

# Combating Racial Discrimination: the UN and its Member States

AN MRG INTERNATIONAL REPORT • COMBATING RACIAL DISCRIMINATION: THE UN AND ITS MEMBER STATES



## COMBATING RACIAL DISCRIMINATION: THE UN AND ITS MEMBER STATES

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Audience at concert, Cape Town, South Africa.

ERIC MILLER/PANOS PICTURES

# Combating Racial Discrimination: the UN and its Member States

### THE AUTHOR

MICHAEL BANTON has been a member of the United Nations Committee on the Elimination of Racial Discrimination since 1986, being Chairman from 1996–8 and Rapporteur from 1990–6 and 1998–2000. He is the author of numerous books and other publications on racism and related issues, including *Ethnic and Racial Consciousness*, Longman, 1997 and *International Action against Racial Discrimination*, OUP, 1996.

### MINORITY RIGHTS GROUP INTERNATIONAL

MRG works to secure rights and justice for ethnic, linguistic and religious minorities. It is dedicated to the cause of cooperation and understanding between communities.

Founded in the 1960s, MRG is a small international non-governmental organization that informs and warns governments, the international community, non-governmental organizations and the wider public about the situation of minorities around the world. This work is based on the publication of well-researched Reports, Books and Papers; direct advocacy on behalf of minority rights in international fora; the development of a global network of like-minded organizations and minority communities to collaborate on these issues; and **the challenging of prejudice and promotion of public understanding** through information and education projects.

MRG believes that the best hope for a peaceful world lies in **identifying and monitoring conflict** between communities, **advocating preventive measures** to avoid the escalation

tion of conflict and **encouraging positive action** to build trust between majority and minority communities.

MRG has consultative status with the United Nations Economic and Social Council and has a worldwide network of partners. Its international headquarters are in London. Legally it is registered both as a charity and as a limited company under English law with an International Governing Council.

### THE PROCESS

As part of its methodology, MRG conducts regional research, identifies issues and commissions Reports based on its findings. Each author is carefully chosen and all scripts are read by no less than eight independent experts who are knowledgeable about the subject matter. These experts are drawn from the minorities about whom the Reports are written, and from journalists, academics, researchers and other human rights agencies. Authors are asked to incorporate comments made by these parties. In this way, MRG aims to publish accurate, authoritative, well-balanced Reports.

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## Charter of the United Nations (1945)

### Article 1

The Purposes of the United Nations are:  
[...]

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion [...]

## International Covenant on Civil and Political Rights (1966)

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## International Convention on the Elimination of All Forms of Racial Discrimination (1965)

The States Parties to this Convention,  
[...]

Have agreed as follows:

### PART I

#### Article 1

1. In this Convention, the term – racial discrimination – shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

#### Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
  - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
  - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

#### Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

#### Article 4

- States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:
- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
  - (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
  - (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

#### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
  - (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

#### Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

### PART II

#### Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems. [...]

#### Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
  - (a) within one year after the entry into force of the Convention for the State concerned; and
  - (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

[...]

#### Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.  
[...]

#### Article 12

1.
  - (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
  - (b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

[...]

#### Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

# Preface

After 1945, when racist ideology reached its zenith during the Second World War, there was hope that the birth of the United Nations (UN) would mark the beginning of a long but ultimately successful fight against the forces of racial hatred worldwide. However, today, we can see that the battle is not only far from won but that new forms of racial hatred are developing. While *apartheid* has been consigned to history, genocide and *pogroms* have revisited us and ‘ethnic cleansing’ has entered the lexicon of hate. In Africa, for example, we have seen genocide in Rwanda. In Asia, we have seen *pogroms* against ethnic Chinese in Indonesia. In Europe, we have seen ‘ethnic cleansing’ in the Balkans, and in Western Europe an increase in racially-motivated violence, and hostility and prejudice towards asylum-seekers.

Thus this MRG Report addresses states parties and their obligations undertaken upon ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In the light of the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it is necessary that we take stock of where we are and where we are going, and issue a stark reminder to states of the solemn legal obligations they have undertaken.

MRG has commissioned Michael Banton’s timely Report *Combating Racial Discrimination: the UN and its Member States* in the knowledge that the World Conference against Racism in 2001 offers an excellent opportunity to review progress in the global fight against racism. The author, Michael Banton, is a distinguished scholar, Emeritus Professor of Sociology at the University of Bristol, UK, researching and publishing on issues of racism for the last four decades. He is an independent expert elected to the Convention’s monitoring body and has unique insights into ICERD’s implementation.

There are now 156 states parties to ICERD. It is considered to be the only international legal instrument to specifically and comprehensively address the issue of racial discrimination. Its monitoring body is the Committee on the Elimination of Racial Discrimination (CERD), which oversees its implementation and is the first UN human rights monitoring mechanism. Furthermore, in those (admittedly few) states which have accepted CERD’s competence under Article 14, it allows individuals or groups who claim to be victims of racial discrimination, to lodge a complaint with CERD against their own state.

Yet there is much that can be done to strengthen the implementation of ICERD and the effectiveness of CERD’s monitoring ability. This starts with universal ratification and the universal acceptance of Article 14, and includes the effective monitoring of domestic implementation and efficient early-warning mechanisms. Civil society, often in the form of non-governmental organizations (NGOs), acts as a vital bridge between decision-making elites and the world

at large. NGOs can also contribute invaluable expertise, local knowledge and insight. Their input is therefore essential for the effective functioning and legitimacy of CERD, and in defending fundamental rights and advocating for their realization.

There is a great danger that international human rights conventions are known and understood only by the diplomats and senior government officials of the states who are party to them, and by an elite group of international lawyers and NGOs. In any democratic state these Conventions, including ICERD, should be known and used by their beneficiaries, the primarily victims of racism. This is a major challenge for the UN states, CERD, and NGOs, including MRG.

This Report does not aim to be a manual for NGOs on how to lobby CERD nor on their critical role in enforcing domestic implementation of its provisions. This information can be found in the manual for NGOs entitled *How to Effectively Use the International Convention on the Elimination of All Forms of Discrimination*, recently co-produced by the International Movement Against All Forms of Discrimination and Racism, and MRG. This MRG Report, however, targets states. It is primarily addressed to state delegations engaged in the World Conference’s process and responsible for pushing for World Conference outputs which are clear, decisive and action-oriented. And in the follow-up to the World Conference against Racism, MRG calls on these delegations to ensure that the Conference’s decisions are fulfilled.

This Report goes some way to presenting the current record of ICERD states parties. The record to date is largely imperfect and the World Conference offers an opportunity for states to heed the just demands of civil society and resolutely address racism, in all its manifestations, with incontrovertible commitment and quantifiable results.

