

"peoples" has been recognized at the domestic level. He contends that article 5, paragraph 2, of the Covenant precludes the State party from contending that First Nations do not, in international law, have such status, for it has been conferred on them by domestic law.

3.6 As a consequence of the above, the author requests the Committee to urge the State party to take effective steps to implement the appropriate measures to recognize and ensure the exercise of their hunting, fishing, trapping and gathering rights, through a new treaty process.

3.7 The author states that the same matter has not been submitted for examination under any other procedure of international investigation or settlement.

Videotape submission by the author

4. In his original communication of 9 October 1998, the author, referring to the oral tradition of the Mississauga First Nations, requested the Committee to take into account, in addition to written materials submitted by the parties, oral evidence reproduced in the form of a videotape containing an interview with the author and two other members of the Mississauga First Nations on the importance of fishing for their identity, culture and way of life. On 12 January 2000 the Committee, acting through its Special Rapporteur on New Communications, decided not to accept videotape evidence, with reference to the Optional Protocol's provision for a written procedure only (article 5, paragraph 1, of the Optional Protocol). By letter dated 7 February 2000, the author furnished the Committee with a transcript of the videotaped testimony in question. The Committee expresses its appreciation for the author's willingness to assist the Committee by submitting the transcript.

The State party's submissions on the admissibility of the communication

5.1 By submission of 28 July 2000, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies. The State party points out that current laws regulate, but do not prohibit, hunting and fishing activities. The regulations, dealing with licensing requirements, catch and hunting limits, and seasonal restrictions, are intended to advance objectives of conservation, safety and ethical hunting practices. The author, as anyone else, is able to exercise his traditional practices within these confines.

5.2 The State party observes that the Williams Treaties First Nations have an action currently pending in the Federal Court, alleging a breach of fiduciary duty by the federal and Ontario governments. They seek, *inter alia*, a remedy that would restore their hunting and fishing rights outside the reserves. The parties have currently stayed this action by agreement, while negotiations are continuing.

5.3 The State party further observes that the Williams Treaties First Nations did not avail themselves of the possibilities to challenge the termination of the CHCAs. While the initial action was dismissed on grounds of procedural defect, the Court made clear that it was open to them to bring a fresh application. They did not do so. The State party notes that, while the author contends that to do so would have been "pointless", it has been the Committee's constant approach that doubts about the effectiveness of remedies is not sufficient reason not to exhaust them.

5.4 Thirdly, the State party observes that it would be open to the Williams Treaties First Nations to seek the assistance of the independent advisory Indian Claims Commission in resolving a dispute in their claims negotiations with the federal government. This settlement procedure has not been exercised.

The author's comments

6.1 By submission of 21 December 2000, the author rejects the State party's observations, arguing that domestic remedies have been exhausted, for the Supreme Court's binding decision in his case confirmed the extinguishment of his aboriginal rights.

6.2 The author argues that the current proceedings before the Federal Court raise different issues and cannot grant him the remedy he seeks. The current proceedings concern breach of fiduciary duty, rather than the restoration of aboriginal harvesting rights, and seek (in current form) a corresponding declaration with "a remedy in fulfilment of the Defendant Crown's obligation to set aside reserves, or damages in lieu thereof". In any event, the Federal Court is bound to follow the Supreme Court's decision to the extent that it held that the aboriginal rights in question had been extinguished by the Williams Treaties. The author notes that while the Federal Court proceedings may allow his community to acquire additional lands and fair compensation for the 1923 surrender, they will not restore his harvesting rights, since the Supreme Court's decision has held they were extinguished at that time.

6.3 As to the proceedings to challenge the abrogation of the CHCAs, the author argues that the outcome of further proceedings was "clearly predictable". The judge stated that he had "determined that on the factual merits there is no support for the granting of any declaratory or injunctive relief". Referring to the Committee's jurisprudence, **(5)** the author notes that the Supreme Court in his case had already "substantially decided the same question in issue" and that therefore there was no need for recourse to further litigation. Moreover, the Supreme Court had denied his own application to revisit its decision in his case, which therefore remained binding on the lower courts.

6.4 To the extent that the State party suggests that negotiations should be pursued, the author argues that these are not "remedies" in terms of the Optional Protocol, and, in any event, that the State party has not shown they would effectively restore the harvesting rights. On 16 May 2000, the First Nations were informed that negotiations would not resume without the presence of the Ontario government as a party. Moreover, the Indian Claims Commission is an advisory body whose recommendations are not binding upon the federal government. Additionally, the Commission may only facilitate certain categories of dispute, and the federal government has already characterized the issue of restoration of harvesting rights as falling outside those categories.

Subsequent submissions of the parties

7.1 By submission of 12 July 2001, the State party responded to the author's comments, arguing that while the author claims not to be acting as a representative of the Williams Treaties, but on his own behalf, he is in fact clearly acting on their behalf **(6)** and requesting a collective remedy.

7.2 In terms of current Federal Court proceedings, the State party argues that it is highly relevant that the First Nations are seeking a remedy for breach of fiduciary duty arising from the surrender of their aboriginal rights, including hunting and fishing rights. While they currently seek compensation, they sought a remedy of restoration at an earlier point and of their own accord modified those pleadings to omit this aspect of remedy. The State party points out that it would be open to seek a remedy of restoration of hunting and fishing rights in the appropriate provincial jurisdiction. Indeed, the First Nations have initiated an action in the Ontario Superior Court of Justice.

7.3 The State party points out that the Supreme Court's decision in the author's case was essentially limited to the factual question of whether he had an existing right to fish in the area where he was caught fishing and charged. It did not address questions of breach of fiduciary duties, and remedies available for such a breach, and accordingly these questions remain open before the courts.

7.4 On 5 September 2001, the author further responded, arguing that he satisfies all conditions of admissibility: in particular, he is a victim within the meaning of article 1 of the Optional Protocol, being denied the ability by highest judicial decision to practice fishing as a member of a "minority" within the meaning of article 27. Referring to previous cases decided by the Committee, **(7)** he argues that it is of no relevance that a remedy he might obtain under the Optional Protocol might benefit others in his community. He alleges specific violations of his rights under the Covenant. Finally, he has exhausted all legal remedies open to him. He submits that it would be unjust to be deprived of his right to present an individual petition based on the Covenant to the Committee simply because his First Nation is pursuing other remedies before Canadian courts under domestic law, along with other First Nation parties to the Williams Treaties.

7.5 The author argues that, under the current state of Canadian law, it is not possible for courts to restore extinguished aboriginal rights. **(8)** All the courts, including the Supreme Court of Canada, are bound by the constitutional recognition in 1982 of "existing" aboriginal rights only. He contends that it is irrelevant that the Supreme Court in his case did not address the fiduciary breach question - even if it had, the outcome would have remained unaltered. Similarly, in terms of further action on the abrogation of the CHCAs, the courts would have been bound by the Supreme Court's determination that no aboriginal right existed in the author's case.

7.6 On 15 January 2003, the State party made further submissions, disputing that the current state of its law makes restoration of extinguished rights impossible. The State party points out that in the Supreme Court decision cited to this effect, the Court did not rule on what, if any, would be the Crown's fiduciary obligations to the First Nation in the process of surrender/extinguishment of the First Nation's rights, whether there had been a breach of any such obligations, and, if so, what remedies might be available. However, precisely these issues are either raised in the proceedings pending in the Federal Court by the Williams Treaties First Nations, or could be raised in the action before the Ontario Superior Court of Justice.

7.7 The State party further states that the federal government has not refused to negotiate hunting, fishing, trapping and gathering rights with the Williams Treaties First Nations. The federal government however considers that the restoration of such rights would require the participation of the Ontario State government, as Ontario alone possesses constitutional jurisdiction over provincial Crown lands and the right to pursue harvesting thereon. The Ontario government is reviewing the First Nations' claims and has not yet made a determination as to whether to accept the claim for negotiations.

The Committee's decision on admissibility

8.1 At its 77th session, the Committee considered the admissibility of the communication.

8.2 The Committee ascertained that the same matter was not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.

8.3 As to the State party's argument that the author is acting on behalf of third parties, the Committee noted that the author claimed personally to be a victim, within the meaning of article 1 of the Optional Protocol, of an alleged violation of his rights under the Covenant, by virtue of the Supreme Court's decision affirming his conviction for unlawful fishing. As to the position of further individuals, the Committee recalled its jurisprudence that there is, in principle, no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights. **(9)** In the present case, however, to the extent that the communication could be understood to have been brought on behalf of other individuals or groups of individuals, the Committee noted that the author had provided neither authorization by such persons nor any arguments to the effect that he would be in the position to represent before the Committee other persons without their authorization. Consequently, the Committee found the communication inadmissible under article 1 of the Optional Protocol, to the extent it could be understood to have been submitted on behalf of other persons than the author personally.

8.4 Concerning the State party's arguments that on-going negotiations might provide an effective remedy, the Committee referred to its jurisprudence that remedies that must be exhausted for the purposes of the Optional Protocol are, primarily, judicial remedies. Negotiations proceeding on the basis of, *inter alia*, extralegal considerations including political factors cannot generally be regarded as being of analogous nature to these remedies. Even if such negotiations were to be regarded as an additional effective remedy to be exhausted in specific circumstances, **(10)** the Committee recalled, with reference to article 50 of the Covenant, that the State party is responsible, in terms of the Covenant, for the acts of provincial authorities as much as federal authorities. In the light of the absence of a decision, to date, by the provincial authorities, on whether to accept the First Nations' claim for negotiations, the Committee would in any event regard this remedy as being unreasonably prolonged. Accordingly, on the current state of negotiations, the Committee did not, on either view, regard its competence to consider the communication excluded by virtue of article 5, paragraph 2 (b), of the Optional Protocol.

8.5 The same applied in relation to the argument that actions are pending in the Federal Court and in the Ontario Superior Court of Justice. Besides the fact that these actions were brought by First Nations parties rather than the author and that their outcome would have no bearing on the author's conviction in 1985 for unlawful fishing, the Committee considered that insofar as the author might individually benefit from such a remedy, the remedy was unreasonably prolonged in relation to him. The Committee was therefore satisfied that the author, in pursuing his own case through to the Supreme Court, exhausted domestic remedies in respect of the claimed aboriginal rights to fish, which are an integral part of his culture.

8.6 On 1 April 2003, the Committee therefore decided that the communication was admissible to the extent that the author was being deprived, under the sanction of criminal law, of the ability to exercise, individually and in community with other members of his aboriginal community, his aboriginal fishing rights which are an integral part of his culture.

The Committee's consideration of the merits of the communication ***State party's submission on the merits***

9.1 By submission of 23 March 2004, the State party comments on the merits of the communication. Contesting the author's claims of violations of articles 2(2) and 27 of the Covenant in his case, the State party submits that the author is able to enjoy,

individually and in community with the other members of the Hiawatha First Nation, the aspects of his culture related to fishing.

9.2 The State party recalls that in the 1923 Williams Treaty, the author's First Nation agreed to give up its aboriginal rights to fish, except for a treaty right to fish in the reserves set aside for them. The Ontario Court has held that this treaty right to fish extends to the waters that are adjacent to the reserves and the Government has interpreted this to mean up to 100 yards from shore in waters fronting the reserve boundaries. In these waters the members of the Hiawatha First Nation do not have to comply with Ontario's normal fishing restrictions, such as closed seasons and catch limits and have a right to fish year-round for food, ceremonial and social purposes. In this context, the State party points out that neither the author nor the Hiawatha First Nation depends on fishing for their livelihood. It is said that the members of the Hiawatha First Nation (of whom 184 members live on the reserve and 232 outside) have tourism as their main source of income and that recreational fishing is a significant attraction for tourists to the area. The fish of Rice Lake, on the shores of which the Hiawatha First Nation lives, are said to be among the most abundant in the area.

9.3 The State party further states that in addition the author can obtain a recreational fishing licence enabling him to fish in the lakes and rivers of the Kawartha Lakes region surrounding the Hiawatha First Nation reserve from May to November. The limited restrictions placed on the fishery are targeted and specific to particular fish species and are intended to ensure that the particular vulnerability of each species is duly considered, and that all persons using the resource, including the author and the other members of the Hiawatha First Nation, benefit there from. Limits are imposed on what species of fish may be caught, when each species may be caught and how many may be caught. **(11)** When the waters bordering the Hiawatha Reserve are closed from 16 November to late April for conservation purposes, the author can fish for most species in other lakes and rivers further away from January to March and from May to December.

9.4 The State party thus argues that, since the author is able to fish all year round, share his catch with his family and show his children and grandchildren how to fish, his right to enjoy the fishing rights belonging to his culture has not been denied to him. The State party submits that the author's assertion that there is not enough fish where he is allowed to fish cannot be reconciled with the fact that he can fish adjacent to the Hiawatha First Nation reserve in the Otonabee river, a short distance downstream from where he was fishing on 18 January 1985 and is also inconsistent with fishery surveys and with public statements made by the Hiawatha First Nation in order to attract tourists. Lawful fishing opportunities exist for the author also in the winter season when the waters next to the Hiawatha reserve are closed for fishing.

9.5 As to the author's argument that the Supreme Court's decision in his case is inconsistent with the State party's obligations under article 27 of the Covenant, the State party recalls the issues and arguments presented to the courts and their decisions. The author was charged for unlawfully fishing during a closed period, because he had taken some pickerel fish from the Otonabee river near but not on the Hiawatha First Nation reserve. At trial before the Provincial Court of Ontario, the author pleaded not guilty and argued that he had a right to fish as a member of the Hiawatha First Nation, that this right was not extinguished by the 1923 Williams Treaty and that this right should not be abrogated by the fishing regulations. The trial judge, having been provided with hundreds of pages of documentary evidence, concluded that the lands where the offence was alleged to have occurred were in fact

ceded by the 1923 Treaty, and that any special rights as to fishing were included in that. On appeal in the District Court of Ontario, the judge found that he could not conclude that the Indians were misled at the time of the 1923 Treaty, and that section 35 of the Constitution Act 1982, recognizing and confirming the existence of aboriginal treaty rights of the aboriginal people of Canada, did not create new rights or reconstitute the rights that had been contracted away. In the Ontario Court of Appeal, the central issue was whether the rights of the Hiawatha First Nation members to fish on the Otonabee river had been surrendered by the 1923 Williams Treaty. The author argued that the Treaty should not be interpreted so as to extinguish the rights, or alternatively that the Rice Lake Band (as the Hiawatha First Nation was then called) did not have sufficient knowledge and understanding of the Treaty's terms to bind the Band to it. The Court found that the language of the 1923 Treaty clearly and without ambiguity showed that the Band surrendered its fishing rights throughout Ontario when it entered into that Treaty and concluded that the Crown had satisfied its onus of establishing that the representatives of the Band knew and understood the treaty and its terms. On appeal to the Supreme Court, the central issue was whether the signatories to the 1923 Williams Treaty had surrendered their treaty right to fish. The Supreme Court after having carefully reviewed the lower courts' assessment of the evidence, endorsed their findings and concluded that the historical context did not provide any basis for concluding that the terms of the 1923 Treaty were ambiguous or that they would not have been understood by the Hiawatha signatories. In this context, the Court pointed out that the Hiawatha signatories were businessmen and a civil servant and that they all were literate and active participants of the economy and society of their province.

9.6 The State party argues that the author's attempt to undermine the courts' findings of fact goes against the Committee's principle that it is for the courts of the States parties and not for the Committee to evaluate facts and evidence in a particular case. The State party also takes issue with the author's suggestion that the Supreme Court's decision in his case reversed a long held understanding of the Hiawatha First Nation that after 1923 they maintained their aboriginal right to fish and were not subject to Ontario's fishing laws. According to the State party this proposition was not supported by any evidence during the court hearings and in fact, the evidence was to the contrary.

9.7 Finally, the State party argues that article 27 must allow for a minority to make a choice to agree to the limitation of its rights to pursue its traditional means of livelihood over a certain territory in exchange for other rights and benefits. This choice was made by the Hiawatha First Nation in 1923 and, in the State party's opinion, article 27 does not permit the author to undo his community's choice over 80 years later. The State party notes that the author did not raise any argument related to Canada's international obligations, including article 27 of the Covenant, during the court proceedings.

Author's comments on the State party's submission

10.1 On 30 August 2004, the author comments on the State party's submission and reiterates that the Williams Treaties are the only treaties in Canada which do not protect Aboriginal hunting, fishing, trapping and gathering rights, but rather are held to have explicitly extinguished these rights. As a consequence, the author claims that he does not enjoy the same special legal and constitutional status as all other Aboriginal peoples of Canada enjoying Aboriginal or treaty rights. The author considers that monetary compensation for these rights is no substitute for the necessary measures of protection of the minority's culture within the meaning of article 27 of the Covenant.

10.2 The author argues that as a member of a minority group, he is entitled to the protection of economic activities that comprise an essential element of his culture. **(12)** The exercise of cultural rights by members of indigenous communities is closely associated with territory and the use of its resources. **(13)** The author notes that the State party does not deny that fishing is an essential element of the culture of the minority to which he belongs, but rather focuses on its assertion that the author is in a position to exercise this right to fish. The author states, however, that the State party does not identify whether he is able to exercise his cultural right to fish as distinct from, and additional to, any statutory privileges to fish that are available to all persons, indigenous and non-indigenous, upon obtaining through payment a licence from the Government.

10.3 The author further challenges the State party's focus on fishing only and submits that this is based on an excessively narrow reading of the Committee's admissibility decision. According to the author, his communication also includes his rights to hunting, trapping and gathering since these are an equally integral part of his culture which is being denied.

10.4 The author emphasizes that it is the cultural and societal importance of the right to fish, hunt, trap and gather which are at the heart of his communication, not its economic aspect. The fact that the members of the Hiawatha First Nation participate in the general Canadian economy cannot and should not diminish the importance of their cultural and societal traditions and way of life.

10.5 Referring to the size of the Hiawatha First Nation reserve (790.4 hectares) and the reserve shared with two other First Nations (a number of islands), the author argues that it is unreasonable to suggest that he is able to meaningfully exercise together with members of his community his inherent rights to fish and hunt within the confines of the reserves and the waters immediately adjacent to them. These rights are meaningless without sufficient land over which to exercise them. In this context, the author reiterates that with the exception of the First Nations parties to the Williams Treaties, all other First Nations in Canada who have concluded treaties with the Crown have had their harvesting rights recognized far beyond the limits of their reserves – throughout their traditional territories.

10.6 As to the State party's argument that he can fish with a recreational licence, the author asserts that he is not a recreational fisher. In his opinion, the regulations governing recreational fishing are designed to enhance sports fishing and make clear that all fishing is done as a privilege and not a right. The general rule is prohibition of fishing activities, except as provided for in the regulations and pursuant to a licence. The regulations make exceptions to the general rule for persons in possession of a licence issued under the Aboriginal Communal Fishing Licence Regulations, but the author states that he has been denied the benefit of this provision because of the Court's decision that his aboriginal rights had been extinguished by the Williams Treaty.

10.7 The author observes that by equating his fishing activities with those of a recreational fisher, the State party deems his access to fishing a privilege not a right. His fishing activities are thus not granted priority over the activities of sport fishers and can be unilaterally curtailed by the State without any obligation to consult the author or the leaders of his First Nation. According to the author, this treatment is contrary to that afforded to other aboriginal persons in Canada for whom the Constitution Act 1982 provides that aboriginal and treaty rights have priority over all other uses except for conservation.

10.8 The author argues that the State party has an obligation to take positive measures to protect his fishing and hunting rights, and that to allow him to fish under recreational regulations is not a positive measure of protection required by article 2(2) of the Covenant.