In conclusion, we look to the World Conference, and the crucial work to follow it up, as an opportunity to examine how the implementation of ICERD can be strengthened and to assist in putting available recommendations into action. In MRG’s view, particular attention must be paid to how ICERD can be made more global and visible, how CERD’s monitoring mechanisms can be made more effective, and how CERD–NGO relations can be improved. But we also turn our eye to states, the parties to this Convention, responsible for actively upholding rights of non-discrimination and providing the necessary guarantees that these will not be violated. These are the obligations they have undertaken and this Report is offered as a straightforward and timely reminder of those crucial obligations.

Alan Phillips

Director

November 2000

# Background

The UN's World Conference Against Racism will be the third of its kind. Will it achieve any more than the two previous such conferences? The first one may have done more harm than good. The second achieved little, if anything. While prospects for the third look much better, much will still depend upon the delegates and the instructions given to them by their governments.

The Conference will succeed if it initiates a programme of action that is implemented by governments in all regions of the world. All governments could do a great deal within their own boundaries. The Conference will fail if it is used to complain about the policies of particular states or groups of states.

The delegates to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (to give it its full title) are due to assemble in South Africa between 31 August and 7 September 2001. They will be appointed by governments, and will bring with them the conclusions and proposals of preparatory conferences and expert seminars convened in each of the world's four main regions. The biggest challenge will be for them to seek consensus over as wide a range of issues as possible. Past experience has shown that a majority vote at such a gathering does not necessarily represent a consensus, and that a resolution may achieve very little if it is not supported by action at the national level.

Diplomats attending the World Conference will already know that the centrepiece of UN action against racism has been the drafting and the adoption (by a unanimous resolution of the General Assembly in 1965) of an inter-state treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). A state which becomes a party to it promises the other states that it will fulfil a variety of legal obligations. One of these is to report every two years to a body, the Committee on the Elimination of Racial Discrimination (CERD), which in turn reports to the UN General Assembly on the fulfilment of these obligations. Any new UN programme to be decided in 2001 will have to build on the Convention, so it is essential to assess what it has achieved so far, what are its limitations, and what its potential for the future will be.

Many delegates to the World Conference and the regional conferences beforehand will know about their own countries' experience in implementing any obligations they have assumed. They may know about the experience of other countries in their regions, but they would have difficulty forming an impression of the global picture from the reports submitted by CERD every year from 1970, since these are written in formal diplomatic language and it takes months to read them all. This MRG Report is designed to provide a global overview, with some supplementary information designed for the use of delegates and observers to the regional conferences who may be less acquainted with the ways of the UN.

This Report begins by comparing the plans for the World Conference with those of its predecessors, for it will be the third of its kind, a culmination of the UN's Third Decade to Combat Racism and Racial Discrimination. After reviewing the process by which CERD examines state reports, it offers a synopsis of the dialogue between CERD and the states. This illustrates the diversity in the forms of racial discrimination in different states, in the willingness of states to accept obligations under the Convention, and in their relations with the Committee. A section on monitoring then summarizes the issues raised in the Synopsis and discusses what the Synopsis has failed to demonstrate. An appreciation of the diversity and of the legal constraints is essential to any consideration of possible further UN action. The Report concludes with a discussion on what might be featured in the World Conference's Declaration and Programme of Action, together with an assessment of the prospects for the future.

## The UN Decades against Racism

The three Decades to Combat Racism and Racial Discrimination have failed to match the ambitions with which they were launched because the General Assembly has never distinguished with sufficient care the kinds of action which are best undertaken at the global, regional, and state levels.

At the global level the UN sets standards which, in varying degree, are given effect by states. Some racial discrimination problems are global, like those of migrant workers, indigenous peoples and the dissemination of racist propaganda on the internet, but the major abuses of human rights related to racial and ethnic origin have a regional character. In Europe, for example, the accession to independence of some of the republics which were formerly part of Yugoslavia led communities which had previously coexisted into violent conflict. Armed militias conducted waves of so-called 'ethnic cleansing'. It will take a long time to re-establish cooperative relations. The governments of some European countries have difficulty preventing racial discrimination against the Roma (Gypsies) because many in the rest of the population believe the Roma to be the authors of their own misfortunes. Furthermore, popular concern about immigration sustains extremist movements which disseminate racial hatred in songs and in writing.

Europe, however, does not face the challenges of some American countries in their efforts to achieve justice for indigenous peoples, some of whom have been demoralized by their contacts with those who have invaded what indigenous peoples believed to be their territory. Africa has to struggle with its own calamities, including the

Rwandan genocide and ethnic warfare in the Great Lakes region. Several Asian countries are having to contend with ethnic conflicts (sometimes associated with differences of religion) which result in mob violence (such as the attacks on citizens of Chinese origin in Indonesia after the recent currency crisis) and can threaten the integrity of the states.

Names which serve to identify or classify groups in one region may not work so well elsewhere. For example, while there is often wide agreement upon which groups in North and South America, the Pacific and the circumpolar region are indigenous peoples, there is no comparable agreement upon which groups in Asia and parts of Africa, if any, are to be recognized as indigenous peoples.<sup>1</sup> Indeed, the Chinese Government has declared that it

*'believes that the question of indigenous peoples is the product of European countries recent pursuit of colonial policies in other parts of the world, there is no indigenous peoples' question in China.'*<sup>2</sup>

Questions remain about the application of the Convention to the circumstances of some Asian states. Discrimination against the Burakumin in Japan must fall within its prohibition of discrimination based upon descent; similarly, CERD has stated that the discriminations of the Hindu caste system should also be covered by ICERD.<sup>3</sup>

Some useful work has been carried out during the Decades, but their programmes attracted little financial support from states. The Decades' relative failure can be attributed in part to the attempts of some states to use the international level to address regional political problems.

### First Decade

The First Decade was mortally wounded in 1975 by the adoption on a majority vote in the General Assembly of the 'Zionism is a form of racism' resolution. Whether or not Zionism is a form of racism depends upon the meaning given to words, but the resolution put a strain on the system that was too great for it to bear.

The first World Conference to Combat Racism and Racial Discrimination, in 1978, faced similar problems. When Western delegations learned that a majority of delegations supported the inclusion of certain draft paragraphs about racial discrimination against the Palestinians in the Conference's concluding declaration, they walked out. The USA had sent no delegation because it declined to participate in the first Decade. A member of CERD who attended that conference reported at the Committee's next session that there had been many ideological speeches which bore little or no relation to racial discrimination. He thought that one region had been trying to put another in the dock.

Delegates in the UN General Assembly in the 1960s and 1970s talked and acted as if states were all-powerful. Kwame Nkrumah had advised Africans 'Seek ye first the political kingdom and all things shall be added unto you.' Since then the peoples of Africa, as of many other parts of the world, have learned that states can achieve little when they are not supported by civil society. Delegates have learned that a majority vote does not necessarily entail implementation.