10.9 He further submits that he is prohibited from fishing in the traditional territory of the Hiawatha First Nation from 16 November to late April every year. According to the author, the State party's argument that he can fish in lakes and rivers further away from the Hiawatha reserve fails to take into account the concepts of aboriginal territory as these lakes are not within the traditional territory of the Hiawatha First Nation. The author further argues that the Regulations give priority to fishing by way of angling and that traditional fishing methods (gill netting, spearing, bait-fish traps, seines, dip-nets etc) are restricted. As a result, many of the fish traditionally caught by Mississauga people cannot be fished by traditional netting and trapping methods. The author also mentions that he cannot ice-fish in the traditional grounds of his First Nation. He refers to a judgement of the Supreme Court (*R. v. Sparrow*, 1990) where the court directed that prohibiting aboriginal peoples from exercising their aboriginal rights by traditional methods constitutes an infringement of those rights, since it is impossible to distinguish clearly between the right to fish and the method of fishing. Finally, the author argues that the catch limits imposed by the Regulations effectively restrict him to fishing for personal consumption only.

10.10 For the above reasons, the author maintains that his rights under article 27 and 2(2) of the Covenant have been violated and requests the Committee to urge the State party to take effective steps to implement the necessary measures to recognize and ensure the exercise of constitutionally protected hunting, fishing, trapping and gathering rights through a treaty process.

Further submissions of the parties (14)

11.1 By submission of 15 December 2004, the State party takes issue with the author's assertion that the scope of the Committee's admissibility decision includes hunting, trapping and gathering rights. It states that the text of the admissibility decision is clear and that the issue before the Committee only concerns "fishing rights which are integral to" the author's culture. If the author does not agree to this limitation, he is free to request the Committee to review its decision on admissibility, in which case the State party reserves its right to make further submissions on this issue.

11.2 The State party also submits that the 1923 Williams Treaty was negotiated upon request by the First Nations themselves, who were looking for recognition of their claims to rights in the traditional hunting territories in Ontario lying north of the 45th parallel. After inquiring into the claims, treaties were concluded by which the First Nations gave up their rights over the territories in Ontario in exchange for compensation. The Rice Lake Band was familiar with the treaty process and as examined by the Court of Appeal in the author's case, the minutes of the meeting of the Band in Council show that the draft treaty was read, interpreted and explained before it was unanimously approved.

11.3 As to the author's claims with respect to the restrictions on what species he can fish, and by what method, the State party argues that these claims under article 27 should have been raised before. The State party notes in this respect that the author's original communication focused on the seasonal restrictions of his ability to fish and raised further arguments concerning his ability to transmit his knowledge to his children, participate with his community and fish for subsistence. He raised no claims in respect to being prevented from fishing for traditional fish or with traditional methods and the State party has thus not been requested to make

submissions in respect of the admissibility and merits of these claims. The State party further notes that the evidence presented by the author in respect to these claims is very general and not specific to the Hiawatha First Nation, calling into question its reliability. For these reasons, the State party requests the Committee not to address these claims.

11.4 With regard to the author's assertion that the State party has an obligation to take positive measures to protect his fishing rights and that it has failed to do so, the State party submits that the author has a constitutionally protected treaty right to fish within his Nations' reserve and the waters adjacent to it. In the reserve that the author's First Nation shares with the Mississaugas of Curve Lake and of Scugog Island (Trent Reserve No. 36A) the author's treaty right to fish is also protected. The State party points out that the shared reserve is made up of over one hundred islands spread throughout twelve lakes and rivers in the Kawarthas and that the waters adjacent to these islands provide significant fishing opportunities to the author and members of the Hiawatha First Nation. In these waters, the author may fish at any time of the year, using his community's traditional techniques. The State party submits that the above constitutional protection does constitute a positive measure.

11.5 The State party further explains that under the major land cession treaties of Canada, including the Williams treaties, what were once aboriginal rights to hunt and fish were redefined and reshaped through the treaties. The terms of the treaties varied depending on the purpose of the treaty and the circumstances of the parties. According to the State party, treaties in remote areas with sparse population and little urban development protect the pursuit of fish and wildlife for subsistence as appropriate in the context. The Williams treaties concerned however lands in close proximity of urbanization and protection of these rights for subsistence were not an issue.

11.6 As to the author's argument that a recreational fishing licence is a mere privilege and not a right, the State party observes that article 27 does not require that a cultural activity be protected by way of right. **(15)** In the State party's opinion, licensing in and of itself does not violate article 27. The State party further explains that under an Ontario recreational fishing licence, a person may choose to fish not for recreational purposes but for food, social, educational or ceremonial purposes.

11.7 The State party contests the author's argument that the catch limits under the regulations limit him to fishing for personal consumption only. It explains that there are no limits on the number of fish he can catch in the waters on and adjacent to the reserves, and that in the waters beyond this area in open season he can catch unlimited yellow perch and panfish, as well as daily 6 walleye, 6 bass, 6 northern pike, 5 trout or salmon, 1 muskellunge and 25 whitefish. The State party concludes that it is thus untenable to suggest that the author can fish for personal consumption only. It further notes that the author has not presented any evidence as to the needs of his extended family and why they cannot be met.

11.8 The State party also contests the author's statement that he is prohibited from fishing in the traditional territory of the Hiawatha First Nation from 16 November to late April every year and reiterates that the author can fish year round in the waters of Rice Lake and the Otonabee river adjacent to the Hiawatha First Nation reserve, as well as in the waters adjacent to the islands in the Trent reserve. With a recreational licence, he can also fish in Scugog Lake in January and February, as well as in lakes and rivers of neighbouring fishing divisions. In this context, the State party notes that the author has presented no evidence that would support his assertion that these waters are outside the traditional territory and fishing grounds of the Hiawatha

Nation. According to the State party evidence shows on the contrary that the seven Williams Treaties First Nations shared their traditional territory.

11.9 Finally, the State party reiterates that the author's requests for findings and remedies on behalf of others than himself are beyond the scope of the admissibility decision in the present case. The State party recalls that the Hiawatha First Nation and the other Williams Treaties First Nations are in the midst of litigation with the Crown on behalf of their members, as they are seeking a judicial remedy for an alleged breach of the Crown's fiduciary duty with respect of the surrender of certain hunting, fishing and trapping rights in the Williams Treaties. It would therefore be inappropriate for the author to seek findings and remedies on behalf of the First Nations when they are not properly before the Committee, and these findings would presuppose the result in the Williams Treaties First Nations' domestic litigation. If the Committee, contrary to the State party, were to find that the author's article 27 rights as they relate to fishing had been infringed, legislative and regulatory mechanisms exist by which the State could provide increased fishing opportunities to the author and his community.

11.10 In his reply to the State party's further submission, the author, in a submission dated 5 April 2005, submits that the islands in the shared Trent Waters Reserve, although numerous, are extremely small, many constituting groups of bare rocks and that the fishing opportunities are thus insignificant. The average size of the islands is said to be 1.68 acre or 0.68 hectare.

11.11 The author further reiterates that the comparison with modern treaties is useful and shows that notwithstanding urban and economic development and non reliance by some Aboriginal persons on traditional activities for subsistence, all treaties except for the Williams treaties recognize and protect hunting, fishing and trapping rights as well as their exercise over a reasonable part of the indigenous' community's traditional territory.

11.12 In reply to the State party's assertion that the author has not provided evidence that Lake Scugog and other lakes and rivers of neighbouring fishing divisions are outside the traditional fishing grounds of the Hiawatha First Nation, the author refers to a map indicating Mississauga family hunting territories, based on the description of these territories made during testimony to the Williams Treaty Commissioners in 1923. According to the author the map shows that Hiawatha traditional hunting territory was located near Rice Lake and did not include Lake Scugog.

11.13 The author also takes issue with the State party's statement that the Williams treaty was properly negotiated with the author's First Nation, and argues that there was only one day of hearing in the community and that the communities' legal counsel was not allowed to participate. No attention was paid to the cultural and religious significance of fishing for the Mississauga and traditional non-commercial fishing rights were almost extinguished. Accordingly, the author reiterates his argument that the State party has not implemented the Williams Treaties in a way to ensure that the author is able to enjoy his culture.

11.14 In reply to the State party's argument that the article 27 does not require that a cultural activity be protected by way of right, the author argues that his situation is distinguishable from the situation of the author in the case referred to by the State party. In that case, the Committee found that the legislation affecting the author's rights had a reasonable and objective justification and was necessary for the continued viability and welfare of the minority as a whole. The same cannot be said of the fishing regulations applied to the author in the present case.

11.15 The author rejects the State party's argument that he has raised new claims by bringing up the issue of fishing methods as it would be artificial to distinguish between his right to fish and the particular manner in which that right is exercised. He emphasizes that this is not a new claim but that it is the same claim that he has brought under article 27 before the admissibility decision of the Committee.

11.16 The author rejects the State party's argument that he is requesting an inappropriate remedy. He states that no substantive negotiations have taken place between the First Nations and Ontario, but only preparatory meetings. The author further argues that during these meetings it had been agreed that the fact that discussions were occurring would not be interpreted or put forward as an admission of fact, law or other acknowledgement contrary to the position of the parties in the present communication, and that the State party's argument thus breaches this agreement. The author reiterates that the only sufficient remedy is the negotiation in good faith on a timely basis of an agreement that would, on a secure and long-term basis, enable the author to enjoy his culture, and that the tools best suited for this task in Canadian domestic law are treaty protected rights.

The Committee's consideration of the merits of the communication

12.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

12.2 In relation to the scope of the decision on admissibility in the present case, the Committee observes that at the time of the admissibility decision, the author had presented no elements in substantiation of his claim concerning the right to hunt, trap and gather or concerning the exhaustion of domestic remedies in this respect. The Committee also notes that the author has raised claims concerning the denial of the use of traditional fishing methods and catch limits only after the communication was declared admissible. In the Committee's opinion, nothing would have stopped the author from making these claims in due time, when submitting his communication, if he had so wished. Since the State party had not been requested to make submissions on the admissibility of these aspects of the author's claim and the domestic remedies which the author exhausted only dealt with his conviction for fishing out of season, these aspects of the author's claim were not encompassed in the Committee's admissibility decision and the Committee will therefore not consider these issues.

12.3 Both the author and the State party have made frequent reference to the 1923 Williams treaty which was concluded between the Crown and the Hiawatha First Nation and which according to the Courts of the State party extinguished the author's Nation's right to fish outside their reserves or their adjacent waters. This matter, however, is not for the Committee to determine.

12.4 The Committee notes that it is undisputed that the author is a member of a minority enjoying the protection of article 27 of the Covenant and that he is thus entitled to the right, in community with the other members of his group, to enjoy his own culture. It is not disputed that fishing forms an integral part of the author's culture.

12.5 The question before the Committee, as determined by its admissibility decision, is thus whether Ontario's Fishing Regulations as applied to the author by the courts have deprived him, in violation of article 27 of the Covenant, of the ability to exercise,

individually and in community with other members of his group, his aboriginal fishing rights which are an integral part of his culture.

12.6 The State party has submitted that the author has the right to fish throughout the year on and adjacent to his Nation's reserves and that, with a fishing licence, he can also fish in other areas in the region which are open for fishing when the area surrounding the reserves is closed. The author has argued that there is not enough fish on and adjacent to the reserves to render the right meaningful and that the other areas indicated by the State party do not belong to his Nation's traditional fishing grounds. He has moreover argued that fishing with a licence constitutes a privilege, whereas he claims to fish as of right.

12.7 Referring to its earlier jurisprudence, the Committee considers that States parties to the Covenant may regulate activities that constitute an essential element in the culture of a minority, provided that the regulation does not amount to a de facto denial of this right. **(16)** The Committee must therefore reject the author's argument that the requirement of obtaining a fishing licence would in itself violate his rights under article 27.

12.8 The Committee notes that the evidence and arguments presented by the State party show that the author has the possibility to fish, either pursuant to a treaty right on and adjacent to the reserves or based on a licence outside the reserves. The question whether or not this right is sufficient to allow the author to enjoy this element of his culture in community with the other members of his group, depends on a number of factual considerations.

12.9 The Committee notes that, with regard to the potential catch of fish on and adjacent to the reserves, the State party and the author have given different views. The State party has provided detailed statistics purporting to show that the fish in the waters on and adjacent to the reserves are sufficiently abundant so as to make the author's right to fish meaningful and the author has denied this. Similarly, the parties disagree on the extent of the traditional fishing grounds of the Hiawatha First Nation.

12.10 The Committee notes in this respect that these questions of fact have not been brought before the domestic courts of the State party. It recalls that the evaluation of facts and evidence is primarily a matter for the domestic courts of a State party, and in the absence of such evaluation in the present case the Committee's task is greatly impeded.

12.11 The Committee considers that it is not in a position to draw independent conclusions on the factual circumstances in which the author can exercise his right to fish and their consequences for his enjoyment of the right to his own culture. While the Committee understands the author's concerns, especially bearing in mind the relatively small size of the reserves in question and the limitations imposed on fishing outside the reserves, and without prejudice to any legal proceedings or negotiations between the Williams Treaties First Nations and the Government, the Committee is of the opinion that the information before it is not sufficient to justify the finding of a violation of article 27 of the Covenant.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it do not disclose a violation of the International Covenant on Civil and Political Rights.

Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Notes

1. In the first preambular paragraph to the treaty, it reads: "WHEREAS, the Mississauga Tribe above described, having claimed to be entitled to certain interests in the lands of the Province of Ontario, hereinafter described, such interests being the Indian Title of the said Tribe to fishing, hunting and trapping rights over the said lands, of which said rights His Majesty, through His said Commissioners, is desirous of obtaining a surrender...."

2. R. v. Sparrow [1990] 1 SCR 1075 (SCC).

3. R. v. Adams [1996] 3 SCR 101 (SCC).

4. Case No. 197/1985, Views adopted on 27 July 1988.

5. Lovelace v. Canada Case No. 24/1977, Views adopted on 19 September 1979.

6. The State party provides documentation in the form of an application for funding identifying work on "United Nations petition" as part of a First Nations' workplan.

7. Davidson v. Canada Case No. 359/1989, Views adopted 31 March 1993, and Länsman v. Finland Case No. 671/1995, Views adopted on 30 October 1996.

8. The author refers to Ontario (Attorney-General) v. Bear Island Foundation [1991] 2 SCR 570 (SCC).

9. See Ominayak et al. v. Canada Case No. 167/1984, Views adopted on 26 March 1990, at paragraph 32.1.

10. See Jonassen et al. v. Norway Case No. 942/2000, Decision adopted on 25 October 2002.

11. The State party indicates that with a resident sport fishing licence, the author can daily catch and possess : 6 walleye, 6 mouth bass, 6 northern pike, 5 trout or salmon, 1 muskellunge, 25 whitefish and unlimited yellow perch, crappie, carp and catfish.

12. Kitok v. Sweden, communication No. 197/1985, adopted on 27 July 1998, CCPR/C/33/D/197/1985

13. See the Human Rights Committee's General Comment No.23 The rights of minorities to enjoy, profess and practice their own culture, 1994

14. A further State party's submission dated 2 June 2005 was received by the Committee. This submission, however, was considered by the Committee to contain no new elements.

15. The State party refers to the Committee's Views in Kitok v. Sweden, communication No. 197/1985, CCPR/C/33/D/197/1985, para. 9.8

16. See inter alia Kitok v. Sweden, communication No. 197/1985, Views adopted on 27 July 1988, CCPR/C/33/D/197/1985 and Länsmann v. Finland, communication No. 511/1992, Views adopted on 26 October 1994, CCPR/C/52/D/511/1992 and communication No. 671/1995, Views adopted on 30 October 1996, CCPR/C/58/D/671/1995.

**3. Communication No 1023/2001: Finland. 15/04/2005.
CCPR/C/83/D/1023/2001**

Submitted by: Jouni Länsman, Eino Länsman and the Muotkatunturi Herdsmen's Committee (represented by counsel, Ms. Johanna Ojala)

Alleged victim: The authors

State party: Finland

Date of initial communication: 6 November 2000 (initial submission)

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are Jouni E. Länsman, Eino A. Länsman, both Finish citizens, and the Muotkatunturi Herdsmen's Committee (of which the two individual authors are part). The authors allege to be victims of a violation by Finland of article 27 of the Covenant. They are represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 31 October 2002, under Rule 86 of its Rules of Procedure, the Committee, acting through its Chairperson, requested the State party "to refrain from conducting logging activities that would affect the exercise by Mr. Jouni Länsman et al. of reindeer husbandry in the Angeli area, while their case is under consideration by the Committee".

Factual Background

2.1 On 30 October 1996, the Committee delivered its Views in *Länsman et al. v. Finland* ("the earlier communication"). **(1)** The Committee found, on the evidence then before it, no violation of the rights under article 27 of the current two individual authors (and others) in the completed logging of some 250 hectares in Pyhäjärvi and the proposed logging of some further 250 hectares in Kirkko-outa (both are in the Angeli area).

2.2 The Committee went on to find:

10.6 As far as future logging activities are concerned, the Committee observes that on the basis of the information available to it, the State party's forestry authorities have approved logging on a scale which, while resulting in additional work and extra expenses for the authors and other reindeer herdsmen, does not appear to threaten the survival of reindeer husbandry. That such husbandry is an activity of low economic profitability is not, on the basis of the information available, a result of the encouragement of other economic activities by the State party in the area in question, but of other, external, economic factors.

10.7 The Committee considers that if logging plans were to be approved on a scale larger than that already agreed to for future years in the area in question or if it could be shown that the effects of logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of the authors' right to enjoy their own culture within the meaning of article 27. The Committee is aware, on the basis

of earlier communications, that other large-scale exploitations touching upon the natural environment, such as quarrying, are being planned and implemented in the area where the Sami people live. Even though in the present communication the Committee has reached the conclusion that the facts of the case do not reveal a violation of the rights of the authors, the Committee deems it important to point out that the State party must bear in mind when taking steps affecting the rights under article 27, that though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.

2.3 By 1999, all 500 hectares of the two areas at issue in the earlier communication had been logged. Moreover, in 1998, a further 110 hectares were logged in the Paadarskaidi area of the Herdsmen's Committee (not part of the areas covered by the earlier communication).

2.4 By the date of submission of the communication, yet another logging operation in Paadarskaidi had been proposed, with minimal advance warning to the Herdsmen's Committee and with an imminent commencement date. At that point, the Herdsmen's Committee had yet to receive a written plan of the nature and scope of the logging operation. The National Forest & Park Service had indicated that it would send the plans to the Herdsmen's Committee at a later date, having indicated in its previous plan that the next logging operation would be due to take place only after a year and in a different location.

The complaint

3.1 The authors allege a violation of their rights as reindeer herders under article 27 of the Covenant, both inasmuch as it relates to logging already undertaken and to logging proposed. At the outset, they complain that since the 1980s, some 1,600 hectares of the Herdsmen's Committee's grazing area in Paadarskaidi have been logged, accounting for some 40 per cent of lichen (utilized for feeding reindeer) in that specific area.

3.2 As to the effect of the logging on the author's herd, it is submitted that reindeer tend to avoid areas being logged or prepared for logging. They therefore stray to seek other pastures and thereby incur additional labour for the herders. After logging, logging waste prevents reindeer grazing and compacted snow hampers digging. The logging operations result in a complete loss of lichen in the areas affected, allegedly lasting for hundreds of years.