### Second Decade

When the second World Conference was being planned the General Assembly removed topics relating to the Middle East from its agenda: they reappeared. The declaration at the 1983 Conference concentrated upon action against *apartheid*. That was understandable, but it is doubtful if it, or the programme of action for the Second Decade, added anything significant to the struggle against *apartheid* that was being waged on so many fronts. By condemning *apartheid* as 'the most extreme form of racism' anti-*apartheid* rhetoric encouraged a concentration upon certain specific characteristics of racial discrimination in one region at the expense of the more general human rights dimension embodied in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) (See p. 2 of this Report). Racial discrimination is but one form of discrimination and it has many features in common with discrimination on the other grounds listed in that Article.

### Third Decade

The Programme of Action for the Third Decade is a feeble and uninspiring document because it lacks any underlying philosophy. It rehearses the original statement of 1972 that

*'The ultimate goals of the decade are to promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially for eradicating racial prejudice, racism and racial discrimination; to arrest any expansion of racist policies and to counteract the emergence of alliances based upon mutual espousal of racism and racial discrimination; to resist any policy and practices which lead to the strengthening of the racist regimes and contribute to the sustainment of racism and racial discrimination; to identify, isolate and dispel the fallacious and mythical beliefs, policies and practices that contribute to racism and racial discrimination; and to put an end to racist regimes.'*

The reference to 'the emergence of alliances' was inspired by reports of cooperation between the governments of South Africa and Israel. The 1972 statement has been repeated, but with the subsequent establishment of democratic rule in South Africa and the ending of *apartheid* the UN's campaign against racial discrimination has lost its orientation.

The Third World Conference may be able to provide a new orientation because it is being organized differently. It is to be 'action-oriented and focus on practical measures to eradicate racism, including measures of prevention, education and protection'. It will succeed in this only if those who draft the Conference's concluding declaration and programme of action attend to the concerns of the governments which will have to do most to put any such programme into effect. A very important innovation is that states have been called upon to hold regional preparatory meetings and to submit reports. It is a crucial

change because previous UN action has tended to neglect the regional differences in the problems presented by racism and racial discrimination.

## Collective action

In all regions states have difficulty agreeing upon collective action. The disarray of the European states in their response to the dissolution of the former Yugoslavia was well publicized, but in the post-1945 era regional institutions have been established which have great potential for action against racial discrimination. States in Central and Eastern Europe which seek the economic benefits of closer association with those in Western Europe have to meet standards set in these institutions. Notable among them are the Organization for Security and Co-operation in Europe (OSCE) with its High Commissioner for National Minorities; the Council of Europe with its European Convention on Human Rights and its European Commission against Racism and Intolerance (ECRI); and the European Union (EU) with its Court of Justice. The latter will soon be empowered to rule on the interpretation of EU law against racial discrimination as it currently rules on EU law against sex discrimination.

The American regional group has the advantages and disadvantages of a situation in which one state is much more powerful than any other. The Organization of American States and its associated institutions have been paying increasing attention to the plight of the region's indigenous peoples. It includes, as a specialized agency, the Inter-American Indian Institute. The Inter-American Commission on Human Rights issues country reports and receives complaints of violations of the American Convention on Human Rights, though up to 1997 it had reached written conclusions on only four of them. The Inter-American Court of Human Rights has addressed Amerindian issues directly in at least two cases. An American Declaration on the Rights of Indigenous Peoples is under active discussion.<sup>4</sup>

The Organization of African Unity in 1981 adopted the African Charter of Human and Peoples' Rights, which included provisions for the establishment of the African Commission on Human and Peoples' Rights; these have since been supplemented by the establishment of a Court and the appointment of its first members. The Organization of the Islamic Conference has issued the Cairo Declaration on Human Rights in Islam, but this remains a declaration only.

As the states of the Asia-Pacific region constitute the largest and most diverse of the UN's regional groups it is little wonder if they have even more difficulty than the states of other regions in agreeing upon common action. Nevertheless, progress can be affirmed. The UN's Eighth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific region, held in Beijing in March 2000, carried forward earlier consultations on the strengthening of national capacities for the promotion and protection of human rights and discussed issues relating to the regional preparatory meeting for the World Conference against Racism.

The Decades for Action Against Racial Discrimination

were established by resolutions of the General Assembly, acting on proposals from the Commission on Human Rights. The Commission has appointed a Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance who works under the authority of the UN Charter. Since this binds all 189 UN member states, the Special Rapporteur can examine situations in states which have not become parties to ICERD, whereas the mandate of CERD is limited by the terms of the Convention and by the adherence to it (up to August 2000) of just 156 states, some of which have entered reservations limiting the extent to which they accept the Convention's obligations. The Special Rapporteur is Mr Maurice Glélé-Ahanhanzo of Benin, a state which is not yet a party to ICERD.

# The reporting process

When reporting on the fulfilment of their obligations, states are requested to follow the reporting guidelines drawn up by the Committee.<sup>5</sup> These give pride of place to the first seven Articles of the Convention. Article 1 defines racial discrimination, covering direct and indirect discrimination. Article 2 defines certain general obligations of states parties. Article 3 is a condemnation of racial segregation, originally directed against *apartheid* but of more general application. Article 4 obliges states parties to make incitement to racial discrimination an offence punishable by law. Article 5 requires states to protect everyone subject to their jurisdiction from racial discrimination in the enjoyment of their civil, political, economic, social and cultural rights. Article 6 obliges states to provide effective remedies to victims of racial discrimination. To comply with Article 7, states have to combat racial prejudices by educational and other measures. Under Article 9 states undertake to submit reports every two years on the legislative, judicial, administrative or other measures which they have adopted to give effect to the Convention.

Article 14 establishes a procedure by which a state can allow persons subject to its jurisdiction who believe themselves to be victims of the state's failure to fulfil its obligations, to communicate with CERD. Then, if they have exhausted their domestic remedies, CERD can take up their case, and, after considering representations, can issue an opinion on whether there has been any violation of the Convention. (For example, see the entry on Denmark in the Synopsis which follows.)

States are also requested to take into account the General Recommendations adopted by CERD, some of which bear upon the interpretation of the Convention's provisions.

## Overdue reports

Very few states report regularly every two years. Those which are torn apart by civil strife have an excuse for neglecting their reporting obligation. That obligation can be a demanding one for the 33 UN member states with populations of less than 500,000 (14 of them having populations of less than 100,000). If the World Conference is to appeal for universal ratification of the Convention, it should ensure that the UN makes it easier for the less populous states to carry out such obligations. It is perhaps more understandable if a very small and poor state falls behind with its reports, but even in such circumstances there should be a limit to delays. There are other defaulting states which have no excuse. In 1999, 54 of the states parties to ICERD had fallen behind to such an extent that three or more of their reports were overdue. Two states which were members of the Commission on Human Rights (Cape Verde, Liberia) each had as many as 11

reports overdue.