3.3 The authors recall that after heavy snows in 1997, herders had for the first time to supply capital and labour intensive fodder for the reindeer rather than rely on lichen. The ongoing and increasing logging of fine lichen forests increases the necessity of providing fodder and threatens the economic self-sustainability of reindeer husbandry, as husbandry depends on the reindeer being able to sustain themselves.

3.4 The authors recall that the maximum number of reindeer that may be kept by the Herdsmen's Committee is decided by the Ministry of Agriculture and Forestry. The Ministry is charged by statute, in determining the maximum number of reindeer, to ensure that the number of reindeer grazing in the Herdsmen's Committee's area in the winter season does not exceed the sustainable productive capacity of the Herdsmen's Committee's winter pastures. Since the Committee's Views in the earlier

communication, the Ministry has twice reduced the Herdsmen's Committee's number of animals: from 8,000 to 7,500 in 1998, and from 7,500 to 6,800 in 2000. In two administrative decisions within two years, then, the Ministry considered that the sustenance of winter pasture in Muotkatunturi was so low that the sustainable number of reindeer should be reduced by 15%. The authors allege that the principal cause of this decline in winter pastures, and particularly of horsehair lichen pastures, are the logging operations.

3.5 Despite the recent reductions in reindeer herds, the National Forest & Park Service continues to conduct logging operations, destroying the Herdsmen's Committee's pastures, and further deteriorating husbandry conditions. The authors contend that this situation violates article 27, in that forestry operations are continuing and the effects are more serious than first thought. At the same time that logging proceeds, reindeer numbers have been reduced because the pastures still available cannot support the previous number of reindeer.

3.6 The authors state that, in respect of logging at Kirkko-ousta and Pyhäjärvi, all domestic remedies have been exhausted. As to the other areas, the authors invoke the Committee's Views in the earlier communication for the proposition that the domestic courts do not need to be seized afresh of the matter. These elements are said to be satisfied, since the State party itself recognizes that the effects have been more serious, while it continues both to log and to plan further logging.

The State party's admissibility submissions

4.1 On 31 December 2001, the State party supplied its observations on the admissibility only of the communication. On 8 February 2002, the Committee, acting through its Chairperson, decided to separate the consideration of the admissibility and the merits of the case.

4.2 The State party informed the Committee that it "refrains from conducting logging activities in the Angeli area (paragraph 10.1 (2) in the Committee's Views in case no. 671/1995, 30 October 1996) that would affect the exercise by the individual authors' reindeer husbandry while their communication is under consideration by the Committee".

4.3 The State party notes that as far as the Paadarskaidi area is concerned, the National Forest & Park Service carried out increment felling (preparative cutting) totalling some 200-300 hectares between 1998 and 2000. The distance between the Angeli area and the Paadarskaidi area is about 30 kilometres. It considers the communication inadmissible on three grounds: lack of proper standing as to one complainant, lack of exhaustion of domestic remedies, and for failure to substantiate the claims for purposes of admissibility.

4.4 While accepting the status of the individual authors, the State party rejects the ability of the Herdsmen's Committee to submit a communication. It considers that the Herdsmen's Committee does not fall within the entitlement of article 27 of the Covenant, nor is it an "individual" within the meaning of article 2 of the Optional Protocol. Under the Reindeer Herding Act, a Herdsmen's Committee consists of all herdsmen in a given area and who are not personally responsible for the performance of the Committee's duties; thus, any claim on the Herdsmen's Committee's behalf amounts to an *actio popularis*.

4.5 The State party observes that domestic remedies remain available, as shown by the decisions of the District Court, Court of Appeal and Supreme Court in the earlier communication, the effectiveness of which has not been contested. The authors did not initiate any proceedings regarding logging operations planned or carried out in either the Angeli or Paadarskaidi areas subsequent to the Committee's Views in the earlier communication.

4.6 The State party notes that in its Views on case 671/1995, the Committee merely observed that, if the logging effects were more serious or further plans were approved, it would have to be considered whether this would constitute a violation of the authors' article 27 rights. The Committee did not imply the requirement to exhaust domestic remedies could be done away with in any further complaint. This is particularly applicable when an assessment of a possible violation of article 27 requires an assessment of the relevant evidence both by the domestic courts and in turn the Committee. There is no proof that the effects of the earlier logging operations were more serious than foreseen at the time. The Ministry's decisions to reduce the Herdsmen's Committee's herd does not substantiate any claim of the effects of individual logging operations. Nor may the reductions in reindeer be considered a justification for not pursuing domestic remedies, where such allegations would be examined.

4.7 Accordingly, the authors have neither exhausted domestic remedies available to them, nor demonstrated any special circumstances which might absolve them from doing so. Finally, the State party argues that the brief communication lacks sufficient material basis, including basic evidence, that would go beyond a mere allegation. Accordingly, the case is said not to have been substantiated.

Authors' comments

5.1 In comments dated 15 March 2002, the authors supplied comments, restricted to the admissibility arguments of the State party.

5.2 As to the availability of domestic remedies in respect of the other areas (not covered by the earlier communication), the authors contend that the State party's suggestion of available remedies is misplaced. No court action designed to prevent specific logging plans was successful, partly because any concrete logging tract "is always only a seemingly modest part of the overall lands [that] are used by the Sami for reindeer herding". There is no indication that a case seeking positive protection for Sami herders would be successful, and, in any event, the existing Supreme Court ruling would be a further obstacle.

5.3 For the authors, the National Forest & Park Service has been too restrictive in providing information on its logging activities affecting the life of Angeli Sami. On the issue of substantiation of claims, the authors argue that they have shown that the reductions of reindeer after the Ministry's decisions was a direct consequence of the impact of logging on pasture areas. They have detailed the State party's plans to continue logging despite the Committee's earlier Views. The authors regard this as sufficient substantiation.

5.4 Finally, the authors state that there are plans for further logging by the National Forestry and Park Service within the area already subject to court proceedings, an area known as the Kippalrova tract.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 During its 77th session, the Committee considered the admissibility of the communication. On the contention that the Muotkatunturi Herdsmen's Committee did not have standing to bring a claim under the Optional Protocol, the Committee referred to its constant jurisprudence that legal persons are not "individuals" able to bring such a claim. **(3)** Neither was there an indication that individual members of the Muotkatunturi Herdsmen's Committee had authorized it to bring a claim on their behalf, or that Jouni and/or Eino Länsman were authorized to act on behalf of the Herdsmen's Committee and its members. Accordingly, while it was uncontested that Jouni and Eino Länsman had standing to bring the communication on their own behalf, the Committee considered the communication inadmissible under article 1 of the Optional Protocol insofar as it related to the Muotkatunturi Herdsmen's Committee and/or its constituent members, other than Jouni and Eino Länsman.

6.2 On the issue of exhaustion of domestic remedies, the Committee noted that with the Supreme Court's decision of 22 June 1995 there were no further avenues available to challenge the decision to undertake logging in the Pyhäjärvi and Kirkko-outa areas (the areas at issue in the earlier communication). Accordingly, the Committee considered that the issue of whether logging of these areas has had effects, in terms of article 27, greater than anticipated by either the Finnish courts in those proceedings or by the Committee in its Views on case No. 671/1995 is one that is admissible.

6.3 Regarding the Kippalrova area in which logging was planned, the Committee noted that this forest tract fell within the area covered by the Supreme Court decision of 22 June 1995. Accordingly it did not appear that further judicial review of this decision was possible. Accordingly, the Committee held the issues arising from the proposal to log this area to be admissible.

6.4 As to the 1998 logging in Paadarskaidi (outside the area covered by the Supreme Court decision), the Committee noted that the domestic remedies to which the State party points are all instances that have dealt, in terms of article 27, with logging plans prior to those plans being executed. In such circumstances, the decision on the anticipated future effects of logging is by necessity speculative, with only subsequent events bearing out whether or not the initial assessment was correct. The Committee observed that other cases referred to by counsel have also been challenges to proposed logging in advance. The Committee considered that the State party had not demonstrated, on the information supplied, what domestic remedies might be available to the authors seeking compensation or to obtain another appropriate remedy for an alleged violation of article 27 by virtue of logging that has already taken place. Accordingly, the Committee considered that the question of the effects, in terms of article 27, of logging in the Paadarskaidi already carried out was admissible.

6.5 On proposed further logging in Paadarskaidi, the Committee noted the authors' contention that no claim before the Finnish courts seeking to prevent logging taking place had been successful. While mindful of the need to examine whether the judicial remedies in question were available and effective in practical terms, the Committee had insufficient information before it in terms of the numbers of actions brought, the arguments invoked and their outcomes to conclude that the judicial remedies invoked by the State party were ineffective. Accordingly, this portion of the

communication was considered inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

6.6 Taking into account the authors' contention that they had suffered a significant reduction in the number of reindeer that they are permitted to raise in their herding areas, the Committee considered that the parts of the communication that have not been found inadmissible for lack of standing or failure to exhaust domestic remedies had been substantiated, for purposes of admissibility.

6.7 On 1 April 2003, the Committee declared the communication admissible insofar as it relates to the cumulative effects on the exercise by Jouni and Eino Länsman of their rights under article 27 of the Covenant arising from the logging that had taken place in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas, along with the proposed logging in Kippalrova.

The State party's merits submission

7.1 On 1 October 2003, the State party submitted comments on the merits and requested the Committee to review its previous decision on admissibility for failure to exhaust domestic remedies. It recalls that complex questions such as the issue of the alleged effects of logging proceedings in the present case must and can be thoroughly investigated, for example through expert and witness testimonies, on-site inspections and specific information on local circumstances. It is unlikely that all the necessary information could be obtained outside national court proceedings. The present case does not show any special circumstances which might have absolved the authors from the requirement of exhausting the domestic remedies at their disposal. The authors could take a civil action for damages against the State in a District Court at first instance, if necessary, on appeal in the Court of Appeal, and subject to leave to appeal in the Supreme Court.

7.2 On the merits, the State party acknowledges that the Sami community is an ethnic community within the meaning of article 27, and that the authors, as members of that community, are entitled to protection under this provision. It reviews the Committee's jurisprudence on article 27 of the Covenant. **(4)** and concedes that the concept of "culture" within the meaning of article 27 covers reindeer husbandry, as an essential component of the Sami culture.

7.3 The State party admits that "culture" within the meaning of article 27 provides for protection of the traditional means of livelihood for national minorities, in so far as they are essential to the culture and necessary for its survival. Not every measure or its consequences, which in some way modify the previous conditions, can be construed as a prohibited interference with the right of minorities to enjoy their own culture. The State party refers to General Comment on article 27, adopted in April 1994, which acknowledges that the protection of rights under article 27 is directed to ensuring "the survival and continued development of the cultural, religious and social identity of the minorities concerned" (paragraph 9). It invokes the *ratio decidendi* of the Committee's Views in *I. Länsman et al. v. Finland*, **(5)** where the Committee held that States parties may wish to encourage economic development and allow economic activity, and that measures which have a certain limited impact on the way of life of persons belonging to a minority do not necessarily violate article 27.

7.4 The State party notes that the areas referred to in the communication is owned by the State and under the administration of the National Forestry and Park Service

which is entitled, *inter alia*, to log forests and construct roads at its discretion - with due regard to the relevant provisions of national legislation and international treaties. In the State party's view, due care was exercised for all logging operations carried out in State-owned forests in northern Finland. In the past few years, logging operations have mainly been carried out for the purposes of thinning forests to ensure proper growth.

7.5 The State party points out that the size of the territory administered by the Muotkatunturi Herdsmen's Committee is relevant. The surface of the land area administered by the Herdsmen's Committee is approximately 248,000 hectares, of which some 16,100 hectares of forests (about 6 per cent of the land areas administered by the Committee) are used for the purposes of forestry on State-owned lands. In fact, there have been very few logging operations in the area, the surface of the lands subject to logging amounting to approximately 1.2 per cent of the area administered by the Committee. The operations carried out in this territory between 1983 and 2001 amounted to 152 hectares per year, whereas the planned logging operations to take place between 2003 and 2012 would amount to 115 hectares per year. In view of the total surface of forest areas, both the logging operations carried out and the planned ones are less extensive than those carried out in private forests in the area. While reindeer owners have required the National Forest and Park Service to terminate forestry activities in the land areas administered by the Committee, they did not reduce their own logging operations.

7.6 The State party denies that any new logging operations have been planned for the Angeli area (Pyhäjärvi and Kirkko-oua), nor have any such operations been carried out in or planned for the area of Kippalrova. The State party observes that as far as the admissible part of the complaint with regard to the Paadarskaidi area is concerned, the National Forest and Park Service mainly carried out increment felling (preparative cutting), in the area, amounting to approximately 110 hectares in 1998.

7.7 The logging operations in Pyhäjärvi in 1996 (170 hectares) and in 1999 (regeneration fellings over 60 hectares), as well as operations in Kirkko-oua in 1998 (regeneration fellings amounting to 70 hectares and thinning amounting to 200 hectares) were already taken into account by the Human Rights Committee on 22 November 1996. The Committee had considered the logging operations which had been carried out by the date of the decision, as well as planned future operations in the Angeli area. According to the decision, there was no violation of article 27 of the Covenant. It observes that the regeneration fellings (300 hectares) in the Angeli area constitute 0.8 percent and the thinning logging operations (200 hectares) constitute 0.5 percent of the forest, administered by the Muotkatunturi Herdsmen's Committee.

7.8 As to the effects of logging on reindeer herding, the State party notes that it has not been shown that the effects of the earlier logging operations were more than anticipated. Nor was it shown that logging operations would create long-lasting harm preventing the authors from continuing reindeer herding in the area at its present extent. It observes that the effects of forestry should not be examined in the short term or in respect of individual logging sites, but from a wider perspective. According to a statement given by the Finnish Game and Fisheries Research Institute on 31 January 2002, the operations referred to in the communication do not have any significant additional adverse effects on reindeer herding in the long term if the numbers of reindeer are maintained approximately at their present level. In view of the state of winter herding areas, the present number of reindeer is high.

7.9 The State party notes that because of the severe conditions of nature in the area administered by the Herdsmen's Committee, provisions for the purposes of

preserving nature and the environment are included, among others, in section 21 of the Reindeer Herding Act, which provides that the Ministry of Agriculture and Forestry shall determine the maximum number of reindeer that the Herdsmen's Committee may keep in their herds, as well as the number of reindeer that may be owned by individual Committee members. In the determination of the maximum numbers of reindeer, the principle enshrined in section 21, subsection 2, is applied according to which the number of reindeer in the herds on the lands administered by the Committee may not exceed the sustainable productive capacity of the winter pastures.

7.10 Even after the reductions of the maximum number of reindeer by the Ministry of Agriculture and Forestry in 1998/1999 and 2000/2001, the maximum number of reindeer allowed is more than three times the numbers allowed in the 1970s. In 1973, the number was no more than 1,051, whereas the highest number in 1990 was 10,398. The State party argues that the significant increase in the number of reindeer kept in herds in the 1980s and 1990s had adverse effects on the state of winter herding pastures. The high numbers of reindeer kept by the Herdsmen's Committee in their herds and the resulting adverse effects on herding lands, increase the need for additional feeding, thereby harming the reindeer husbandry. The State party adds that apart from the number of reindeers per herd, the difficulties of reindeer herdsmen and the poor state of herding lands are not so much affected by forestry as they are by other forms of forest use. For the State party, the Ministry's decision on the permitted number of reindeer does not alone constitute any substantiated evidence of the effects of certain individual loggings, but rather of the effects of the high numbers of reindeer kept in herds.

7.11 The State party submits that there has been regular contact between the authorities and the Herdsmen's Committee in the form of letters, negotiations and even various on-site visits. It notes that irrespective of whether the owner is the State or an individual citizen, the possible restrictions resulting from the right of the Sami, other Finns or nationals of other European Economic Area countries, to carry out reindeer herding cannot entirely deprive landowners of their own rights. It is also observed that reindeer herdsmen's committees within the Sami often have a mixed composition of both Sami and other Finns as their members. The relevant provisions of the Finnish Constitution are based on the principle that both population groups have, as performers of professional activities, equal status before the law and neither group may be placed in a more favourable position than the other, not even in respect of reindeer herding.

Authors' comments

8.1 On 5 December 2003, the authors commented on the State party's submission. They dispute the claim that they may institute civil proceedings for damages against the State party. According to section 1 of chapter 5 of the Finnish Damages and Tort Liability Act of 1974, "damages shall constitute compensation for the personal injury and damage to property. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also constitute compensation for economic loss that is not connected to personal injury or damage to property." The National Forest and Park Service, which caused the damage, does not exercise public authority and the logging operations are not a criminal offence. Thus, compensation for financial damage could arise under the Act only if there are "especially weighty reasons". The application of the concept of "especially weighty reasons" in Finnish case law has caused problems of interpretation, and "it is by no means clear that the provision could be applied to the damage to the authors". In any

event, such a process of litigation would be laborious, onerous and the costs prohibitive. The litigation would take several years to complete.

8.2 The authors contest the State party's denial that it intends to carry out logging in Kippalrova and provides a map which it purports to prove otherwise. In October 2003 the National Forest and Park Service announced that it was preparing a further logging plan in Paadarskaidi.

8.3 As to the logging operations undertaken in the entire territory, the authors submit that the territory covered by the Herdsmen's Committee is not homogeneous forest but is made up of different types of grazing land. Even though the National Forest and Park Service engages in forestry in only part of the area administered by the Committee, 35 per cent of the forest pastures in the winter grazing area and 48 percent of those in the summer grazing area are subject to forestry operations by the State and private owners. According to the current land demarcation for forestry and statements made by the National Forest and Park Service, the area in question will sooner or later be absorbed into the felling cycle. The felling cycle involves a wide range of measures, even the least invasive of which cause harm to reindeer husbandry. 9 per cent of the entire territory of the Committee is privately owned, and the owners are not subject to the same obligations as the State with respect to reindeer husbandry.

8.4 The National Forest and Park Service invited the Herdsmen's Committee on two field trips in Kippalvaara and Kippalrova in September 2001 and Savonvaara-Pontikkamäki in January 2002, at which herdsmen expressed their opposition to the logging proposals. Nevertheless, the operations started in the Savonvaara-Pontikkamäki region (not part of the current communication) in the early spring of 2002. In October 2003, the National Forest and Park Service announced that logging will take place there in the near future.

8.5 On the issue of participation of the Herdsmen's Committee, while the National Forest and Park Service arranged a hearing which the Committee members and other interested groups could attend, this hearing was, in practice, merely an exercise in opinion gathering. In the authors' view, the National Forest and Park Service determines the principles, strategies and objectives of its forestry operations exclusively according to its own needs; as its decisions are not open to appeal, this fails to ensure effective participation.

8.6 As to the effects of logging, the authors refer to several investigations, studies and Committee reports which have been prepared since the previous *Länsman* case, and which purportedly attest to the substantial damage caused by the logging operations. An inventory of Alectoria lichen was conducted in the territory of the Lapland Herdsman's Committee in 1999 to 2000, in which it confirmed that the incidence of Alectoria lichen in the logged forest areas is very low, and that logging operations cause considerable harm to reindeer husbandry. Similar results were found in other reports, including various Swedish studies published in 1998 and 2000. In addition, the Finnish Ministry of Agriculture and Forestry, in considering the maximum permissible population of reindeer per herd, acknowledged the importance and availability of winter nutrition for reindeer – Lichenes, Alectoria and Deschampsia – and that logging has reduced stocks of the former two foods.