ICERD has so far failed to consider what it should do when one of its number defaults. During the years 1986–90 and 1992 CERD was able to hold just half of its scheduled meetings because some states were not paying their assessments. Appeals from the General Assembly had no effect upon the states which were refusing to pay. Although these refusals were undermining the monitoring process, the meetings of states parties did not consider suspending the defaulting states' rights to participate in the election of Committee members. Nor have most states heeded appeals to accept the amendments to the Convention agreed by the states parties in 1992; for these amendments to come into effect they must be accepted by two-thirds of the states parties. While these amendments relieve states of their responsibility under Article 8.6 for the expenses incurred by Committee members, seven years later only 24 had taken the necessary action. Non-reporting, and the burden which reporting imposes even on states in favourable circumstances, are problems which have to be addressed in ways other than by treaty amendment.

To ease the reporting burden, early in its history, CERD invited any state which had fallen behind to submit all outstanding reports as a single document. Thus an entry in the synopsis later in the text, which refers to a state's eighth/twelfth reports having been considered, is a reference to a single document which combined five periodic reports. In 1988 the states parties proposed that while maintaining the Convention's requirements of a report every two years, states should submit a comprehensive report every four years and a brief updating report in the two-year interim. CERD agreed to this in 1990. Recognizing that some states lack the qualified personnel to prepare reports, the UN has arranged training sessions. Some states have sent people on these courses yet they still fail to submit reports.

As explained later, CERD notifies states whose reports are seriously overdue that it will nevertheless review their implementation of the Convention, but if the state then promises a report by a specific date the Committee has been ready to agree to any request for postponement. As the Secretary-General and CERD have done so much to ease the reporting burden, the states parties should act on General Assembly Resolution 49/178 which, in paragraphs 3 and 6, urges the states parties to use the meetings which they hold every two years to elect members of CERD to improve the reporting process. At these meetings they elect a bureau of officers which functions for the duration of the meeting. The states might decide that, once elected, their bureau should function until the next meeting of the states, and that in the period between meetings it should communicate with defaulting states and consider whether they should be subject to any sanction.

The Synopsis later in this Report is of a summary and selective character. The entries are selective in that the

notes on certain states are used to describe general issues. Little is written about the Committee's dialogue with some important states if it has given rise to no interesting issues. Furthermore, the entry on Australia summarizes CERD's comments on the compatibility of the state's policies concerning the rights of indigenous peoples with the Convention. Some entries outline CERD's attempts to give early warning of impending ethnic conflict or increased conflict in the area of the former Yugoslavia and in the Great Lakes region. There are also states which claim that as there is no racial discrimination on their territory their existing legislation does not require supplementation; this issue is discussed in connection with the entry on the Dominican Republic, but it could equally well have been raised in other places.

The entry on the USA summarizes a dispute about the responsibilities of treaty bodies for considering whether state reservations are compatible with the object and purpose of the treaty. Within CERD opinion has been divided about whether its duty to treat states equally requires it to give equal time to the consideration of their reports. The examination of the initial report of the USA surely demands more time than the consideration of a report from a far less populous state, but where is a balance to be struck? General issues of this kind can be difficult, so CERD usually tackles them when they arise in connection with the reports of particular states.

## CERD's responsibilities

CERD has reviewed its own history in a booklet entitled *The First Twenty Years* (HR/PUB/91/4). It shows that the Committee, from its earliest sessions, has paid close attention to the passage in Article 9 which states that it shall report annually 'based on the examination of the reports and information received from the States Parties'. The word examination is crucial. It requires the Committee to test statements that are made to it. Had those who drafted the Convention intended that CERD should simply accept every statement made by a government they would not have stipulated in Article 8 that it should consist of experts. From time to time governments change and sometimes a new government has withdrawn a report submitted by its predecessor or informed the Committee that some of the information supplied by it was not reliable, so a governmental report is not necessarily the last word on a subject.

During the 1990s CERD members received a growing amount of information from non-governmental sources, initially in the form of a commentary on a state report submitted by a national section of the International Commission of Jurists, and more recently via press cuttings or documents from international or national non-governmental organizations (NGOs). These organizations are often assisted by the Geneva-based Anti-Racism Information Service and sometimes Committee members meet informally with NGO representatives.

In 1991 CERD adopted decision I(XL) in which it stated that it would 'continue to make its suggestions and general recommendations on the basis of the reports and information received from States parties' but that mem-

bers 'must have access, as independent experts, to all other sources of information'.<sup>6</sup> CERD's use of information from non-governmental sources has sometimes been disputed by state representatives (see, for example, the entry on Mauritania in the Synopsis).

## Committee sessions

The UN convenes two sessions of CERD each year. A session usually lasts three weeks, permitting the examination of 12 initial or periodic reports. A delegation presents its government's report at the beginning of an afternoon meeting, taking about half an hour for an oral introduction. The Committee's Country Rapporteur opens the discussion with an address of a similar length, which reviews the extent to which the government has responded to the Committee's 'concluding observations' on its previous report, and identifies the main issues. Other members of CERD then ask questions and offer comments, leaving the delegation time overnight to prepare answers for presentation the following day. Some delegations reply to all questions asked; some ignore those they find awkward. The chair tries to bring matters to an end by mid-morning, inviting the Country Rapporteur to provide a concluding summary. The Country Rapporteur later drafts concluding observations which, after amendment, are adopted by the Committee.

CERD's methods of work are described in its report for 1996.<sup>7</sup> The examination of initial and periodic reports received from states parties takes up most of the Committee's time. When reports are overdue by more than five years CERD notifies the state that it will conduct a review of its implementation of the Convention based on previous reports, on other information submitted by the state to the UN, or on reports prepared by UN organs. Many states respond to this notification by promising that the outstanding reports will soon be submitted and the Committee is then able to consider them in the usual way. If no report has been received after 10 years there is a 'second round' review, but these have not yet inspired any Committee decision. A 'third round' review of states which have not reported for 20 years is due to start in 2001. In 1993, in connection with the prevention of racial discrimination, the Committee adopted an outline of early warning measures and urgent procedures by which it occasionally makes use of its power under Article 9.1 to request further information from a state party or to consider a situation in the absence of an up-to-date report from a state.

## Recent Developments

In addition to these procedures, in 1999 CERD issued a statement on the human rights of Kurds and another on Africa. In the first, having described its alarm about the violations of human rights inflicted on people because of their ethnic or national origin, it expressed

*'its concern about acts and policies of suppression of the fundamental rights and the identity of the Kurds*

*as distinct people. The Committee stresses that the Kurdish people, wherever they live, should be able to lead their lives in dignity, to preserve their culture and to enjoy, wherever appropriate, a high degree of autonomy'.*

It appealed to the UN and other organizations to work for peaceful solutions which do justice to the fundamental human rights and freedoms of the Kurds. In the second statement CERD urged the UN to take urgent and effective action under the UN Charter to stop the massacres and genocide in Africa and facilitate the safe return of the refugees and displaced persons.

A further development was in August 2000, when CERD held a thematic discussion on discrimination against the Roma. Consideration of periodic reports from individual states had demonstrated that discrimination against the Roma followed the same pattern in many countries, making it desirable to consider this as a general issue. Fourteen states parties, two international organizations and 11 NGOs responded to an invitation to submit written information on the subject. In the discussion several CERD members stressed the need to identify the causes of the prejudices against the Roma and maintained that they had to be seen in the context of a triangular relationship involving the government of the state, the Roma, and the non-Roma, or Gaje, population. Later CERD adopted its General Recommendation XXVII on Discrimination against Roma which includes 45 numbered paragraphs divided into six sections:

- Measures of a general nature;
- Measures for protection against racial violence;
- Measures in the field of education;
- Measures to improve the living conditions;
- Measures in the field of media; and
- Measures concerning participation in public life.

### States which have made the declaration under Article 14 (as at 26 August 2000)

Algeria  
Australia  
Bulgaria  
Chile  
Costa Rica  
Cyprus  
Denmark  
Ecuador  
Finland  
France  
Hungary  
Iceland  
Italy  
Luxembourg  
Malta  
Netherlands  
Norway  
Peru  
Poland  
Portugal  
Republic of Korea  
Russian Federation  
Senegal  
Slovakia  
South Africa  
Spain  
Sweden  
The former Yugoslav Republic of Macedonia  
Ukraine

# Synopsis of the dialogue between states parties and CERD – as at September 2000

**N**B: The nomenclature used in this section (e.g for the names of states and peoples etc.) is that of the UN and is not always the same as MRG's preferred nomenclature.

States can become parties to the Convention, undertaking to fulfil its obligations in one of three ways. They can follow up signature of the Convention by ratification (as provided for in Article 17), or accede (article 18) or succeed to the obligations assumed by a predecessor state. An asterisk attached to the date of accession or ratification denotes a state which has made a declaration permitting the right of individual petition under Article 14.

## Afghanistan

Afghanistan acceded in 1994. Its initial report was considered in 1985.<sup>8</sup> Its implementation of the Convention was reviewed for a second time in 1997<sup>9</sup> because the second/eighth reports have been overdue since 1986. CERD urged that dialogue be resumed as soon as possible.

## Albania

Albania acceded in 1994. Its initial/second reports have been overdue since 1995.

## Algeria

Algeria ratified in 1972.\* Its twelfth report was considered in 1997.<sup>10</sup> It was recommended to implement Article 4 fully, to ensure non-discriminatory protection of the right to security of the person, to supply further information on other protections, and on complaints and court cases. Its thirteenth/fourteenth reports have been overdue since 1997.

## Andorra

Andorra has not ratified the Convention.

## Angola

Angola has not ratified the Convention.

## Antigua and Barbuda

Antigua and Barbuda acceded in 1988. Its initial/fifth reports have been overdue since 1989. A planned review of implementation was postponed in 1998 because a report was said to be in preparation, but, as no report was received, a review was conducted in 1999.<sup>11</sup>

## Argentina

Argentina ratified in 1968. Its fourteenth report was considered in 1997.<sup>12</sup> Argentina was recommended to fulfil all obligations under Article 4, to monitor the transfer of land to indigenous communities, to report on indigenous communities' participation in political and economic life, and to report on the implementation of Article 5. Its fifteenth report will be considered in 2001.

## Armenia

Armenia acceded in 1993. Its initial and second reports were considered in 1998.<sup>13</sup> Armenia was recommended to comply fully with Article 4, to register racially-motivated crimes, to ensure that ethnic and national minorities have access to education in their own languages wherever possible, and to furnish information on the effectiveness of reforms to the judicial system. Its third report has been overdue since 1998.

## Australia

Australia ratified in 1975.\* In the same year the Commonwealth Government gave effect to its obligations as a state party by enacting the Racial Discrimination Act. This represents the only national standard of non-discrimination in Australian law since the Constitution includes no prohibition of racial discrimination. The Act binds the Commonwealth, State and Territory Governments and the private sector. Although it does not prevent the Commonwealth Government passing inconsistent legislation, it renders inconsistent State and Territory legislation inoperative.

In 1992 the High Court in the case of *Mabo v Queensland* recognized for the first time in common law the existence of 'native title' in Australia, that is, that 'native title' pre-existed colonization and continued to exist unless it

had been validly extinguished. In his lead judgment Brennan J. concluded that 'native title' to land had been validly extinguished in certain circumstances, but (and this was in line with decisions in other common law jurisdictions)

*'the exercise of a power to extinguish native title must reveal a clear and plain intention to do so, whether the action had been taken by the Legislature or the Executive'.*

Where this standard had not been met, 'native title' to land has subsisted from the pre-colonial period.

The decision was far-reaching, but for present purposes the point to note is that between 1975 and 1992, the Government had taken certain actions which had retrospectively been rendered unlawful because they were contrary to the Racial Discrimination Act 1975. To cure this retrospective invalidation and to provide a simpler process for the recognition and protection of continuing 'native title' it introduced the Native Title Act 1993, an enactment welcomed by CERD in its report on Australia's ninth report.<sup>14</sup>

Another decision of the High Court in the case of *Wik v Queensland* in 1996 established that 'native title' may have subsisted in further unanticipated circumstances, leading the Government to introduce a second Act to amend the Native Title Act. The original Act had been negotiated with representatives of the indigenous peoples, but the new Government was unwilling to enter significant negotiations with indigenous leaders and did not secure their agreement to its draft second Act. It was passed nonetheless.

Learning of a major dispute over the measure, and with the Government's tenth periodic report having been overdue since October 1994, CERD in August 1998 requested the Government to provide it with information on the changes. The Native Title Amendment Act had been passed the previous month, its final form having been influenced by the negotiations needed to secure a majority of one vote in the upper legislative chamber. The reply from the Government was considered in 1999<sup>15</sup> and led the Committee, in decision 2(54), to express concern 'over the compatibility of the Native Title Act, as currently amended, with the State party's international obligations under the Convention'. The amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.