8.7 It is submitted that after logging, as reindeer do not remain grazing on managed areas, grazing pressure comes to bear on the remaining territory. This means that the effects of logging also extend beyond the areas that are actually managed. The authors argue that the impact of logging operations are long-term, practically

permanent, and that the measures employed create new damage, exacerbate existing damage, and extent the area affected by logging. Since the logging operations, the access of reindeer to winter food has become more susceptible to other variations in the Pyhäjärvi, and Kirkko-outa areas, including those arising from natural phenomena, such as heavy snow cover, delays in the arrival of spring and an increase in predators, especially wolves.

8.8 On the State party's argument that according to the Finnish Game and Fisheries Research Institute, "the loggings referred to in the communication do not have significant additional adverse effects on reindeer herding in the long term if the numbers of reindeer are maintained approximately at their same level", the authors submit that the State party omitted the last line of the opinion "...and the deterioration in pastures is compensated by feeding. If, on the other hand, the aim is to engage in reindeer husbandry based purely on natural pastures, then loggings – even those notified as relatively mild – will be of greater significance for reindeer husbandry that is already in difficulties for other reasons". The authors refer to the view of the Lapland and Kemin-Sompio Herdsmen Committee's who have previously stated that artificial feeding causes inequalities and disputes within the Herdsmen's Committee, and is regarded as a threat to the old Sami tradition and culture of reindeer husbandry. In recent years, because of the lack of natural winter food, the authors have had to rely on artificial reindeer food which requires additional income from sources other than reindeer husbandry, thereby impacting on the profitability of this form of livelihood.

8.9 The authors acknowledge that over the last two years, conditions have been favourable from the point of view of securing natural food supplies, resulting in a substantial reduction in expenses for additional feeding and the survival rate of reindeer beyond expectation. Despite these conditions, the profitability of reindeer husbandry has not improved, as the companies buying reindeer meat have reduced their prices by up to 30 per cent and have purchased less. In addition, the State collects a penalty fee if the Herdsmen's Committee exceeds its quota of reindeer per herd on account of failure to sell.

Review of admissibility

9.1 The Human Rights Committee has examined the communication in light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 As to the State party's request to review admissibility on the grounds that the authors did not take a civil action for damages and thus did not exhaust domestic remedies, the Committee considers that in the present case where the issue is the effect of past logging, the State party has not demonstrated that an action for damages would be an effective remedy to address all relevant aspects of the State party's responsibility under article 27 of the Covenant to protect the right of minorities to enjoy their own culture and with respect to a claim that this culture has been or is being destroyed. For this reason, the Committee does not intend to reconsider its admissibility decision.

9.3 As to the claim, that the negative effects of the *proposed* logging in Kippalrova would interfere with their rights under article 27, the Committee recognises the commitment of the State party, expressed in its submission on the merits, not to

proceed to logging in this area and therefore finds it unnecessary to consider the possibility of future logging, by the State, in this area any further.

9.4 The Committee proceeds to a consideration of the merits of the claims relating to the effects of past logging in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas.

Consideration of the merits

10.1 As to the claims relating to the *effects* of logging in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas of the territory administered by the Muotkatunturi Herdsmen's Committee, the Committee notes that it is undisputed that the authors are members of a minority within the meaning of article 27 of the Covenant and as such have the right to enjoy their own culture. It is also undisputed that reindeer husbandry is an essential element of their culture and that economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community. **(6)** Article 27 requires that a member of a minority shall not be denied the right to enjoy his culture. Measures whose impact amounts to a denial of the right are incompatible with the obligations under article 27. As noted by the Committee in its Views on case no. 511/1992 of *Länsman et al. v. Finland*, however, measures with only a limited impact on the way of life and livelihood of persons belonging to a minority will not necessarily amount to a denial of the rights under article 27.

10.2 The Committee recalls that in the earlier case no. 511/1992, which related to the Pyhäjärvi and Kirkko-outa areas, it did not find a violation of article 27, but stated that if logging to be carried out was approved on a larger scale than that already envisaged or if it could be shown that the effects of logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of article 27. In weighing the effects of logging, or indeed any other measures taken by a State party which has an impact on a minority's culture, the Committee notes that the infringement of a minority's right to enjoy their own culture, as provided for in article 27, may result from the combined effects of a series of actions or measures taken by a State party over a period of time and in more than one area of the State occupied by that minority. Thus, the Committee must consider the overall effects of such measures on the ability of the minority concerned to continue to enjoy their culture. In the present case, and taking into account the specific elements brought to its attention, it must consider the effects of these measures not at one particular point in time – either immediately before or after the measures are carried out – but the effects of past, present and planned future logging on the authors' ability to enjoy their culture in community with other members of their group.

10.3 The authors and the State party disagree on the effects of the logging in the areas in question. Both express divergent views on all developments that have taken place since the logging in these areas, including the reasons behind the Minister's decision to reduce the number of reindeer kept per herd: while the authors attribute the reduction to the logging, the State party invoke the overall increase in reindeer threatening the sustainability of reindeer husbandry generally. While the Committee notes the reference made by the authors to a report by the Finish Game and Fisheries Research Institute that "loggings – even those notified as relatively mild – will be of greater significance for reindeer husbandry" if such husbandry is based on natural pastures only (supra 8.8), it also takes note of the fact that not only this report but also numerous other references in the material in front of it mention other factors explaining why reindeer husbandry remains of low economic profitability. It also takes into consideration that despite difficulties the overall number of reindeers still

remains relatively high. For these reasons, the Committee concludes that the effects of logging carried out in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas have not been shown to be serious enough as to amount to a denial of the authors' right to enjoy their own culture in community with other members of their group under article 27 of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee do not reveal a breach of article 27 of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Notes

1. Case no. 671/1995.

2. Para 10.1 provides, as relevant: "The issue to be determined is whether logging of forests in an area covering approximately 3,000 hectares of the area of the Muotkatunturi Herdsmen's Committee (of which the authors are members) - i.e. such logging as has already been carried out and future logging - violates the authors' rights under article 27 of the Covenant."

3. See, for example, *Hartikainen v. Finland*, Case no. 40/1978, Decision adopted on 9 April 1981, *JT v. Canada*, Case no. 104/1981, Decision adopted on 6 April 1983, and *Ominayak et al. v. Canada*, *op. cit.*

4. Views on Cases Nos. 167/1984 (*B. Ominayak and members of the Lubicon Lake Band v. Canada*), 197/1985 (*Kitok v. Sweden*) and 511/1992 (*I. Länsman v. Finland*).

5. *Supra*

6. Views on case no. 197/1985 (*Kitok v. Sweden*), Views adopted 27 July 1988, para. 9.2; on case No. 511/1992 (*I. Länsman et al. v. Finland*), adopted 26 October 1994, paragraph 9.2.

C. General Comments

1. General Comment No. 27: Freedom of movement (Art.12): 02/11/99. CCPR/C/21/Rev.1/Add.9¹

7. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. ...

11. Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorizes the State to restrict these rights only to protect national security, public order (ordre public), public health or morals and the rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant (see para. 18 below).

12. The law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded. Restrictions which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3, would violate the rights guaranteed by paragraphs 1 and 2.

13. In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art. 5, para. 1); the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.

14. Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.

15. The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.

16. States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality. These conditions would not be met, for example, if an individual were prevented from leaving a country merely on the ground that he or she is the holder of "State secrets", or if an individual were prevented from travelling internally without a specific permit. On the other hand, the conditions could be met by restrictions on access to military zones on national security grounds, or limitations on the freedom to settle in areas inhabited by indigenous or minorities communities.^[2]

¹ Omitted from Volume 1, Compilation of Jurisprudence 1993-2004.

^[2] 8. See general comment No. 23, para. 7, in HRI/GEN/1/Rev.3, 15 August 1997, p. 41.

III. Committee on Economic, Social and Cultural Rights

A. Concluding Observations

1. Norway, E/C.12/1/Add.109, 23/06/2005

26. The Committee urges the State party to ensure that the Finnmark Act, which is currently being considered by parliament, gives due regard to the rights of the Sami people to participate in the management and control of natural resources in the county of Finnmark. The Committee requests the State party to provide in its next periodic report updated information about the implementation of the Finnmark Act and the extent to which the opinions of representatives of the Sami people have been taken into consideration.

2. Chile, E/C.12/1/Add.105 26 November 2004.³

7. The Committee welcomes measures taken to improve the situation of indigenous peoples, including the adoption of the Indigenous People Act (Act No. 19.253) of 1993, the establishment of the National Indigenous Development Corporation (CONADI) and the Indigenous Land and Water Fund, and the recently announced New Deal Policy (*Política de Nuevo Trato*) 2004-2010.

13. The Committee notes with concern the lack of constitutional recognition of indigenous peoples in the State party and that indigenous peoples, despite the existence of various programmes and policies to improve their situation, remain disadvantaged in the enjoyment of their rights guaranteed by the Covenant. It also regrets that the State party has not ratified ILO Convention No. 169 (1989) concerning indigenous and tribal peoples, and that unsettled claims over indigenous lands and national resources remain a source of conflict and confrontation.

14. The Committee is deeply concerned about the application of special laws, such as the Law of State Security (No. 12.927) and the anti-terrorism law (No. 18.314), in the context of the current tensions over the ancestral lands in the Mapuche areas.

33. The Committee recommends that the State party include recognition of its indigenous peoples in the Constitution, ratify ILO Convention No. 169, and continue to strengthen its efforts to ensure the effective enjoyment by indigenous people of their economic, social and cultural rights.

34. The Committee recommends that the State party fully take into consideration the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80/Add.3) on the implementation of the New Deal Policy 2004-2010, namely that the Land Fund be substantially increased; that efforts to recover indigenous lands be strengthened, especially in Mapuche areas; and conditions of rural indigenous people be improved, especially in the health and educational sectors.

50. The Committee recommends that the State party continue to strengthen its efforts to reduce poverty, especially among indigenous peoples, and to integrate economic, social and cultural rights in all its poverty alleviation programmes. In this regard, it refers the State party to the Committee's statement on poverty, adopted on 4 May 2001. It also recommends that the State party ensure that adequate resources are allocated towards meeting the goals and targets set under the Chile Solidarity (*Chile Solidario*) and the Chile Neighbourhood (*Chile-barrio*) programmes.

51. The Committee urges the State party to take effective measures to promote the right to housing, especially among the disadvantaged and marginalized groups,

³ Omitted from Vol, I, Compilation of Jurisprudence 1993-2004.

and to ensure that adequate protection is afforded to people living in illegal settlements who are liable to forced evictions. The Committee recalls in this connection its General Comments No. 4 (on the right to adequate housing) and No. 7 (on adequate housing: forced evictions), and requests the State party to provide further information on the number and nature of forced evictions in its next periodic report.

3. Canada, E/C.12/CAN/CO/5, 19 May 2006

5. The Committee notes with appreciation the reduction in disparities between Aboriginal people and the rest of the population in the State party with regard to infant mortality and secondary education.

11. The Committee regrets that most of its 1993 and 1998 recommendations have not been implemented, and that the State party has not addressed in an effective manner the following principal subjects of concern, which were stated in relation to the second and third periodic reports, and which are still relevant: [...]

d) The disparities that still persist between Aboriginal peoples and the rest of the Canadian population in the enjoyment of Covenant rights, as well as the discrimination still experienced by Aboriginal women in matters of matrimonial property.

15. The Committee is concerned that, despite Canada's economic prosperity and the reduction of the number of people living below the Low Income Cut Off, 11.2 percent of its population still lived in poverty in 2004, and that significant differences in levels of poverty persist between Provinces and Territories. The Committee also notes with particular concern that poverty rates remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal peoples, African-Canadians, immigrants, persons with disabilities, youth, low-income women and single mothers. In a number of jurisdictions, including British Columbia, poverty rates have increased among single mothers and children in the period between 1998 and 2003. The Committee is also concerned by the significant disparities still remaining between Aboriginal people and the rest of the population in areas of employment, access to water, health, housing and education, and by the failure of the State party to fully acknowledge the barriers faced by African-Canadians in the enjoyment of their rights under the Covenant.

16. The Committee, while noting that the State party has withdrawn, since 1998, the requirement for an express reference to extinguishment of Aboriginal rights and titles either in a comprehensive claim agreement or in the settlement legislation ratifying the agreement, remains concerned that the new approaches, namely the "modified rights model" and the "non-assertion model", do not differ much from the extinguishment and surrender approach. It further regrets not having received detailed information on other approaches based on recognition and coexistence of rights, which are currently under study.

17. The Committee notes with concern that the long-standing issues of discrimination against First Nations women and their children, in matters relating to Indian status, Band membership, and matrimonial real property on reserve lands have still not been resolved. The Committee notes that such discrimination has had a negative impact on the enjoyment of economic, social and cultural rights of some First Nations women and their children under the Covenant.

24. The Committee notes with concern that low-income families, single-mother-led families and Aboriginal and African-Canadian families, are over-represented in families whose children are relinquished to foster care. The Committee is also concerned that women continue to be forced to relinquish their children into foster care because of inadequate housing.

33. The Committee, while noting the numerous programmes adopted to preserve Aboriginal languages in the State party, as well as the studies conducted in the area of the protection of traditional knowledge, regrets that no time frame has been set up

for the consideration and implementation of the recommendations of the Task Force on Aboriginal Languages and Cultures, and that no concrete measures have been adopted in the area of intellectual property for the protection and promotion of ancestral rights and traditional knowledge of Aboriginal peoples.

35. The Committee reiterates its recommendation that the federal government take concrete steps to ensure that Provinces and Territories are made aware of the State party's legal obligations under the Covenant, that the Covenant rights should be enforceable within Provinces and Territories through legislation or policy measures, and that independent and appropriate monitoring and adjudication mechanisms be established in this regard. In particular, the State party should establish transparent and effective mechanisms, involving all levels of governments as well as civil society, including indigenous peoples, with the specific mandate to follow-up on the Committee's concluding observations.

37. The Committee urges the State party to re-examine its policies and practices towards the inherent rights and titles of Aboriginal peoples, to ensure that policies and practices do not result in extinguishment of those rights and titles.

38. The Committee strongly recommends that the State party resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the Covenant. The Committee also strongly recommends the State party to conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the Covenant.

45. The Committee recommends that the State party, in consultation with First Nations and including Aboriginal women's groups, adopt measures to combat discrimination against First Nations women and their children in matters relating to Indian status, Band membership and matrimonial property. In particular, the Committee urges the State party to repeal section 67 of the Canadian Human Rights Act, which prevents First Nations people from filing complaints of discrimination before a human rights commission or tribunal. The Committee also urges the State party to amend the Indian Act to remove any residual discrimination against First Nations women and their children.

52. The Committee recommends that the State party undertake a detailed assessment of the impact of the reduction of federal transfers for social assistance and social services to Provinces and Territories, on the standard of living of people depending on social welfare, in particular women, children, older persons, persons with disabilities, Aboriginal people, African-Canadians and members of other minorities. The Committee strongly recommends that the State party reconsider all retrogressive measures adopted in 1995.

56. The Committee recommends that the State party gather disaggregated statistical data in relation to the relinquishment to foster care of children belonging to low-income families, single mother-led families, and Aboriginal and African-Canadian families in order to accurately assess the extent of the problem. The Committee further recommends that, in accordance with the provisions of article 10 of the Covenant on the protection of families, the federal, provincial and territorial governments undertake all necessary measures including through financial support, where necessary, to avoid such relinquishment.

67. The Committee recommends that the State party undertake the adoption and implementation of concrete plans, with relevant benchmarks and time frames, for the consideration and implementation of the recommendations of the Task Force on Aboriginal Languages and Cultures, as well as in the area of intellectual property for the protection and promotion of ancestral rights and traditional knowledge of Aboriginal peoples.

4. Mexico, Future E/C.12/CO/MEX/4, 17 May 2006

10. The Committee is concerned about reports that members of indigenous and local communities opposing the construction of the “La Parota Hydroelectric Dam” or other projects under the Plan Puebla Panama are not properly consulted and are sometimes forcefully prevented from participating in local assemblies concerning the implementation of these projects. It is also concerned that the construction of the La Parota Dam would cause the flooding of 17.000 hectares of land inhabited or cultivated by indigenous and local farming communities, that it would lead to environmental depletion and reportedly displace 25.000 people and that it would also, according to the Latin American Water Tribunal, violate the communal land rights of the affected communities, as well as their economic, social and cultural rights.

13. The Committee is concerned about the low minimum wages in the State party, especially as regards women and indigenous workers.

14. The Committee is deeply concerned about the poor working conditions of indigenous workers who are frequently underpaid or not paid at all, receive no social security benefits or paid vacations, and often work on daily contracts or as unpaid family members.

23. The Committee reiterates its deep concern that, despite the State party’s efforts to reduce poverty, more than 40 million people continue to live in poverty, in particular members of indigenous communities and other disadvantaged and marginalized individuals and groups, such as indigenous women, agricultural workers, workers in the informal sector, and older persons. The Committee is equally concerned about the unequal distribution of wealth between the Northern and Southern States of the State party and between rural and urban areas.

26. The Committee expresses its concern about the lack of teachers in primary and secondary schools, especially in indigenous and remote areas, the low school attendance by indigenous children, their comparatively poor school performance, the high illiteracy rate among the indigenous population and the limited access to education for, in particular, indigenous and migrant children and agricultural workers under the age of completion of compulsory education. The Committee is also concerned about the reduction in the budget allocated to intercultural and bilingual education.

27. The Committee notes with concern that the collective authorship of indigenous peoples of their traditional knowledge and cultural heritage is not protected by the Federal Copyright Act or in other legislation of the State party.

28. The Committee urges the State party to ensure that the indigenous and local communities affected by the La Parota Hydroelectric Dam Project or other large-scale projects on the lands and territories which they own or traditionally occupy or use are duly consulted, and that their prior informed consent is sought, in any decision-making processes related to these projects affecting their rights and interests under the Covenant, in line with ILO Convention No. 169 on Indigenous and Tribal Peoples. The Committee also urges the State party to recognize the rights of ownership and possession of indigenous communities to the lands traditionally occupied by them, to ensure that adequate compensation and/or alternative accommodation and land for cultivation are provided to the indigenous communities and local farmers affected by the construction of the La Parota Dam or other construction projects under the Plan Puebla Panama, and that their economic, social and cultural rights are safeguarded. In this regard, the State party is referred to the Committee’s General Comments Nos. 14 and 15 on the right to the highest attainable standard of health and on the right to water.

31. The Committee recommends to the State party to ensure that wages fixed by the National Wages Commission or negotiated between workers and employers secure for all workers and employees, in particular women and indigenous workers, a

decent living for themselves and their families, in accordance with article 7 (a) (ii) of the Covenant.

32. The Committee urges the State party to take effective measures to improve the working conditions of indigenous workers by, *inter alia*, adopting and/or implementing relevant legislation, enforcing the Federal Act for the Prevention and Elimination of Discrimination and corresponding State legislation, increasing the number and effectiveness of labour inspections in indigenous communities, and by sanctioning employers who violate minimum labour standards.

44. The Committee recommends to the State party to ensure and monitor the full access of rape victims to legal abortion, to implement the Equal Start in Life Programme in all of its States, to ensure full access by everyone, especially by girls and young women, to reproductive health services and education, especially in rural areas and in indigenous communities, and to allocate sufficient resources for these purposes.

45. The Committee urges the State party to increase the number of primary and secondary school teachers, especially in indigenous and remote areas, as well as the budget for education, in particular for intercultural and bilingual education, to strengthen and upgrade schooling programmes for indigenous and migrant children, child workers and children belonging to other disadvantaged and marginalized groups, in particular girls, and to report on the progress made in achieving universal access to compulsory primary and secondary education in its next report.

46. The Committee recommends that the State party consider the adoption of legislation to recognize, register and protect the collective authorship of indigenous peoples of their traditional knowledge and cultural heritage and to prevent the unauthorized use of scientific, literary and artistic productions of indigenous peoples by third parties, in line with the Committee's General Comment No. 17.

B. General Comments

1. General Comment No. 17 (2005). The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)

9. The Committee considers that "any scientific, literary or artistic production", within the meaning of article 15, paragraph 1(c), refers to creations of the human mind, that is to "scientific productions", such as scientific publications and innovations, including knowledge, innovations and practices of indigenous and local communities, and "literary and artistic productions", such as, *inter alia*, poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions.

18. The right to the protection of the moral and material interests of authors contains the following essential and interrelated elements, the precise application of which will depend on the economic, social and cultural conditions prevailing in a particular State party:

(a) *Availability*. Adequate legislation and regulations, as well as effective administrative, judicial or other appropriate remedies, for the protection of the moral and material interests of authors must be available within the jurisdiction of the States parties;

(b) *Accessibility*. Administrative, judicial or other appropriate remedies for the protection of the moral and material interests resulting from scientific, literary or artistic productions must be accessible to all authors. Accessibility has four overlapping dimensions:

- (i) Physical accessibility: national courts and agencies responsible for the protection of the moral and material interests resulting from the scientific, literary or artistic productions of authors must be at the disposal of all segments of society, including authors with disabilities;
- (ii) Economic accessibility (affordability): access to such remedies must be affordable for all, including disadvantaged and marginalized groups. For example, where a State party decides to meet the requirements of article 15, paragraph 1 (c), through traditional forms of intellectual property protection, related administrative and legal costs must be based on the principle of equity, ensuring that these remedies are affordable for all;
- (iii) Accessibility of information: accessibility includes the right to seek, receive and impart information on the structure and functioning of the legal or policy regime to protect the moral and material interests of authors resulting from their scientific, literary and artistic productions, including information on relevant legislation and procedures. Such information should be understandable to everyone and should be published also in the languages of linguistic minorities and indigenous peoples;

(c) *Quality of protection.* Procedures for the protection of the moral and material interests of authors should be administered competently and expeditiously by judges and other relevant authorities.

32. With regard to the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of indigenous peoples, States parties should adopt measures to ensure the effective protection of the interests of indigenous peoples relating to their productions, which are often expressions of their cultural heritage and traditional knowledge. In adopting measures to protect scientific, literary and artistic productions of indigenous peoples, States parties should take into account their preferences. Such protection might include the adoption of measures to recognize, register and protect the individual or collective authorship of indigenous peoples under national intellectual property rights regimes and should prevent the unauthorized use of scientific, literary and artistic productions of indigenous peoples by third parties. In implementing these protection measures, States parties should respect the principle of free, prior and informed consent of the indigenous authors concerned and the oral or other customary forms of transmission of scientific, literary or artistic production; where appropriate, they should provide for the collective administration by indigenous peoples of the benefits derived from their productions.

45. Violations of the obligation to *protect* follow from the failure of a State to take all necessary measures to safeguard authors within their jurisdiction from infringements of their moral and material interests by third parties. This category includes such omissions as the failure to enact and/or enforce legislation prohibiting any use of scientific, literary or artistic productions that is incompatible with the right of authors to be recognized as the creator of their productions or that distorts, mutilates or otherwise modifies, or is derogatory towards, such productions in a manner that would be prejudicial to their honour or reputation or that unjustifiably interferes with those material interests that are necessary to enable authors to enjoy an adequate standard of living; and the failure to ensure that third parties adequately compensate authors, including indigenous authors, for any unreasonable prejudice suffered as a consequence of the unauthorized use of their scientific, literary and artistic productions.

IV. Committee on the Rights of the Child:

A. Concluding Observations

1. Australia, CRC/C/15/Add.268, 20 October 2005

5. The Committee notes with satisfaction that most of its concerns expressed and recommendations (CRC/C/15/Add.79) made upon the consideration of the State party's initial report (CRC/C/8/Add.31) in 1997 have been addressed. However, it notes that some concerns and recommendations have been insufficiently or partly addressed regarding, inter alia, the special problems still faced by indigenous children, corporal punishment, the spread of homelessness among young people, children in immigration detention, juvenile justice and the disproportionately high percentage of indigenous children in the juvenile justice system.

17. The Committee notes that despite the increase in budgetary allocations in many areas of childcare and well-being, indigenous children and other vulnerable groups continue to need considerable improvement in their standard of living, health and education.

18. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention, by prioritizing budgetary allocations so as to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to disadvantaged groups, such as indigenous children, "to the maximum extent of ... available resources".

24. While the Committee notes the initiatives taken against racial, ethnic and religious discrimination, it is particularly concerned at the existing discriminatory disparities affecting Aboriginal and Torres Strait Islander children, especially in terms of provision of and accessibility to basic services. ...

25. In accordance with article 2 of the Convention, the Committee recommends that the State party regularly evaluate existing disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures within a set time period in order to prevent and eliminate de facto discrimination and discriminatory attitudes towards especially vulnerable groups of children and ensure that, in enforcing its anti-terrorism legislation, the rights enshrined in the Convention are fully respected.

31. The Committee notes the national inquiry carried out in 1997 by HREOC into the separation of Aboriginal and Torres Strait Island children ("Bringing Them Home"), which acknowledged the past policies whereby indigenous persons were deprived of their identity, name, culture, language and family. In this respect, the Committee welcomes the activities undertaken by the State party to assist family reunification and improve access to records to help indigenous persons trace their families.

32. The Committee encourages the State party to continue and strengthen as much as possible its activities for the full implementation of the recommendations of the 1997 HREOC report, "Bringing Them Home", and to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships.

39. The Committee also recommends that the State party maximize its efforts, within a set time period, to reduce the significant number of indigenous children placed in out-of-home care, inter alia by strengthening its support for indigenous families. It further recommends that the State party fully implement the Indigenous Child Placement Principle and intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.

40. While the Committee notes the efforts undertaken to tackle this issue, including the Prisoners and their Families programme, it is concerned at the information that a considerable number of children have one parent in prison, and that indigenous children are significantly over-represented in this group.

47. The Committee notes the State party's efforts with regard to the prevention of overweight and obesity, the promotion of breastfeeding, and the prevention and control of injury. However, the Committee remains concerned at malnutrition and undernutrition of indigenous children compared with overnutrition, overweight and obesity at the national level. Furthermore, despite recent studies suggesting that indigenous infant mortality has declined in the past years, the Committee remains concerned at the disparity in health status between indigenous and non-indigenous children and at the unequal access to health care of children living in rural and remote areas.

48. The Committee recommends that the State party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services, with special attention to children belonging to vulnerable groups, especially indigenous children and children living in remote areas. In addition, the Committee recommends that the State party take adequate measures, within a set time period, to overcome the disparity in the nutritional status between indigenous and non-indigenous children.

55. The Committee notes with appreciation the Federal Government's considerable expenditures on indigenous housing and infrastructure and the good initiative, the "Community Housing and Infrastructure Programme", but reiterates its concern at the still inadequate standard of living of indigenous children and children living in rural and remote areas.

56. The Committee also notes that the State party has not defined an official poverty line and is concerned that the impact of poor living conditions on the well-being and development of children is not adequately considered.

57. In light of article 27 of the Convention, the Committee recommends that the State party increase its efforts to provide affordable housing options and take all possible measures to raise the standard of living of indigenous children and children living in rural and remote areas.

59. While the Committee acknowledges the State party's efforts in this field, including the Jobs Education and Training Child Care Programme, it continues to be concerned at the serious difficulties that indigenous children and children living in remote areas face with regard to education, and in particular their lower level of achievement and high dropout rate.

61. The Committee recommends that the State party:

(a) Take all necessary measures to ensure that articles 28 and 29 of the Convention are fully implemented, in particular with regard to children belonging to the most vulnerable groups (i.e. indigenous children, homeless children, children living in remote areas, children with disabilities, etc.); [...]

75. Despite the numerous measures taken by the State party's authorities, including the Indigenous Child Care Support Programme, the Committee remains concerned about the overall situation of indigenous Australians, especially with regard to their health, education, housing, employment and standard of living.

76. The Committee notes that the Aboriginal and Torres Strait Islander Commission (ATSIC), a key policy adviser to the Government and its agencies on indigenous affairs, had been abolished and replaced by a ministerial task force.

77. The Committee recommends that the State party strengthen its efforts to continue developing and implementing - in consultation with the indigenous communities - policies and programmes aimed at ensuring equal access for indigenous children to culturally appropriate services, including social and health services and education. The Committee further recommends that an evaluation of the new arrangements for the administration of indigenous affairs take place soon in

order to assess whether the abolition of ATSIC has been in the best interests of indigenous children.

2. Uganda, CRC/C/UGA/CO/2, 23 November 2005

30. The Committee notes that the Ugandan Constitution prohibits discrimination on grounds of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, or political opinion. It also welcomes the information provided by the delegation that the Equal Opportunity Commission will be established within a year. However, the Committee is concerned at the fact that discrimination against certain groups of children still exists in practice, particularly with regard to girls, children with disabilities, children living in poverty, refugee children, children affected by and/or infected with HIV/AIDS, former child soldiers and Batwa children.

81. The Committee is concerned at the situation of children belonging to minorities, including Batwa children, in particular with regard to their limited access to basic social services, including health care and education, and the violation of their rights to survival and development, to enjoy their own culture and to be protected from discrimination.

82. In light of the recommendations adopted at its day of general discussion on the rights of indigenous children (CRC/C/133, para. 624), the Committee recommends that the State party:

(a) Undertake a study to assess the situation and the needs of Batwa children and to elaborate a plan of action, involving leaders of the Batwa community, to protect the rights of those children and ensure access to their social services; and

(b) Adopt adequate means and measures to ensure that Batwa communities, including children, are provided with information regarding birth registration procedures, access to health-care facilities and education.

3. Costa Rica, CRC/C/15/Add.266, 21 September 2005

13. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by: (a) prioritizing budgetary allocation to ensure implementation of the economic, social and cultural rights of children to the “maximum extent of the State party’s available resources”; and (b) identifying the amount and proportion of the State budget spent on children in the public sector and for non-profit organizations in order to evaluate the impact and effect of the expenditures and also, in view of the costs, the accessibility, and the quality and effectiveness of the services for children in the various sectors. The Committee further recommends that particular attention be given to children belonging to vulnerable groups, i.e. indigenous populations, migrants, and those living in rural areas, and that funding be identified for programmes aiming at alleviating their disadvantage.

15. The Committee recommends that the State party strengthen its efforts towards duly processing and regrouping the relevant data available in the various institutions dealing with issues relating to children, which should be used as indicators for monitoring the situation of children and adolescents in the country, and that this data be integrated into the national data collection system in order to inform decision-making at the policy level. In particular, the Committee recommends that the State party produce data with respect to vulnerable groups, i.e. indigenous populations, migrants, refugees, and those living in rural areas, broken down by nationality, gender and age.

18. The Committee welcomes the elaboration of the first National Development Plan for Costa Rica’s Indigenous People, the translation into indigenous languages of the Childhood and Adolescence Code, the Law against Domestic Violence and the Law on Responsible Paternity, as well as the incorporation of the rights of indigenous people into the National Plan for Children and Adolescents. The Committee is concerned however at the limited access of indigenous children, migrant children and

those living in rural areas, to basic education and health services, and at their low standard of living. The Committee also regrets the absence of information in the State party's report on the implementation of its previous recommendation regarding the protection of children of migrant families in irregular situations against discrimination. While welcoming the revocation by resolution No. 008857-99 of articles 6 and 7 of Executive Decree (Decreto ejecutivo) No. 21989-MEP-MTSS, the Committee is concerned at information received whereby migrant children are still neither eligible for scholarships, nor entitled to take part in students' councils.

19. The Committee encourages the State party to continue to pay due attention to the needs of indigenous people by taking appropriate measures to address the high rate of infant mortality among the indigenous communities, and to substantially increase their level of education and standard of living, and endorses the recommendation of the Committee on the Elimination of Racial Discrimination in that regard (CERD/C/60/CO/3, para. 11). The Committee further recommends that the State party provide information on the number of migrant children who benefited from scholarships since the adoption of resolution No. 008857-99. In addition, the Committee recommends that the State party take steps to disseminate the contents of the resolution to the public at large. The Committee also recommends that the State party take appropriate measures to ensure the right of migrant children to take part in students' councils. The State party should provide information in its next periodic report on the action taken to protect children of migrant families in irregular situations against discrimination as recommended by the Committee in its previous concluding observations.

45. The Committee takes note of the efforts made by the State party to increase the level of school infrastructure at the country level, and ensure that all children, including refugee children, have access to education. The Committee also notes with great appreciation that 90 per cent of children attend preschool. The Committee welcomes the variety of measures by which children are relieved from additional costs of school attendance. The Committee takes note of new projects which provide opportunities of education for children who have left school before completion. Although courses and institutions for technical and vocational training were expanded, the Committee regrets that not more children between the ages of 15 and 18 receive vocational training in order to facilitate their transition to qualified labour, and the low completion rate of secondary school, in particular in rural areas, especially of deprived children and indigenous children, as well as the lack of school infrastructure in remote areas of the country.

46. The Committee recommends that the State party continue to take effective measures to increase enrolment in primary and secondary school, reduce the high rate of drop-out students and repeaters, in particular in rural areas, and find ways to address the lack of school infrastructure in these areas, inter alia by finding alternative educational methods, e.g. vocational and apprenticeship programmes, which would take the specific needs of these populations into consideration. The State party should focus on the improvement of secondary education.

57. With respect to indigenous communities, the Committee takes note of the State party's efforts to increase the number of schools providing bilingual education. It is however concerned at the insufficient number of indigenous teachers and schools, and at the fact that education does not fully take into account indigenous culture.

58. The Committee recommends that the State party continue to increase the number of indigenous schools and adequately trained indigenous teachers, and ensure the right of indigenous children to learn to read and write in their own language through methods adapted to their own culture. The Committee recommends that the State party provide relevant information to indigenous children and their communities on, inter alia, birth registration procedures, reproductive health, HIV/AIDS, child abuse and neglect, child labour and sexual exploitation in

order to raise awareness of their rights. The Committee further recommends that the State party strengthen mechanisms for the collection of data on children so as to identify existing gaps and barriers to the enjoyment of human rights by indigenous children, and with a view to developing legislation, policies and programmes to address such gaps and barriers.

4. Ecuador, CRC/C/15/Add.262, 13 September 2005

20. The Committee notes with deep concern that the resources allocated for social services, particularly with regard to the promotion and protection of children's rights are relatively low and this seems to a large extent to be caused by considerable expenditure (more than 35 per cent of the national budget) on debt servicing. In addition, the Committee is concerned that the free trade agreements, currently being negotiated, may also negatively impact the allocation of budgets for social services.

21. The Committee urges the State party to increase budget allocations for the promotion and implementation of the rights of children in accordance with article 4 of the Convention and pay particular attention to investment for the implementation and protection of the rights of children belonging to vulnerable groups, including indigenous and Afro-Ecuadorian children, children living in poverty and those in remote areas. The Committee also recommends that the State party undertake maximum efforts to negotiate the rescheduling of payments on external and internal debts with a view to investing more in poverty reduction programmes including investment in the implementation of rights of children to, inter alia, education, the highest attainable standard of health and adequate standard of living and calls on the international and private financial institutions and bilateral and multilateral partners to support these efforts. The Committee finally recommends that the State party ensure that free trade agreements do not negatively affect the rights of children, inter alia, in terms of access to affordable medicines, including generic ones. In this regard, the Committee reiterates the recommendations made by the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.100).

23. The Committee recommends that the State party strengthen its system of collecting disaggregated data as part of the national data collection system, including vulnerable and marginalized groups such as children with disabilities, poor children, indigenous and Afro-Ecuadorian children, to form a basis on which to assess progress achieved in the realization of children's rights and to help design policies to implement the Convention. The Committee also recommends that the State party seek technical assistance from, inter alia, the United Nations Children's Fund (UNICEF) and the Inter-American Children's Institute.

24. The Committee notes with appreciation the efforts made by the State party in disseminating the Convention through, inter alia, seminars and workshops. Nevertheless, it is of the opinion that additional progress needs to be made by the State party with regard to raising awareness among children and adults, especially in rural and remote areas.

25. The Committee recommends that the State party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children. It also recommends the reinforcement of adequate and systematic training of all professional groups working for, and with, children, in particular judges, lawyers, law enforcement officials, teachers, including teachers in indigenous communities and rural and remote areas, health personnel and social workers and personnel in childcare institutions. The State party is also encouraged to translate the new Childhood and Adolescence Code into the various indigenous languages and to promote its principles and provisions, inter alia, by making use of traditional and innovative methods of communication.

28. The Committee reiterates the concern voiced by the Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/2, para. 11) that, despite constitutional and legal guarantees, indigenous and Afro-Ecuadorian people, as well

as members of other ethnic minorities are, de facto, still discriminated against. The Committee is further concerned about discrimination against girls, children living in poverty and refugee children.

29. The Committee urges the State party to take adequate measures to ensure practical application of the constitutional and legal provisions guaranteeing the principle of non-discrimination and the full compliance with article 2 of the Convention and to strengthen and effectively implement its national strategies to eliminate discrimination on any grounds and against all vulnerable groups.

35. While taking note of the efforts made by the State party to promote the birth registration of children, the Committee is concerned that 1 out of 10 children is not registered or is registered at a later stage. The Committee is further concerned that the birth registration rate in some regions, such as the Amazon, is very low.

36. In the light of article 7 of the Convention, the Committee recommends that the State party strengthen its efforts to institute systematic birth registration for all children born within the national territory through, inter alia, the elimination of administrative costs for parents, awareness-raising campaigns, and the introduction of mobile registration units in rural areas, particularly in the Amazon region. The Committee also recommends that the State party undertake similar measures to ensure registration of those children who have not yet been registered. In this regard, the State party should consider seeking technical assistance from, inter alia, UNICEF, the United Nations Population Fund (UNFPA) and other potential donors.

53. The Committee reiterates the concern raised in its previous concluding observations (CRC/C/15/Add.93) with regard to the damaging effect of oil extraction and the spraying of illegal crops under Plan Colombia on the environment and on the health of children.

54. The Committee recommends that the State party effectively address the problem of pollution and environmental degradation, including by seeking bilateral agreements and international cooperation. It also recommends that the State party strengthen its environmental health education programme.

57. The Committee joins the concern expressed by the Committee on Economic, Social and Cultural Rights (see E/C.12/1/Add.100, para. 26) with regard to the persistent and growing level of poverty in the State party, particularly affecting children, including indigenous and Afro-Ecuadorian children.

58. The Committee recommends that the State party increase its effort to provide vulnerable and marginalized children, including indigenous and Afro-Ecuadorian children, with material assistance and support programmes, particularly with regard to nutrition, clothing and housing in accordance with article 27 of the Convention.

65. The Committee expresses its concern at the high number of people, among which a significant number of children, who are victims of violence and displacement, which are to a significant degree a consequence of Plan Colombia.

66. The Committee recommends that the State party undertake all necessary measures to reduce the negative impacts of Plan Colombia on the population, to ensure the respect of the rights of the children and to provide all victims with assistance for recovery.

73. The Committee takes note of the various measures undertaken by the State party with regard to indigenous children, including the implementation of the bilingual intercultural education system. However, the Committee remains concerned about the limited enjoyment of rights by indigenous children, particularly with regard to access to education and health due to widespread poverty. It is also concerned that indigenous children:

- (a) Begin to work in agricultural and domestic activities at 5 years of age for boys and 4 years for girls;
- (b) Are subjected to punishment, including forms of public shaming; and
- (c) Are often victims of sexual abuse.

74. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. In this regard, the Committee refers the State party to its recommendations adopted following its day of general discussion on the rights of indigenous children at its thirty-fourth session in 2003. The Committee further recommends that the State party provide indigenous communities, including children with sufficient information regarding birth registration procedures, child labour, HIV/AIDS, child abuse and neglect, including corporal punishment.

5. Nepal, CRC/C/15/Add.261, 21 September 2005

35. While noting that discrimination is prohibited under the Constitution and other relevant legislation, as well as the various efforts undertaken by the State party to eliminate discrimination, the Committee reiterates its deep concerns about the widely prevailing de facto discrimination against girls and children belonging to the most vulnerable groups such as the *Dalit* community, children belonging to indigenous or ethnic minority groups, refugee and asylum-seeking children, street children, children with disabilities and children living in rural areas. The Committee notes with grave concern that as a consequence of prevailing discriminatory attitudes, children belonging to vulnerable groups are particularly likely to fall victim to abuse and exploitation.

6. Nicaragua, CRC/C/15/Add.265, 21 September 2005

6. The Committee notes with satisfaction that some concerns and recommendations (CRC/C/15/Add.108) made upon the consideration of the State party's second periodic report (CRC/C/65/Add.4) have been addressed. However, it regrets that other concerns and recommendations have been insufficiently addressed, particularly those contained in paragraph 22 (the need to allocate substantial financial resources for the benefit of children); paragraph 24 (the persistent disparities between the Atlantic/Caribbean and Central/Pacific regions as well as between urban and rural areas); paragraph 33 (need to reinforce measures and raise awareness to prevent and combat cases of abuse and ill-treatment of children, including sexual abuse, both within and outside the family); paragraph 34 (regional disparities in access to health care, high rates of malnutrition in children under 5 and in school age and low access to health care in rural and remote areas); paragraph 39 (children belonging to indigenous groups); paragraph 40 (child labour and economic exploitation); and paragraph 43 (conditions of detention for children). The Committee notes that those concerns and recommendations are reiterated in the present document.

16. The Committee notes the current effort of the State party, together with other countries, to achieve debt relief, as well as the 2002 study undertaken by the Economic Commission for Latin America and the Caribbean and UNICEF, which reached the conclusion that one of the major causes of poverty in Nicaragua was the unequal distribution of income. The Committee - also taking into account that social expenditure does not seem to be proportional to the economic growth reported by the State party - expresses concern at the reported insufficient political will to increase the budget for programmes and policies for children, who suffer severely from the consequences of budgetary constraints and from the uneven distribution of income. In addition, the Committee is concerned that the free trade agreements currently under negotiation may negatively impact on the allocation of budget for social services.

17. The Committee recommends that the State party, in accordance with article 4 of the Convention, increase budget allocations for the implementation of the rights recognized in the Convention, ensure a more balanced distribution of the income throughout the country and prioritize budgetary allocations to ensure

implementation of the economic, social and cultural rights of all children, including those belonging to economically disadvantaged groups, such as indigenous children, "to the maximum extent of ... available resources and, where needed, within the framework of international cooperation". Furthermore, the Committee recommends that the State party ensure that free trade agreements do not negatively affect the rights of children, e.g. in terms of access to affordable medicines, and that - if debt relief efforts are successful - it should invest the money saved in the adequate implementation of child rights and in other social services.

18. While the Committee welcomes the information that the State party is developing a national information system with the support of UNICEF, it remains concerned that, so far, insufficient data are available on the situation of children. The Committee notes in this regard that the State party does not yet collect statistical data on indigenous groups and other national or ethnic minorities.

19. The Committee recommends that the State party continue to strengthen its efforts to develop a comprehensive system of collection of comparative and disaggregated data on the implementation of the Convention, in particular by providing adequate financial and other resources for the development and implementation of the above-mentioned national information system. The data should cover all children below the age of 18 years and be disaggregated into those groups of children who are in need of special protection, including indigenous children and children belonging to minority groups.

27. The Committee is concerned that the country's adult-centred culture and the high poverty levels, concentrated especially in rural, indigenous and Caribbean areas, prevent the full enjoyment of rights by children belonging to vulnerable groups, such as children with disabilities, indigenous children and children living in rural or remote areas.

28. The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups throughout the country.

75. The Committee notes with concern that, despite constitutional recognition of indigenous customary rights, indigenous communities still suffer from institutional neglect, historic abandonment and indiscriminate pillaging of natural resources, especially in the Caribbean region.

76. The Committee recommends that the State party pursue measures to effectively address the gap in life opportunities of indigenous children, and take adequate measures in order to provide protection for the rights of indigenous children as protected in the Constitution, taking due account of the recommendations adopted by the Committee at its day of general discussion on the rights of indigenous children in September 2003.

7. The Philippines. CRC/C/15/Add.259, 21 September 2005

16. The Committee welcomes the various efforts to improve data collection but it remains concerned that in some areas covered by the Convention, including children with disabilities, migrant children, children living in extreme poverty, abused and neglected children, children within the justice system and children belonging to minorities and indigenous children, data are lacking or insufficient.

19. The Committee recommends that the State party continue to develop creative and child-friendly methods of promoting the Convention. It further encourages the State party to raise awareness of the Convention among children and adults in remote areas and to make the Convention available in at least the major languages and as much as possible in other indigenous and minority languages. The Committee further recommends systematic training of professional groups working with, and for, children, such as judges, lawyers, law enforcement personnel, teachers, school

administrators and health personnel. With regard to the dissemination of the Convention, the Committee also recommends that the State party seek technical assistance from, among others, the Office of the United Nations High Commissioner for Human Rights and UNICEF.

20. Notwithstanding the measures taken by the State party to eliminate discrimination against children, inter alia, through the implementation of the provisions of the Child and Youth Welfare Code (Presidential Decree No. 603), the Family Code and the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act and several programmes, such as the Third Elementary Education Programme, the Committee is concerned about discrimination faced by many children, in particular children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in areas of conflict, as regards their access, inter alia, to social and health services and education. The Committee is particularly concerned about the de facto discrimination faced by girls in everyday life, which is often multiple discrimination based on their gender. The Committee finally reiterates its concern about the unequal status of children born out of wedlock, particularly with regard to their right to inherit and their discriminatory classification as “illegitimate”.

21. In the light of article 2 of the Convention, the Committee recommends that the State party increase its efforts to ensure effective implementation of existing laws guaranteeing the principle of non-discrimination and adopt a proactive and comprehensive strategy to eliminate all forms of discrimination, including forms of multiple discrimination, against all vulnerable groups of children. The Committee recommends that the State party pay particular attention to the equal status and full enjoyment of all human rights and fundamental freedoms by girls. As regards children born out of wedlock, the Committee requests the State party to review its domestic legislation in order to secure their right to equal treatment, including their right to equal inheritance and abolish the discriminatory classification of those children as “illegitimate”.

33. While noting the estimated increase in the birth registration rate and the measures taken by the State party in this respect, including the Unregistered Children Project conducted in collaboration with PLAN International and the National Statistics Office, the Committee remains concerned at the difficulties in ensuring timely birth registration of children, in particular children belonging to religious or other minority groups or indigenous peoples and children living in the remote areas of the country and at the fact that birth registration is not free of charge and not equally accessible to all parents in the entire territory of the State party. The Committee also expresses its concern about the simulation of birth certificates.

34. In order to secure the full enjoyment of all human rights and fundamental freedoms by children and to achieve 100 per cent birth registration, the Committee recommends that the State party strengthen its efforts to develop an efficient and at all stages free of charge birth registration system, which covers its territory fully, including through using more effectively mobile birth registration units to reach the most remote areas of its territory. The Committee requests the State party to pay particular attention to improved access to an early birth registration for parents whose children were born out of wedlock and parents belonging to religious or other minorities or indigenous peoples.

69. The Committee is encouraged by the State party's efforts to promote indigenous, minority and local languages in education including, inter alia, through the Lingua Franca Project. The Committee is concerned about poor schooling facilities, particularly in the remote *barangays*, including the insufficient number of classroom seats, textbooks and other schooling supplies. It reiterates its concern about the low rate of enrolment in secondary education and that children living in the remote *barangays* have very limited access to secondary education. The Committee

notes with appreciation that the State party has made intense efforts to improve the quality of education by increasing the time spent on task and teaching methods that encourage children's participation. It also welcomes the expansion and improvement of pre-service and in-service teacher training. The Committee also recognizes the attempts to regularly monitor and evaluate the quality of education.

70. In the light of articles 28 and 29 of the Convention and the Committee's general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party allocate adequate financial, human and technical resources in order to: [...]

(b) Urgently take all necessary measures to ensure universal and free primary education for all and pay particular attention to the schooling opportunities in the most remote *barangays* and to the educational needs of children belonging to vulnerable groups, such as children living in poverty, children with disabilities, indigenous children, child labourers, children in armed conflict, children infected with or affected by HIV/AIDS and street children, in order to fulfil their right to education; [...]

(f) Provide indigenous children and children belonging to minority groups with equal access to quality education which respects their distinct cultural patterns and uses local indigenous and minority languages in education through, inter alia, the Lingua Franca Project;

92. While noting the provisions of the Indigenous Peoples Rights Act (Republic Act No. 8371) as well as programmes and projects for children belonging to minorities and indigenous peoples, such as an alternative system of education for children belonging to indigenous cultural communities, the Childcare Development Programme and the Lingua Franca Project, the Committee is concerned about the widespread poverty among minorities and indigenous peoples and the limited enjoyment of their human rights, in particular, concerning their access to social and health services and education. The Committee shares the State party's concern about arranged early marriage in the indigenous communities. In addition, the Committee notes with concern more pronounced discrimination against Muslims.

93. The Committee recalls the obligations of the State party under articles 2 and 30 of the Convention and recommends that the State party ensure that indigenous children and children belonging to minorities fully enjoy all of their human rights equally and without discrimination. In this respect the Committee recommends that the State party strengthen its efforts to implement the Indigenous Peoples Rights Act (Republic Act No. 8371) and develop and implement policies and programmes in order to ensure equal access for indigenous and minority children to culturally appropriate services, including social and health services and education. Furthermore, the Committee recommends that the State party strengthen its mechanisms for data collection on minority and indigenous children so as to identify existing gaps and barriers to the enjoyment of their human rights and with a view to developing legislation, policies and programmes to address such gaps and barriers.

94. As regards the child's right to use his/her own language, the Committee encourages the State party to continue its efforts to address the linguistic needs of indigenous and minority children. In addition, the Committee recommends that the State party seek, in close collaboration with indigenous and minority communities and their respective leaders, effective measures to abolish traditional practices prejudicial to the health and well-being of indigenous and minority children, such as early marriage.

8. Bolivia, CRC/C/15/Add.256, 28 January 2005

17. Despite some improvements in the system of data collection, the Committee remains concerned about inadequate mechanisms to collect, systematize and analyze disaggregated statistical data on children and adolescents. In particular, it regrets the

lack of data on education, children with disabilities, children who need special protection and indigenous children.

21. While welcoming the translation of the Convention into Aymará, Quechua and Guaraní and the production of popular version of the Convention, the Committee remains concerned about the low awareness of the Convention among professionals working with and for children and among the general public, especially among children themselves.

25. The Committee is deeply concerned about significant disparities in the implementation of the rights of the Convention in the State party, reflected in a range of social indicators, like enrolment in and completion of education, infant mortality rates and birth registration, indicating persistent discrimination against indigenous children, girls, children with disabilities and children living in rural areas.

26. In light of article 2 of the Convention, the Committee recommends that the State party intensify its efforts to prevent and eliminate all forms of de facto discrimination against indigenous children, children with disabilities, girls and children living in rural areas.

47. The Committee welcomes the improvement of primary health care coverage, including the basic health insurance scheme (SUMI) providing free medical care for children between zero and five years of age and their mothers. The Committee, however, is concerned that not all children, especially indigenous people, benefit from the SUMI scheme. It also remains deeply concerned that post-natal health care is still inadequate and that mortality rates and other health indicators are significantly worse in rural areas. The Committee also is concerned that, despite a significant decrease, the infant mortality rates remains very high, and well above the regional average. Furthermore, the Committee is deeply concerned at the high levels of malnutrition among children in the State party and the low prevalence of exclusive breast feeding. While noting that the HIV/AIDS prevalence is relatively low in the State party, the Committee expresses concern at its considerable increase in recent years.

48. The Committee recommends that the State party continue to strengthen its efforts in improving the health situation of children in the State party and improving access to quality health services in all areas of the country, in particular rural areas. It also recommends that the State party take measures to ensure that all children benefit from the SUMI health insurance scheme. Furthermore, the State party should ensure that mothers are encourage to exclusive breast-feeding for six months after birth with the addition of appropriate infant diet thereafter. The Committee also recommends that the State party complete and implement the draft law on HIV/AIDS.

53. While welcoming the recent reform of the education system and the increase in coverage in both primary and secondary education achieved in the last years, the Committee is concerned at continuing low enrolment rates, especially among girls and indigenous children; considerable disparities in coverage and quality of education between urban and rural areas; high drop-out rates and persistent high illiteracy rates, particularly among rural and indigenous children and girls. The Committee is also concerned at the low percentage of children enrolled in pre-primary education. The lack of access to educational programmes for juvenile offenders is also a cause for concern.

9. Belize: CRC/C/15/Add.252 28 January 2005

15. While noting the devastation caused by hurricanes and the budgetary burden of reconstruction, the Committee is concerned that there are no budget allocations for children, that the resources in the national budget are insufficient to meet the needs of all children and that regional disparities, particularly between urban and rural areas, with regard to a range of social indicators do exist.

16. In the light of article 4 of the Convention, the Committee urges the State party to allocate considerably more resources to children, in particular to the most vulnerable groups of children, including children with disabilities, children living in extreme poverty, abused and neglected children and children belonging to minorities and indigenous children, such as Maya and Garifuna children. ... The Committee recommends the State party to prioritize budgetary allocations to the implementation of the economic, social and cultural rights of children to the maximum extent of available resources. In order to be able to evaluate the impact of expenditures on children, the Committee recommends that the State party identify the yearly budgetary amount and proportion spent on persons under 18 years of age.

17. The Committee takes note of the establishment of, in 1996, the Social Indicators Committee which supervises the national social sector statistics and monitors the quality of such statistics. However, the Committee regrets the lack of adequate resources allocated to the Social Indicators Committee and the interruptions in its work. The Committee is concerned at the insufficient data in some areas covered by the Convention, including children with disabilities, migrant children, children living in extreme poverty, abused and neglected children, children within justice system and children belonging to minorities and indigenous children.

22. The Committee recommends that the State party develop creative and child friendly methods to promote the Convention. It further encourages the State party to make the Convention available on the different languages spoken in the country, including indigenous and minority languages. ...

25. While appreciating that some measures have been taken to promote the principle of non-discrimination of children, such as the enactment in 1998 of the Families and Children Act which guarantees that all children are of equal status in the application of the Belizean legislation, the Committee is concerned at the persistent discrimination faced by girls, children with disabilities, migrant children, children living in poverty, children belonging to minorities, indigenous children, children infected or affected by HIV/AIDS, children living in rural areas and pregnant students and teenage mothers in schools.

26. In the light of article 2 of the Convention, the Committee recommends that the State party increase its efforts to adopt appropriate legislation, to ensure implementation of existing laws guaranteeing the principle of non-discrimination, and to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and more so against all vulnerable groups of children.

61. The Committee is concerned at the discrepancies in the implementation of national policies and principles on education in public schools and private schools, including the church-based schools. With respect to the treatment of pregnant students and teenage mothers in schools, the Committee expresses its grave concern that the State party does not have a policy to prevent and combat the school-based practices of educational exclusion of these students. The Committee is also concerned about the quality of education and the insufficient teacher training, particularly in the most remote areas of the country.

62. The Committee recommends the State party allocate adequate financial, technical and human resources in order: [...]

(b) To progressively ensure that all children, without any distinction to gender or ethnic origin, from all areas of the country, have equal access to compulsory and free quality primary education, without any financial obstacles; ...

(d) To pay special attention to the needs of children belonging to vulnerable groups, inter alia, girls, migrant children, working children, children living in poverty, children deprived of their liberty, children belonging to minorities and indigenous children, in order to ensure their right to education at all levels; ...

72. With regard to the children belonging to minorities and indigenous peoples, such as Maya and Garifuna children, the Committee is concerned about the widespread poverty among them and the limited enjoyment of their rights,

particularly, concerning their access to social and health services and education. The Committee notes with concern that it is generally difficult for girls belonging to minorities and indigenous peoples to be heard in society and that their right to participate and be heard in proceedings affecting them is often limited.

73. The Committee recommends that the State party strengthen its efforts to improve the equal enjoyment of all rights of children belonging to minorities and indigenous peoples, in particular, by prioritizing effective measures to reduce poverty among them. The Committee also recommends that the State party take measures to promote respect for the views of children, especially girls, belonging to minorities and indigenous peoples and facilitate their participation in all matters affecting them.

10. Colombia, CRC/C/COL/CO/3, 2 June 2006

6. The Committee notes that some concerns and recommendations (CRC/C/15/Add.137 of 16 October 2000) made upon the consideration of the State party's second periodic report (CRC/C/70/Add.5) have been addressed. However, it regrets that several of its concerns and recommendations have been insufficiently or only partly addressed, including those related to children's rights and the peace process, legislation, data collection, financial resources, non-discrimination, the right to life, birth registration, freedom from torture, physical and sexual abuse of children within and outside the family, regional disparities in access to health care, reproductive health, limited access to education, especially affecting Afro-Colombian and indigenous children, children affected by armed conflict, internally displaced children, sexual exploitation and trafficking.

18. The Committee notes that the National Human Rights Institution, *la Defensoría del Pueblo*, has a unit for children's rights and sustains regional offices in all the 32 departments. However, the Committee is concerned that large parts of the country, especially rural areas with high percentages of Afro-Colombian, indigenous and displaced populations lack the presence of civilian authorities, notably the Defensoría del Pueblo, in order to effectively monitor children's human rights situation.

35. The Committee is deeply concerned that widespread discrimination exists towards certain vulnerable groups, such as displaced children, Afro-Colombian and indigenous children and children living in rural and remote areas. Their ability to access education and health facilities is severely reduced by the disproportionate allocation of resources. The Committee is concerned that such vulnerable groups are at greater risk of recruitment by the armed forces as well as the risk of commercial and sexual exploitation; internal displacement and trafficking. The Committee is further concerned that the rights of girls and women continue to be violated.

36. The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any grounds and against all vulnerable groups throughout the country.

37. The Committee also request that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to provide special protection to vulnerable groups including girls, indigenous and Afro-Colombian children and to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account General Comment n° 1 on article 29(1) of the Convention (aims of education).

48. The Committee notes the efforts undertaken together with various UN agencies in order to improve the rate of birth registration, however it is concerned that 20% of all Colombian children continue to lack birth registration, especially in rural areas and among Afro-Colombian and indigenous populations.

72. The Committee, while acknowledging the State party's legitimate priority to combat narcotics, is concerned about environmental health problems arising from the usage of the substance glyphosate in aerial fumigation campaigns against coca plantations (which form part of Plan Colombia), as these affect the health of vulnerable groups, including children.

73. The Committee recommends that the State party carry out independent, rights-based environmental and social impact assessments of the sprayings in different regions of the country and ensure that when affected, prior consultation is carried out with indigenous communities and that all precautions be taken to avoid harmful impact of the health of children.