*'The Committee urges the State party to suspend implementation of the 1998 amendments and reopen discussions with the representatives of the Aboriginal and Torres Strait Islander peoples with a view to finding solutions acceptable to the indigenous peoples and which would comply with Australia's obligations under the Convention.'*

The Attorney-General of Australia, in a press statement, declared 'The Committee's comments are an insult to Australia' and the Government embarked upon an unprecedented diplomatic offensive to persuade members of CERD that their conclusions were unbalanced. About this time members received many documents and letters critical of the Government's actions from organizations and individuals in Australia. Annexe VIII to the Committee's report for 1999 publishes the comments of

the Government of Australia on decision 2(54). The most important issues concerned the measures for extinguishing 'native title'. After studying those comments the Committee, in decision 2(55), reaffirmed its decisions.

Australia's combined tenth, eleventh and twelfth periodic reports were considered in March 2000. CERD then expressed concern over

*'the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories'.*

It reiterated its recommendation that the Commonwealth Government undertake measures to ensure the consistent application of the Convention at all levels of government, in accordance with Article 27 of the Vienna Convention on the Law of Treaties. Expressing concern over 'the continuing risk of further impairment of the rights of Australia's indigenous communities', the Committee reaffirmed its previous decisions and reiterated

*'its recommendation that the State party ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of the "informed consent" of indigenous peoples'.*

The Committee expressed 'its concern about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia and in particular in the Northern Territory', especially in their effect upon juveniles, and questioned the compatibility of these laws with the state party's obligations.

CERD noted that a Parliamentary Joint Committee was conducting an inquiry into 'The Consistency of the Native Title Amendment Act with Australia's international obligations under the Convention on the Elimination of All Forms of Racial Discrimination'. Perhaps predictably, the Committee was split, with the Government members reporting that the Act was compatible with Australia's international obligations and the opposition members reporting that it was not. The Government then submitted comments rejecting CERD's observations on its reports.

## Austria

Austria ratified in 1972. Its tenth report was considered in 1994.<sup>16</sup> Austria was advised that the protection of the right to work must cover the private as well as the state sector. Concern was expressed over increasing signs of racism, xenophobia and anti-semitism, and possible discrimination. The next periodic report is to be of a comprehensive character. The eleventh/thirteenth reports were considered in 1999 when the Committee recommended that the Government introduce comprehensive legislation against racial discrimination in all its forms, covering both citizens and foreigners, that it review those elements of its current immigration policy which classify foreigners on the basis of their national origin, implement Articles 4(b) and 6 of the Convention, and train law enforcement officials in racial tolerance and human rights issues.<sup>17</sup> Its fourteenth report has been overdue since 1999.

**Azerbaijan**

Azerbaijan acceded in 1996. Its initial/second reports were considered in 1997 when CERD made various suggestions concerning its next periodic report. It wished to be better informed about the relatively large emigration from the Russian-speaking and Armenian minorities, and on the economic and social situation of the other ethnic groups. It asked for better information on legislative and administrative measures, and recommended further steps to facilitate equal access to the courts. It suggested the establishment of a national human rights institution, and recommended action to ameliorate the situation of displaced persons and refugees.<sup>18</sup>

**Bahamas**

Bahamas ratified in 1975. Its implementation was reviewed for a second time in 1997<sup>19</sup> because its fifth/twelfth reports have been overdue since 1984.

**Bahrain**

Bahrain acceded in 1990. Its initial/fifth reports were considered in March 2000. CERD cautioned that

*‘Guarantees of equality under the Constitution, or the absence of judicial rulings applying provisions of the Convention, should not be taken to imply that racial discrimination within Bahraini society does not exist’.*

It recommended that future reports provide examples of the practical implementation of the Convention, including the extent of the protection afforded to foreigners.

**Bangladesh**

Bangladesh acceded in 1979. Its sixth report was considered in 1992.<sup>20</sup> Grave concern was expressed over reports relating to ethnic minorities in the Chittagong Hill Tracts. Its seventh/eleventh reports, overdue since 1992, are due to be considered in 2001.

**Barbados**

Barbados acceded 1972. Its implementation was reviewed for a second time in 1994<sup>21</sup> because its eighth/thirteenth reports have been overdue since 1987.

**Belarus**

Belarus ratified in 1969. Its fourteenth report was considered in 1997.<sup>22</sup> The Committee requested that the next report include information on the practical implementation of the laws, including an explanation of the absence of prosecutions for offences of racial discrimination, on the effective enjoyment by all groups of rights listed in Article 5, and on the availability of the right to reparation for damage as a result of racial discrimination. Its fifteenth report has been overdue since 1998.

**Belgium**

Belgium ratified in 1975. Its ninth/tenth reports were considered in 1997.<sup>23</sup> It was recommended to improve the prosecution of racial incitement and the prohibition of racist organizations, to review the training of judicial authorities and police, and to provide more information on

the socio-economic situation of non-citizens. Its eleventh/twelfth reports have been overdue since 1996.

**Belize**

Belize has not ratified.

**Benin**

Benin has not ratified.

**Bhutan**

Bhutan has not ratified.

**Bolivia**

Bolivia ratified in 1970. Its eighth/twelfth reports were considered in 1996.<sup>24</sup> It was urged to implement obligations under Article 4 and to review the problems of judicial sentencing. It was recommended in the next report to provide fuller information on the socio-economic circumstances of ethnic minority and indigenous groups, including their education. Its thirteenth/fourteenth reports have been overdue since 1995.

**Bosnia & Herzegovina**

Bosnia & Herzegovina succeeded in 1993. The Committee in that year reviewed its situation under the procedure for the prevention of racial discrimination,<sup>25</sup> and again in 1995 when it adopted decision 2(47).<sup>26</sup> followed in 1996, by decisions 1(48) and 1(49),<sup>27</sup> in 1997, by decision 2(51)<sup>28</sup> and in 1998 after discussion with a state delegation by decision 6(53).<sup>29</sup> The initial/third reports have been overdue since 1994 but a special report was submitted in 1993.<sup>30</sup>

**Botswana**

Botswana acceded in 1974. Its implementation was reviewed for a second time in 1996<sup>31</sup> because its sixth/thirteenth reports have been overdue since 1985.

**Brazil**

Brazil ratified in 1968. Its tenth/thirteenth reports were considered in 1996.<sup>32</sup> It was recommended to protect indigenous land rights more effectively, to furnish ‘social indicators’ on the difficulties encountered by indigenous, black and *mestizo* populations and on complaints of racial discrimination, to facilitate the election of candidates from disadvantaged groups, and to prosecute more vigorously all those who violate their rights. Its fourteenth/fifteenth reports have been overdue since 1996.

**Brunei Darussalaam**

Brunei Darussalaam has not ratified.

**Bulgaria**

Bulgaria ratified in 1966.<sup>33</sup> Its twelfth/fourteenth reports were considered in 1997.<sup>33</sup> It was recommended to develop a more comprehensive policy on the elimination of racial discrimination and to monitor its implementation, to counter acts of violence and the use of excessive force against ethnic minorities, and to protect the rights of the Roma. Its fifteenth report has been overdue since 1998.