76. The Committee notes that free education during nine years in school is enshrined as a constitutional right; however with the reservation that costs be levied upon those who can afford to pay. In practice this provision has created a discriminatory educational system marked by arbitrary fees and social exclusion. The Committee continues to have a number of serious concerns with regards to the implementation of the right to education, including the following; [...]

e) the policy of *etnoeducación* for indigenous communities lacks coverage and is often done without sufficient consultation with the communities;

94. The Committee welcomes the legal steps taken to recognise ethnic diversity, autonomy and collective land rights of minorities, in particular the Afro-Colombian and indigenous peoples, however notes that in practice the above mentioned groups confront serious challenges and threats to the enjoyment of their rights. Both the regular armed forces and the armed groups distinct from the State armed forces block vital supplies of food and medicines, resulting in high levels of malnutrition and disease. In particular, the Committee is concerned over the threats against indigenous leaders, the over representation of ethnic minority children among those displaced, victims of land mines and forcefully recruited by illegal armed. The Committee is also concerned that among children of ethnic minorities, birth registration rates are low and access to basic health services is lacking. Despite an established program for bi-lingual education (*etnoeducacion*) the coverage is limited and illiteracy rates high. The Committee is concerned that despite affirmative legal provision, children of ethnic minorities are victims of social exclusion and racial discrimination. Additionally, the UN Special Rapporteur on Indigenous Peoples highlighted in his mission report on Colombia (2004) that several indigenous peoples in Amazonia are facing extinction.

95. The Committee recommends the State party;

a) dedicate considerable attention to securing the physical integrity of all community members, including children. Such measures should be conducted in consultation with Afro-Colombian and indigenous leaders;

b) provide positively differentiated assistance for displaced children of ethnic minorities;

c) take affirmative measures to ensure that children of ethnic minorities gain *de facto* enjoyment of their rights, in particular in the area of health and education;

d) take due account of the recommendations adopted by the Committee after its Day of General Discussion on the rights of indigenous children in September 2003 and pay particular attention to the recommendation by OHCHR and those presented in the UN Special Rapporteur on Indigenous Peoples, 2004 mission report (E/CN.4/2005/88/Add.2).

11. Mexico, CRC/C/MEX/CO/3, 2 June 2006

4. While noting that the first part of the State Party report provides specific reference to the previous concluding observations, the Committee regrets that some recommendations it made (see CRC/C/15/Add. 112) on the State Party's second periodic report (CRC/C/65/Add.6 and CRC/C/65 Add.16) have not been sufficiently

addressed, including those regarding social inequality and vulnerable groups, non-discrimination, indigenous children, economic and sexual exploitation of children, trafficking of migrant children.

17. The Committee notes the preparation of inter-institutional public policies to promote children's rights and the activities led by the National Human Rights Commission to initiate public dialogue, in particular the trainings of judicial staff held in 1998 and 2003, the Programme for the Promotion of Children's Rights "*DIFusores Infantiles*" of the National System for the Full Development of the Family (DIF), and the Promoter Children's Programme. However, the Committee remains concerned about the low awareness of the Convention among professionals working with and for children and among the general public, especially among children themselves, and regrets that the Convention is not available in indigenous languages.

18. The Committee encourages the State party to:

- (a) Take effective measures to disseminate information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government and seek active participation of the media in that regard;
- (b) Develop systematic and ongoing training programmes on human rights, including children's rights, for all persons working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, teachers, social workers, health personnel) and, especially, children themselves;
- (c) Provide information as much as possible in indigenous languages and taking into account the cultural context on the Convention and make it widely available in indigenous communities.

23. The Committee is deeply concerned about the significant disparities in the State party in the implementation of the rights enshrined in the Convention, reflected in a range of social indicators like enrolment in and completion of education, infant mortality rates and access to health care, indicating persistent discrimination against indigenous children, girls, children with disabilities, children living in rural and remote areas and children from economically disadvantaged families.

24. In light of article 2 of the Convention, the Committee recommends that the State party intensify its efforts to prevent and eliminate all forms of de facto discrimination against indigenous children, children with disabilities, girls, children living in rural and remote areas and children from economically disadvantaged families, including through awareness-raising campaigns.

48. The Committee welcomes the emphasis on children's health of the National Development Plan for 2001-2006 and the National Health Programme for 2001-2006. The Committee also welcomes the decrease of malnutrition rate in urban areas, the decrease of the mortality rates for children under one year and for children under five years related to infection diseases, as well as the high vaccination coverage. The Committee remains concerned at the high rates of maternal mortality, the emergence of obesity and the low percentage of the GDP allocated to health. The Committee remains deeply concerned that post-natal health care is still inadequate and that mortality and malnutrition rates, as well as other health indicators, are significantly worse in rural and remote areas and for indigenous mothers and children.

49. The Committee reiterates its previous recommendations (see document CRC/C/15/Add.112, paras. 26 and 27), in particular, it recommends that the State party implement all necessary measures to reduce the persistence of regional disparities in access to health care, the high rates of malnutrition among children under five years of age and those of school age, especially in rural and remote areas and among children belonging to indigenous groups. It also recommends developing interventions programmes for the new challenges that emerge from the globalization and the urbanization process: child overweight and obesity, as well as environmental health.

56. The Committee welcomes the establishment of the *Oportunidades* Programme and of the “Programme for Reducing Arrears in Initial and Basic Education”, the reform of article 3 of the Constitution adopted in 2001 making pre-school education compulsory for all as of 2008/9, and measures taken to increase the quality of education, in particular in remote areas. However, the Committee is concerned at continuing low enrolment rates, especially among migrants and indigenous children; the insufficient resources allocated to education; the considerable disparities in the coverage and quality of education between urban and rural areas; the high dropout rates, particularly among adolescents as well as rural, indigenous and migrant children; and the low quality of teaching. The insufficient bilingual inter-cultural education in indigenous areas is also a cause of concern as it negatively affects the drop out rate in these areas. The lack of access to educational programmes for juvenile offenders is also a cause of concern. The Committee is also concerned that necessary resources have not been allocated to ensure that pre-schools will have sufficient human and material resources to be free and accessible to all by 2008.

57. The Committee recommends that the State party:

- (a) Increase budget allocation and take effective measures to ensure free quality education at all levels of primary and secondary education in all regions;
- (b) Strengthen efforts to bridge the gaps in the coverage and quality of education throughout the country, in particular by improving the training of teachers and the teachers-pupil ratio;
- (c) Strengthen measures to reduce the high drop-out rate among indigenous children, inter alia by providing them with bilingual and bicultural education;
- (d) Take measures to identify the causes of the high dropout rate in schools, particularly in rural areas and in secondary schools, and to take steps to address the situation;
- (e) Strengthen educational and vocational programmes, in particular for children who do not attend regular school education, especially migrant children;
- (f) Ensure that all juvenile offenders have access to adequate educational and vocational programmes;
- (g) Allocate necessary resources to ensure that quality pre-school education will effectively be available to all children in the country by 2008.

62. While noting the activities undertaken by the State party to reduce child labour and the decrease in the number of working children, the Committee expresses its concern at the widespread occurrence of child labour, in particular of indigenous children, and at the insufficiency of rights-based policies to protect the rights of children and adolescents involved in child labour. The Committee is particularly concerned about the large number of child domestic workers, who are vulnerable to abuse.

72. While welcoming the measures taken to encourage indigenous children to attend schools, the Committee remains deeply concerned at the limited enjoyment of rights by indigenous children, especially indigenous migrant workers, in particular their very limited access to education and health, at the disproportionately high malnutrition rate, and infant and maternal mortality rates. It is particularly concerned about the disproportionately high number of working children among indigenous children.

73. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. The Committee further recommends that the State party provide indigenous communities, with sufficient information, in their own language as well as in a child friendly format, regarding birth registration procedures, child labour, education and health, HIV/AIDS, child abuse and neglect, including corporal punishment, and on

themes covered by the Optional Protocols to the Convention. In this regard, the Committee refers the State party to its recommendations adopted following its day of general discussion on the rights of indigenous children at its thirty-fourth session in 2003 and to the recommendations issued by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, contained in his report E/CN.4/2004/80/Add.2.

12. Peru, CRC/C/PER/CO/3, 14 March 2006

5. The Committee notes that some concerns and recommendations (CRC/C/15/Add.120) made upon consideration of the State party's second periodic report (CRC/C/65/Add.8) have been addressed. However, it regrets that other of its concerns and recommendations have been insufficiently or partly addressed, including, inter alia, those related to the strengthening of the "Ente Rector", non-discrimination, resource allocation, respect for the views of the child, physical and sexual abuse of children within and outside the family, regional disparities in access to health care, limited access to education for children belonging to indigenous groups, economic exploitation of children and the administration of juvenile justice.

19. The Committee is concerned that - despite the constant growth in the economy (24 per cent between 2001 and 2005) and the incorporation of children's issues into policy priorities - the allocation and implementation of the current budget for children is insufficient. Furthermore, while welcoming the development of minimum standards for budgeting, the Committee is concerned that recently some of the budget allocated for education, health care and other services has declined (on percentage of the budget/GDP) and that some of the budgets earmarked for specific groups of children were not exclusively spent for these target groups.

20. The Committee recommends that the State party, in accordance with article 4 of the Convention, increase budget allocations for the implementation of the rights recognized in the Convention and prioritize them in order to ensure implementation of the economic, social and cultural rights of all children, especially those belonging to economically disadvantaged groups, such as indigenous children.

21. While the Committee welcomes the presence of statistical data and information throughout the report and the written replies, it is concerned that information on children with disabilities and indigenous children is limited and that there is no centralized data management system to monitor progress on the indicators defined in the National Plan of Action for Children and Adolescents (NAPCA) and in other social programmes and plans.

22. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system of data collection on the implementation of the Convention covering all children below the age of 18 years and disaggregated by those groups of children who are in need of special protection, including indigenous children, children belonging to minority groups, children living or working in the streets, child domestic workers, children with disabilities and children in institutions.

26. The Committee is concerned that de facto discrimination still exists towards certain vulnerable groups such as children with disabilities, indigenous children, children living in rural and remote areas and those working or living in the streets.

27. The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups throughout the country.

46. The Committee is concerned that:

(a) Access to health and health services is inadequate especially in rural and remote areas of the country, resulting in significant disparities in health-care provisions; [...]

(c) There is high incidence of hepatitis B and anaemia especially among particular groups of indigenous people;

47. The Committee recommends that the State party:

(a) Ensure basic health care and services to all children throughout the country and continue to address the problem of malnutrition, with special emphasis on rural and remote areas; [...]

(d) Give special attention to the problem of indigenous communities affected by Hepatitis B epidemic, including by urgently ensuring vaccination for newborn babies.

50. The Committee is concerned about environmental health problems arising from a lack of access to safe drinking water, inadequate sanitation and contamination by extractive industries, which mainly affect the health and livelihoods of vulnerable groups, including children.

51. The Committee reiterates the recommendation of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, that the State party carry out independent, rights-based environmental and social impact assessments prior to the setting up of all mining or other industrial projects that may have harmful impacts on the right to health of children. The Committee further recommends that the State party strengthen its efforts to provide sanitation and safe drinking water to all the population, with special attention to rural and remote areas.

73. The Committee, while acknowledging the State party's efforts in this respect, notes with concern that indigenous communities continue to face serious difficulties in the enjoyment of their rights, especially economic, social and cultural rights. In particular, the Committee is concerned about the lack of recognition of their land rights, pillaging of their resources, inadequate access to basic services, health and education, social exclusion and discrimination.

74. The Committee recommends that the State party pursue measures to effectively address the gap in life opportunities of indigenous children, and take adequate measures in order to provide protection for the rights of indigenous children as contained in the Constitution taking into due account the recommendations adopted by the Committee on its Day of General Discussion on the rights of indigenous children in September 2003.

13. Thailand, CRC/C/THA/CO/2, 17 March 2006

24. The Committee is concerned about the persistence of both direct and indirect discrimination against the child, contrary to article 2 of the Convention, particularly with respect to the girl child, children of indigenous, and religious or ethnic minority communities, children of refugees and asylum-seekers, children of migrant workers, street children, children with disabilities, children living in rural areas, and children living in poverty. The Committee is also concerned that there continues to be regional disparities, especially in the southernmost provinces, in access to social, health and educational services.

25. The Committee recommends that the State party, in accordance with article 2 of the Convention, take more effective measures to ensure that all children within its jurisdiction enjoy all the rights enshrined in the Convention on the basis of non-discrimination by effectively implementing existing laws which guarantee that principle. The Committee recommends that the State party prioritize social and health services and ensure equal opportunities to education for children belonging to the most vulnerable groups, including Muslim, immigrant and refugee children. The Committee further recommends that the State party carry out comprehensive public education campaigns to prevent and combat all forms of discrimination.

60. Notwithstanding the State party's continuous and very successful efforts to reduce poverty in Thailand, including the establishment of the Child Protection Fund, the Committee notes with concern that 36 per cent of the poor are children and that

there are wide disparities in income levels across regions - the north and north-east, and the three southernmost provinces being the most economically disadvantaged areas. The Committee is deeply concerned about difficulties faced by children living in poverty, particularly orphans, street children, children with disabilities and children belonging to indigenous and minority communities, in the full enjoyment of their human rights, including access to social and health services and education.

61. In accordance with article 27 of the Convention, the Committee recommends that the State party continue to allocate resources for effective poverty reduction measures, particularly in the north, north-east and the three southernmost provinces. It recommends that the State party strengthen its efforts to raise the standard of living among its population living in poverty, inter alia, through enhancing the capacity to develop and monitor poverty reduction strategies at the local and community levels, and ensuring access to social and health services, education and adequate housing. It also requests the State party to increase its efforts to provide earmarked funds and concrete assistance and support to children and families in poverty.

78. The Committee expresses its concern about the situation of children belonging to indigenous, tribal and minority communities who are subject to both stigmatization and discrimination. In particular, it is concerned about widespread poverty among indigenous peoples and minorities and the limited enjoyment of their human rights, in particular, concerning their access to social and health services and education. The Committee is also concerned that many indigenous and minority children are stateless and/or have no birth registration and are at increased risk for abuse and exploitation. It further notes that there is at present insufficient demographic data on the hill-tribe population in Thailand.

79. The Committee recalls the State party's obligations under articles 2 and 30 of the Convention and recommends that it ensure the full enjoyment, by indigenous and minority children, of all of their human rights equally and without discrimination. In this regard, the Committee urges the State party to take adequate measures to protect the rights of indigenous and minority children to preserve their historical and cultural identity, customs, traditions and languages, taking into account the recommendations adopted by the Committee on its day of general discussion on the rights of indigenous children in September 2003. It also urges the State party to continue to develop and implement policies and programmes in order to ensure equal access to culturally appropriate services, including social and health services and education. The Committee also recommends that the State party ensure access to birth registration for all indigenous and minority children and continue to implement measures to address the issue of statelessness. The Committee further recommends that the State party conduct a demographic survey of the hill-tribe population and of all other minority and indigenous groups, disaggregating data by sex, age and province.

14. Republic of Congo, CRC/C/COG/CO/1, 20 October 2006

16. The Committee expresses its appreciation for the creation of a unit in charge of collecting and publishing data on the situation of children and welcoming the 2006 Plan of Action elaborated with the technical assistance of UNICEF which includes collection of data on the situation of children and women. However, the Committee is concerned at the absence of a systematic methodology for data collection and disaggregated data analysis in all the areas covered by the Convention, and in particular in relation to children belonging to vulnerable groups.

17. The Committee recommends that the State party develop a system for a comprehensive collection of data on all areas of the Convention in a way that allows for disaggregation and analysis. Particular emphasis should be placed on those groups who are in need of special protection, including indigenous children, street children, children in alternative care, children "informally" adopted, disabled

children and children who head families. The Committee further encourages the State party to use this data for the formulation of policies and programmes in view of the effective implementation of the Convention, to continue its cooperation with UNICEF in this respect and to consider the publication of an annual statistical report on the implementation of the Convention.

26. While noting with appreciation that the Constitution prohibits discrimination, the Committee is concerned at the fact that those dispositions do not cover the full scope of article 2 of the Convention, inter alia birth and disability. The Committee is also concerned at the inadequate enforcement of the Constitution with respect to non-discrimination. It is further concerned in particular at the widespread ethnic-based discrimination against indigenous people. [...]

27. The Committee recommends that the State party: [...]

(c) Adopt a comprehensive strategy, including comprehensive public education campaigns, and take appropriate legislative and administrative measures to ensure the actual elimination of discrimination based on any grounds against vulnerable groups, including indigenous populations, girls, HIV/AIDS infected children, street children and refugee children. [...]

33. While welcoming the law in which birth registration has become compulsory, the Committee expresses concern at the fact that a large number of children have still not been registered. The Committee is also concerned at registration fees and penalties attached to late birth registration, which may hinder the process. The Committee is also concerned at the lack of civil registry offices in remote areas and the insufficient awareness of the importance of registration.

34. In the light of article 7 of the Convention, the Committee recommends that the State party establish an efficient and accessible birth registration system, including for noncitizens, which covers its entire territory, including through inter alia: [...]

(d) Taking appropriate measures to register those who have not been registered at birth, including indigenous children and refugee children;

88. The Committee notes with appreciation that the Constitution prohibits discrimination and welcomes the establishment of the Inter-Ministerial Committee to coordinate actions on issues related to indigenous people. It also commends the State party for having drafted a Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo and for having elaborated with the technical assistance of UNICEF a development programme designed for indigenous populations. However, the Committee is concerned at the alarming situation of the latter, in particular indigenous children, who are victims of economic exploitation, systematic violence, including rape, and systematic discrimination, in particular with respect to access to health services, education and birth registration. The Committee is also concerned that the draft Law on the Promotion and Protection of the Rights of Indigenous Populations does not refer explicitly the rights of indigenous children.

89. The Committee recommends that the State party:

(a) Amend the draft Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo, so as to ensure that it explicitly covers all areas of the Convention on the Rights of the Child;

(b) Adopt a Plan of Action for Indigenous People which would address discrimination at all levels;

(c) Dedicate more attention to securing the physical integrity of indigenous children;

(d) Take affirmative measures to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the area of health and education; and

(e) Take due account of the recommendations adopted by the Committee following its day of general discussion on the rights of indigenous children held in September 2003.

B. General Comments

1. General Comment No. 7 (2006): Implementing child rights in early childhood. CRC/C/GC/7, 20 September 2006.

11. **Right to non-discrimination.** Article 2 ensures rights to every child, without discrimination of any kind. The Committee urges States parties to identify the implications of this principle for realizing rights in early childhood: ...

(b) Article 2 also means that particular groups of young children must not be discriminated against. Discrimination may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive. For example: [...]

- (iv) Discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society. It affects parents' capacities to fulfil their responsibilities towards their children. It affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults;
- (v) Young children who suffer multiple discrimination (e.g. related to ethnic origin, social and cultural status, gender and/or disabilities) are especially at risk.

15. **A crucial role for parents and other primary caregivers.** Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on States parties to provide assistance, including quality childcare services (especially article 18). The preamble to the Convention refers to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.

18. **Respecting parental roles.** Article 18 of the Convention reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern (arts. 18.1 and 27.2). States parties should respect the primacy of parents, mothers and fathers. This includes the obligation not to separate children from their parents, unless it is in the child's best interests (art. 9). Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers. They are also less able to comprehend the circumstances of any separation. Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent, involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations), or where they are provided with low-quality institutional care. The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling

their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where young children's well-being may be at risk. States parties' overall goals should include reducing the number of young children abandoned or orphaned, as well as minimizing the numbers requiring institutional or other forms of long-term care, except where this is judged to be in a young child's best interests (see also section VI below).

24. **Access to services, especially for the most vulnerable.** The Committee calls on States parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents (see also section VI).

2. General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children outside the Country of Origin. CRC/GC/2005/6, 1 September 2005

(d) Full access to education (arts. 28, 29 (1) (c), 30 and 32)

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

42. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return.

V. Committee on the Elimination of Discrimination Against Women

A. Concluding Observations

1 Paraguay, CEDAW/C/PAR/CC/3-5, 15 February 2005

36. The Committee is concerned about the poor conditions of indigenous women, including monolingual Guaraní women, reflected in their high illiteracy rates, which surpass the national average, low school enrolment rates, poor access to health care and significant levels of poverty that lead them to migrate to urban centres where they are even more vulnerable to suffer from multiple forms of discrimination.

37. The Committee urges the State party to ensure that all policies and programmes explicitly address the high illiteracy rates and the needs of indigenous women, including monolingual Guaraní women, and to actively seek their participation in the formulation and implementation of sectoral policies and programmes. It recommends that the State party strengthen its efforts to implement bilingual educational programmes at all levels of education and to ensure indigenous women's access to education and health care. The Committee also encourages the State party to adopt temporary special measures in accordance with article 4, paragraph 1, of the convention and the Committee's general recommendation 25, on temporary special measures, to accelerate such access for indigenous women. The Committee recommends that the State party strengthen its programmes of dissemination, education and training on the Convention and its Optional Protocol for indigenous women, including monolingual Guaraní women.

38. The Committee urges the State party to establish a mechanism to monitor and evaluate the implementation and impact of the current plans and policies aimed at realizing equality for women and to take such corrective action as may be necessary if they are found to be inadequate to achieve their intended goals. The Committee invites the State party to include in its next report an evaluation, including statistics, on the impact on women, including indigenous women, monolingual Guaraní women and women from rural areas, of the actions, measures, policies and studies undertaken to achieve de facto equality between women and men.

2 Gabon, CEDAW/C/GAB/CC/2-5, 15 February 2005

38. The Committee is concerned about the situation of rural women, particularly in view of their geographic isolation and lack of access to adequate nutrition and sanitation, health care, education and income-generating opportunities. This situation leads to multiple forms of discrimination against rural women. The Committee is also concerned about the absence of statistical information related to rural and indigenous women.

39. The Committee urges the State party to implement, on a priority basis, measures to ensure that rural women have full access to adequate nutrition and sanitation, health-care services, education and income-generating opportunities. The Committee invites the State party, as necessary, to seek the assistance from relevant specialized agencies of the United Nations to improve the standard of living of rural women.

3 Laos, CEDAW/C/LAO/CC/1-5, 15 February 2005

21. While noting that 80 per cent of the population lives in rural areas, the Committee is deeply concerned about the pervasive poverty and underdevelopment of women, especially in rural and ethnic minority communities. The Committee is also concerned that ethnic minority women, without having any alternative sources of income, depend on production of opium poppies for their livelihood. While welcoming the reinvestigation into the matter of land titling, the Committee is concerned that the current reinvestigation and the re-issuance of land titles are

limited to nine provinces. The Committee is also concerned that while rural women carry out more than half of total agricultural production in every field, the additional workloads of housework and child-rearing also fall primarily on the shoulders of women. The Committee is very concerned that rural women are not fully represented in important decision-making regarding development programmes, nor on the village council.

22. The Committee urges the State party to accelerate its plan to eradicate poverty among women, especially rural and ethnic minority women, by more actively seeking international assistance and at the same time by applying gender perspectives in all development programmes and fully integrating women into decision-making on those programmes, as well as in their implementation processes. The Committee also urges the State party to step up its efforts to provide ethnic minority women who depend on opium poppy production with alternative and sustainable means of livelihood. The Committee recommends that the reinvestigation and re-registration of land titles be carried out in all provinces, with the expected result of eradicating discrimination against women, and requests the State party to provide detailed information about the results achieved in its next report. The Committee also recommends that the State party take measures to ease the double burden of women, including by providing new technologies for women farmers and educating men regarding the sharing of family responsibilities. The Committee strongly recommends that the State party ensure the full and equal representation of rural women on the various committees at the village level.

4. Malaysia. CEDAW/C/MYS/CO/2, 31 May 2006

29. The Committee is concerned that the report did not provide information about the position of women from various ethnic groups in all areas covered by the Convention. In addition, the Committee regrets that the information provided on rural women was out of date and did not present a current picture of the situation of rural women.

30. The Committee urges the State party to include in its next report, data disaggregated by sex and ethnicity in all areas covered by the Convention and current sex-disaggregated data and information on the de facto position of rural women in all sectors.

5. Guatemala. CEDAW/C/GUA/CO/6, 2 June 2006

3. The Committee commends the State party for its high-level delegation headed by the Minister of the Presidential Secretariat for Women, which included the Minister of Education and representatives from the Ministries of Health and Social Assistance, Planning and Programming, the legislature, and the Defender of Indigenous Women, contributing to the quality of the constructive dialogue that was held between the delegation and the members of the Committee.

4. The Committee welcomes the efforts of the State party to achieve greater coordination among the various institutions for the advancement of women, including the Presidential Secretariat for Women, the National Office for Women's Affairs, the Indigenous Women's Defense Unit and the First Lady's Social Work Secretariat.

25. The Committee is concerned about the prevalence of domestic violence against women, the lack of effective access to justice for women, particularly indigenous women, who also face language barriers, and the lack of social awareness about and condemnation of violence against women and girls in the country.

27. While noting the efforts to amend the Act on Elections and Political Parties to impose a quota of 44 per cent for women's participation, the Committee remains concerned about the under representation of women, in particular indigenous women, in political and public positions at all levels. The Committee is also concerned about the persistence and pervasiveness of patriarchal attitudes and deep

rooted stereotypes regarding the roles and responsibilities of women and men in the family and society, which constitute a significant impediment to the participation of women in decision-making at all levels and a root cause of women's disadvantaged position in all spheres of life.

28. The Committee calls upon the State party to accelerate amending of the Act on Elections and Political Parties and strengthen the use of temporary special measures, including quotas, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to increase the number of women, in particular indigenous women, in political and public life and in decision-making positions. It suggests that the State party implement leadership training programmes aimed at women to help them participate in leadership and decision-making positions in society. The State party is urged to carry out awareness-raising campaigns aimed at women and men to help ensure the elimination of stereotypes associated with men's and women's traditional roles in the family and in society at large and enhance women's political empowerment.

31. The Committee observes with concern the possible adverse impact that the free trade agreements may have on the living and working conditions of Guatemalan women.

32. The Committee suggests that the State party undertake a study to determine the impact of the free trade agreements on the socio-economic conditions of women and to consider the adoption of compensatory measures that take into consideration women's human rights.

35. Noting that the majority of the Guatemalan population are indigenous peoples, the Committee expresses concern about the situation of indigenous women, who lack enjoyment of their human rights and are vulnerable to multiple forms of discrimination. It is also concerned about the absence of statistical information related to the situation of indigenous women.

36. The Committee encourages the State party to adopt concrete, targeted measures to accelerate the improvement of conditions of indigenous women in all spheres of life. It calls upon the State party to ensure that indigenous women have full access to bilingual education, health services and credit facilities and can fully participate in decision-making processes. It requests the State party to include information and data on the situation of indigenous women and on the impact of measures taken to overcome the multiple discrimination against them in its next periodic report.

6. Australia, CEDAW/C/AUL/CO/5, 3 February 2006

16. While noting that the Sex Discrimination Act allows for the adoption of special measures to ensure equality of opportunity or in order to meet the special needs of women, the Committee is concerned that the State party does not support the adoption of targets or quotas to promote greater participation of women, particularly indigenous women and women belonging to ethnic minorities, in decision-making bodies.

17. The Committee recommends that the State party fully utilize the Sex Discrimination Act and consider the adoption of quotas and targets, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to further increase the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, particularly indigenous women and women belonging to ethnic minorities.

18. While noting the efforts of the State party to address violence against women at all levels of authority, the Committee remains concerned about the continuing prevalence of violence against women, as well as by the low rates of reporting, prosecutions and convictions in sexual assault cases. It is concerned that laws that protect victims of violence and require perpetrators of domestic violence to leave the family home are not regularly enforced. It is also concerned about the high levels of

violence against women, particularly domestic violence, in indigenous, refugee and migrant communities.

19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions. It further recommends that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women. The Committee calls upon the State party to create public awareness of violence against women as an infringement of women's human rights that has grave social and financial costs for the whole community.

30. The Committee is concerned about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to employment, education, health and political participation. The Committee is particularly concerned about the lower life expectancy among indigenous women. It is also concerned about the disproportionately large number of indigenous women in prisons.

31. The Committee recommends that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It recommends that the State party increase indigenous women's access and awareness of the availability of targeted social services in all sectors. It further recommends that the State party take steps to increase indigenous women's legal literacy and improve their access to remedies for claims of discrimination. The Committee urges the State party to examine the reasons for the high rate of incarceration of indigenous women and take steps to address its root causes. It calls on the State party to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.

7. Venezuela, CEDAW/C/VEN/CO/6, 31 January 2006

8. The Committee commends the State party for the nationwide implementation of education, literacy, health and economic programmes, which will have a positive impact on the status of women, particularly indigenous women and women of African descent.

16. The Committee recommends that the State party, in its policies and programmes, clearly distinguish between general social and economic policies and programmes, which also benefit women, and temporary special measures under article 4, paragraph 1, of the Convention, which are necessary to accelerate the achievement of de facto equality for women in various areas, as clarified by the Committee in general recommendation No. 25. It also encourages the State party to strengthen the application of temporary special measures to accelerate de facto equality between women and men. The Committee urges the State party, in particular, to take such measures to accelerate the achievement of de facto equality of indigenous women and women of African descent in the fields of education, employment, health and public and political life.

18. The Committee urges the State party to establish effective monitoring mechanisms, through inter-institutional involvement at all levels, in order to systematically assess the implementation and impact on the status of women of gender equality policies and national programmes in all regions and to strengthen the interaction with non-governmental organizations in this process. Based on such assessments, the Committee invites the State party to undertake corrective measures whenever necessary. The Committee recommends that the State party develop, adopt and implement, at the national level, a comprehensive and coordinated plan of action to ensure gender mainstreaming at all levels and in all areas. The Committee requests that the State party provide, in its next report, statistical data and analysis, disaggregated by sex, on the impact of its programmes and policies on women and men in urban and rural areas and on indigenous groups and groups of African descent.

24. The Committee urges the State party to increase its efforts to address stereotypical attitudes about the roles and responsibilities of women and men that perpetuate direct and indirect discrimination against women and girls. These should include educational measures at all levels, beginning at an early age; and awareness-raising campaigns directed at both women and men, designed, whenever possible, with the involvement of the media and civil society, including non-governmental organizations, to address stereotypes regarding the roles of women and men with a view to combating discrimination against women, in particular against indigenous women and women of African descent. The Committee also calls upon the State party to periodically review the measures taken, especially their impact, to identify shortcomings, to adjust and improve those measures accordingly and to report thereon to the Committee in its next report.

26. The Committee urges the State party to take immediate effective measures to eliminate any obstacles that may be encountered by women victims of violence in obtaining precautionary measures against perpetrators of violence and to ensure that such measures remain easily accessible to them. The Committee underscores the need for the State party to place high priority on the comprehensive implementation and evaluation of the Violence against Women and the Family Law and to make it widely known to public officials and society at large. The Committee calls upon the State party to ensure that perpetrators of violence against women are prosecuted and adequately punished. It encourages the State party to enhance effective access to legal aid for women from all regions, including indigenous women and women of African descent. [...]

32. The Committee recommends that the State party pay special attention to the effective implementation and monitoring of the national plan of action on sexual and reproductive health. The State party should place higher priority on the provision of family planning services, including information on contraceptives and their wide and easy availability in all regions of the country, as well as the provision of sex education, addressing both young women and men. The Committee urges the State party to ensure effective access of women to such information and to sexual and reproductive health services, particularly to young women, women from rural areas, indigenous women and women of African descent. [...]

8. Thailand, CEDAW/C/THA/CO/5, 3 February 2006

33. The Committee is concerned about the situation of rural and hill tribe women, particularly in view of their lack of access to adequate nutrition, sanitation, healthcare services, education and income-generating activities.

34. The Committee requests the State party to address the needs of rural and hill tribe women in an urgent and comprehensive manner and to implement measures to ensure that rural and hill tribe women have full access to adequate nutrition, sanitation, health-care services, education and income-generating activities.

37. While welcoming the efforts made by the State party in granting Thai citizenship to 80 per cent of the hill tribe people and approving it for 140,000 displaced persons, the Committee remains concerned about the complexity of the procedure for obtaining citizenship by hill tribe women. It is also concerned that many refugee women do not enjoy legal status in the country.

38. The Committee urges the State party to adopt measures that will facilitate and accelerate the process for obtaining citizenship by hill tribe women, including by addressing any corrupt practices by public officials responsible for determining the citizenship of applicants. It also calls on the State party to take steps that will ensure that refugee women can obtain legal status.

9. Guyana, CEDAW/C/GUY/CO/3-6, 3 February 2006

34. In the light of its general recommendation 19, the Committee urges the State party to accord priority attention to the effective enforcement and monitoring of legislation on domestic violence to ensure that all women who are victims of violence, including Amerindian women and those living in rural and hinterland areas, have access to immediate means of redress and protection, including protection orders, legal aid and shelters in sufficient numbers. The Committee calls on the State party to provide adequate funding for such protection and support measures. The Committee requests the State party to strengthen its efforts to train the police and ensure that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women and adequately equipped to support victims of such violence. The Committee also calls on the State party to take measures, through the media and public education programmes, towards changing social, cultural and traditional attitudes that remain permissive of all forms of violence against women, including sexual violence against young girls. The Committee requests that the State party provide in its next report comprehensive information, including statistical information, on all forms of violence against women and measures to prevent and eradicate

36. The Committee recommends that a broad framework for health services in line with the Committee's general recommendation 24 on article 12, on women and health, be put in place, and that access by women, especially Amerindian women and other women living in rural and hinterland areas, be monitored. It also recommends that the State party provide information on women's access to health services in its next periodic report.

39. While noting that women are disproportionately affected by poverty and the existence of a National Development Strategy and a Poverty Reduction Strategy Paper, the Committee is disappointed that these policies insufficiently address the gender dimensions of poverty, nor do they target women specifically, notwithstanding the participation of women's groups in consultations for their preparation. The Committee is especially concerned about the consequences of this omission for Amerindian women and women living in rural and hinterland areas.

40. The Committee urges the State party to make the promotion of gender equality an explicit component of its national development strategies and in particular those aimed at poverty alleviation and sustainable development. It encourages the State party to include programmes that target vulnerable groups of women, such as Amerindian women and poor women living in rural and hinterland areas. The Committee invites the State party to strengthen these policies so as to enhance compliance with the Convention, especially article 14 on rural women. It encourages the State party to place emphasis on implementation of the Convention and women's human rights in all development cooperation programmes with international organizations and bilateral donors. It also recommends that the State party channel resources available through the Highly Indebted Poor Countries (HIPC) initiative towards the empowerment of women especially Amerindian women and women in rural and hinterland areas. It also requests the State party to provide

in its next periodic report data on how women have benefited from the implementation of the Poverty Reduction Strategy paper.

10. The Philippines. CEDAW/C/PHI/CO/6, 25 August 2006

5. The Committee notes with appreciation the adoption of laws which contribute to the enhanced implementation of the Convention. They include the Anti-Trafficking in Persons Act of 2003, the Anti-Violence against Women and Their Children Act of 2004, the Family Courts Act of 1997, the Rape Victims Assistance Act of 1998, the Indigenous People's Rights Act of 1997 and the Social Reform and Poverty Alleviation Act of 1997.

23. While acknowledging that the President, five Supreme Court justices, 17 appellate court justices and two justices in the Court of Tax Appeals in the Philippines are women, the Committee is concerned about the low level of participation of women in elected and public bodies.

24. The Committee calls upon the State party to establish concrete goals and timetables and to take sustained measures, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25 on temporary special measures, to accelerate women's equal participation in political and public life and ensure that the representation of women in political and public bodies reflects the full diversity of the population, particularly indigenous women and Muslim women. [...]

29. The Committee expresses its concern about the precarious situation of rural and indigenous women, as well as the Muslim women in the autonomous region of Muslim Mindanao, who lack access to adequate health services, education, clean water and sanitation services and credit facilities. The Committee is also concerned about women's limited access to justice in cases of violence, especially in the conflict zones, and the lack of sanctions against the perpetrators of such violence. The Committee is furthermore concerned that the practice of early marriage is persistent among Muslim women.

30. The Committee calls upon the State party to pay special attention to the needs of rural women, indigenous women and Muslim women living in the autonomous region of Muslim Mindanao, ensuring that they have access to health care, social security, education, clean water and sanitation services, fertile land, income-generation opportunities and participation in decision-making processes. The Committee recommends that the State party ensure women's access to justice through the provision of legal aid and take steps to prosecute the perpetrators of violence against them. It also encourages the State party to provide increased educational opportunities to Muslim girls to discourage early marriages. The Committee requests the State party to include in its next report sex-disaggregated data and information on the de facto position of rural, indigenous and Muslim women, and on the impact of measures taken and results achieved with policies and programmes implemented for these groups of women.

11. Mexico. CEDAW/C/MEX/CO/6, 25 August 2006

20. The Committee is concerned that neither the report nor the constructive dialogue provided a clear picture of the extent to which gender perspectives have effectively been mainstreamed in all national policies, including the National Development Plan 2001-2006 and the Plan Contigo, aimed at eradicating poverty. The Committee is also concerned about the lack of clarity about the linkages between these plans and the National Programme for Equality of Opportunities and Non-Discrimination against Women. The Committee regrets that insufficient information was provided about the gender-specific impact on women of macroeconomic policies, in particular about the effects of regional trade agreements such as the Puebla Panama Plan and the North American Free Trade Agreement.

21. The Committee urges the State party to put in place an effective strategy for mainstreaming gender perspectives into all national plans and to strengthen the linkages between the national plans for development and poverty eradication and the National Programme for Equality of Opportunities and Non-Discrimination against Women with a view to ensuring the effective implementation of all the provisions of the Convention. The Committee requests the State party to include information about the effects of macroeconomic policies, including the regional trade agreements, on women, particularly on women living in rural areas and employed in agricultural activities, in its next periodic report.

32. The Committee remains concerned about the level of maternal mortality rates, particularly those of indigenous women, which are a consequence of the insufficient coverage of, and access to, health services, including sexual and reproductive health care. [...]

34. While welcoming the establishment of the National Commission for the Development of Indigenous Peoples, the Committee is concerned about the higher levels of poverty and illiteracy and multiple forms of discrimination experienced by indigenous and rural women. The Committee is concerned about the large disparities between them and women in urban areas and from non-indigenous groups in access to basic social services, including education and health, and participation in decision-making processes.

35. The Committee urges the State party to ensure that all poverty eradication policies and programmes explicitly address the structural nature and various dimensions of poverty and discrimination that indigenous and rural women face. It recommends that the State party use temporary special measures to address the disparities that indigenous and rural women face with regard to access to basic social services, including education and health, and participation in decision-making processes. The Committee requests the State party to include in its next periodic report comprehensive information on the measures taken and their impact, accompanied by data disaggregated by urban and rural areas, by states and by indigenous populations.