**Burkina Faso**

Burkina Faso acceded in 1974. Its sixth/eleventh reports were considered in 1997.<sup>34</sup> It was recommended in its next report to furnish more information about certain laws and their application, and on the representation of the various ethnic groups. Its twelfth/thirteenth reports have been overdue since 1997.

**Burundi**

Burundi ratified in 1977. From 1989 onwards members of CERD started to display increasing concern about aspects of Tutsi rule in this country. Reacting to reports of intensified conflict, CERD in 1992 requested the Governments of Burundi (and Rwanda) to supply further information by 1 March 1993 on the conflict and on its implications for the implementation of the Convention, in particular Article 5(b).<sup>35</sup> As the reports were not received, CERD planned to reconsider the situation in August 1993 but was unable to do so because of the pressure of other business. This may have been unfortunate since the genocide started that October. CERD might have drawn attention to the situation. However, The UN Security Council had already taken up the issue in March 1993. At both its sessions in 1994 CERD gave further consideration to implementation of the Convention in Burundi (and Rwanda), employing its new procedure for preventive action. It took decisions 1 & 2(45) calling for UN action.<sup>36</sup> In March 1995 it expressed concern and dismay about the situation in both countries and in August, in decision 1(47) called on the General Assembly and Security Council to take decisive steps including implementation of seven specific recommendations. Events up to this point are summarized elsewhere.<sup>37</sup>

In August 1996, in resolution 1(49), CERD took account of recent developments. Twelve months later it was able to consider Burundi’s seventh/tenth periodic reports. The Government was recommended to end the impunity of those who on ethnic grounds violate others’ rights, to combat more effectively the incitement to racial hatred, to protect rights to equality of treatment under Article 5, to strengthen the judicial system and to provide more information on various subjects of concern, such as the situation in the regroupment camps and the protection of refugees.<sup>38</sup> Burundi’s eleventh report has been overdue since 1998.

**Cambodia**

Cambodia ratified in 1983. Its second/seventh reports were considered in 1998.<sup>39</sup> It was recommended to end the impunity of perpetrators of racial discrimination, to improve legislation, to ensure that the rights of everyone under Article 5, including ethnic Vietnamese, are protected, to recognize the citizenship of the indigenous peoples and to improve the training of officials in the prevention of racial discrimination. Its eighth report has been overdue since 1998.

**Cameroon**

Cameroon ratified in 1971. Its tenth/thirteenth reports were considered in 1998.<sup>40</sup> It was recommended to fully implement the requirements of Article 4, to guarantee the right of everyone, without ethnic distinction, to the freedom of expression and the freedom of the press, to

improve recourse measures for victims of discrimination, and to provide fuller information on the implementation of certain Articles of the Convention. Its fourteenth report has been overdue since 1998.

**Canada**

Canada ratified in 1970. Its eleventh/twelfth reports were considered in 1994.<sup>41</sup> It was recommended to harmonize relevant provincial legislation, bringing this into line with requirements of the Convention, and to improve remedies, ban racist organizations and speed up negotiations on indigenous peoples’ land claims. Its thirteenth/fifteenth reports have been overdue since 1995.

**Cape Verde**

Cape Verde acceded in 1979. Its implementation was reviewed for a second time in 1996<sup>42</sup> because its third/tenth reports have been overdue since 1984.

**Central African Republic**

The Central African Republic ratified in 1971. Since the eighth/fourteenth reports had been overdue since 1986, the Committee reviewed implementation of the Convention in 1993<sup>43</sup> and again in 1999.<sup>44</sup>

**Chad**

Chad acceded in 1977. Its fifth/ninth reports were considered in 1995.<sup>45</sup> It was recommended to provide fuller information on the process of national integration and other topics, and to make every effort to ensure that the system of justice functions properly. Its tenth/eleventh reports have been overdue since 1996.

**Chile**

Chile ratified in 1971.<sup>46</sup> Its ninth/tenth reports were considered in 1992.<sup>46</sup> Following the end of Pinochet’s regime, the Committee expected the return to the rule of law to benefit the ethnic groups, especially the indigenous peoples, and reiterated the importance of implementing Article 4. Chile’s eleventh/thirteenth reports were considered in 1999 when CERD commended the state party for having recognized its part in the discrimination experienced by the indigenous population; it recommended that the Constitution be amended to incorporate a prohibition of racial discrimination, that the scope of the Indigenous Act be extended to cover discrimination in effect, and that in its forthcoming report the state party should provide detailed information on a variety of subjects, including implementation of Articles 4 and 5.<sup>47</sup>

**China**

China acceded in 1981. Its fifth/seventh reports were considered in 1996.<sup>48</sup> It was recommended to improve fulfilment of obligations under Article 4, to furnish information on certain topics relating to ‘minority nationalities’ (including Tibetans), including political representation, their religious rights, their imprisonment, employment and access to education, and that special attention be paid to any adverse effect that economic development may have upon their right to enjoyment of their culture. More information was also requested about complaints of racial

discrimination and about educational policy. Its eighth/ninth reports have been overdue since 1997.

#### Colombia

Colombia ratified in 1981. Its sixth/seventh reports were considered in 1996.<sup>49</sup> It was recommended to introduce better means for protecting the rights of indigenous and Afro-Colombian communities, including their land rights, to implement Article 4, to attend to the problem of impunity, and to provide detailed information on cases of judicial remedy regarding racial discrimination. Its eighth/ninth reports were considered in 1999 when CERD recommended new legislation to implement Articles 2 and 4, action to address *de facto* racial segregation in urban centres, measures to advance the status of historically marginalized communities and to promote the wellbeing of Colombia's large internally displaced population, while guaranteeing the security of human rights defenders who have sought to protect them.<sup>50</sup>

#### Comoros

Comoros has not ratified.

#### Congo

Congo acceded in 1988. Because the initial/sixth reports had been overdue since 1989 CERD reviewed implementation in 1999.<sup>51</sup>

#### Costa Rica

Costa Rica ratified in 1967.<sup>52</sup> Its tenth/eleventh reports were considered in 1992.<sup>53</sup> It was recommended to furnish more practical examples and relevant statistics of modes of implementation, plus social indicators of the situation of ethnic minorities, especially indigenous peoples and blacks. Its twelfth/fifteenth reports were considered in 1999 when CERD recommended action to ensure that Articles 2 and 4 are adequately reflected in domestic legislation; that the rights of the indigenous population, the black minority, refugees and immigrants under Article 5 are protected; and the need to achieve a fair and equitable distribution of land, taking into account the needs of the indigenous population. The Committee stressed the importance that land holds for indigenous peoples and their spiritual and cultural identity, and that they have a distinctive concept of land use and ownership. Additional efforts were needed if equal access to the courts was to be ensured.

#### Côte d'Ivoire

Côte d'Ivoire acceded in 1973. Its implementation was reviewed for a second time in 1996.<sup>53</sup> Its fifth/thirteenth reports have been overdue since 1982.

#### Croatia

Croatia succeeded in 1992. Its initial/third reports were considered in 1998.<sup>54</sup> It was recommended to reinstate the provisions for the fair and proportionate representation of the Serbian minority in the Croatian Parliament, to comply fully with the terms of Article 4, to monitor the return of displaced persons, to guarantee freedom of association without distinction as to ethnic origin, to improve training with respect to ethnic discrimination and to pro-

vide detailed information on certain other matters. Its fourth report has been overdue since 1998.

#### Cuba

Cuba ratified in 1972. Its tenth/thirteenth reports were considered in 1998.<sup>55</sup> It was recommended to furnish information on complaints of discrimination and the manner in which they have been dealt with, and to review the training of law enforcement officials.

#### Cyprus

Cyprus ratified in 1967.<sup>56</sup> Its fourteenth report was considered in 1998.<sup>56</sup> It was recommended to furnish information on the protection of refugees and the employment of foreign domestic workers. Its fifteenth report has been overdue since 1998.

#### Czech Republic

The Czech Republic succeeded in 1973. Its initial/second reports were considered in 1998.<sup>57</sup> It was recommended to improve the protection against violence of Roma and persons belonging to minority groups; to pay more attention to individuals and groups promoting racism; to improve the protection rights in Article 5, and the recourse available to victims. Later in 1998 CERD requested further information on reports that in certain municipalities measures were contemplated for the physical segregation of some residential units housing Roma families and expressed its concerns in dialogue with a state delegation. A third report was considered in 2000, when CERD welcomed new measures for the protection of the Roma's human rights, but expressed concern about their *de facto* segregation in housing and education, discrimination against them in employment, the ineffective implementation of legislation against incitement to racial hatred, and the degrading way in which the police sometimes treat members of minority groups. The Committee recommended the extension of educational programmes.

#### Democratic People's Republic of Korea

The Democratic People's Republic of Korea has not ratified.

#### Democratic Republic of the Congo

The Democratic Republic of the Congo acceded in 1976. Its third/ninth and tenth reports were considered in 1997, when it was recommended to submit a comprehensive report with information on a variety of specific topics. Its implementation was reviewed in 1997, leading to decision 3(51), and twice in 1998, leading to decisions 1(53) and 4(53).<sup>58</sup> Its eleventh/twelfth reports have been overdue since 1997.

#### Denmark

Denmark ratified in 1971.<sup>59</sup> Its thirteenth report was considered in 1997. It was recommended to provide detailed information on the implementation of Article 3 (with reference to residential segregation), to fully implement Article 4, to review the protection from discrimination regarding the rights to work and housing, and to supply certain information regarding Greenland and the Faroe Islands. In the

same year, 1997, Somali refugees in Denmark complained to the UN High Commissioner for Refugees about the racially-motivated physical and verbal aggression they had experienced in Denmark and asked to be moved to another country. They also described their experiences to the Danish Board for Ethnic Equality. This stimulated changes in the Government's policy and institutions.

In considering a communication under Article 14 of the Convention, CERD found that the complainant was refused a loan by a Danish bank on the sole ground of his non-Danish nationality and that the steps taken by the police and the state prosecutor were insufficient to determine whether an act of racial discrimination had taken place. It recommended the Government take measures to counteract racial discrimination in the loan market and provide the applicant with reparation.<sup>59</sup>

Its fourteenth report was considered in March 2000, when CERD expressed concern that in allocating housing to aliens in different localities attention be paid to the principle of equity, and that a neo-Nazi organization was permitted to operate a local radio station. The Committee observed that although a state party is not obliged to issue work permits to foreign residents, those who have such permits may not suffer discrimination in their access to employment.

#### Djibouti

Djibouti has not ratified.

#### Dominica

Dominica has not ratified.

#### Dominican Republic

The Dominican Republic acceded in 1983. From its earliest years CERD has had reports from states parties contending that racial discrimination 'does not exist' in their territories. The Committee has replied that they must report 'whether or not racial discrimination exists in their respective territories'<sup>60</sup> and that

*'the provisions of Part I of the Convention aim not only at coping with existing practices of racial discrimination but also at guarding against such practices in the future.'*

This continues as a source of disagreement between the Committee and some reporting states. The concluding observations on the report of the Dominican Republic in paragraph 5 stated

*'Concern is expressed at statements contained in the periodic report that no racial prejudice exists in the Dominican Republic and that the State party never perceived any need to condemn racial discrimination within the meaning of article 2 of the Convention, as no country can claim the total absence of racial discrimination in its territory or be confident that it will not appear in the future.'*

At its 56th session CERD started consideration of a possible General Recommendation on Racial Discrimination by Individuals which stated, *inter alia*, that

*'In some countries there are no distinctive groups based upon race, colour, descent, or national or ethnic*

*origin but within these societies individuals may nevertheless treat others less favourably because of the significance they attribute to such characteristics',*

and went on to indicate how this might be described in periodic reports. When the Dominican Republic's fourth/eighth periodic reports were considered in 1999, CERD expressed concern over the Government's claim that there was no racial discrimination in the country. It recommended the Government take the necessary steps to meet the requirements of Articles 2 and 5, consider those of Article 4 in its current reform of the penal code, address the requirements of Article 6 and give effect to the provisions of Article 7.<sup>61</sup>

#### Ecuador

Ecuador acceded in 1966.<sup>62</sup> Its eleventh/twelfth reports were considered in 1993.<sup>62</sup> It was recommended to provide information on the implementation of the national development plan with respect to indigenous communities and to report more fully on the functioning of the judiciary. Its thirteenth/fifteenth reports were received in 2000.

#### Egypt

Egypt ratified in 1967. Its eleventh/twelfth reports were considered in 1994.<sup>63</sup> It was recommended to supply fuller information on the practical implementation of the Convention, with particular reference to Articles 4, 6 and 7. Its thirteenth/fifteenth reports have been overdue since 1994. It is scheduled for review.

#### El Salvador

El Salvador acceded in 1979. Its third/eighth reports were considered in 1995.<sup>64</sup> It was recommended to foster a legal culture that protects human rights, to coordinate existing institutions in this field, to collect data for monitoring progress and to seek technical assistance from the UN in reviewing its compliance with the Convention. Its ninth/tenth reports have been overdue since 1996.

#### Equatorial Guinea

Equatorial Guinea has not ratified.

#### Eritrea

Eritrea has not ratified.

#### Estonia

Estonia acceded in 1991. Its initial/fourth periodic reports were considered in March 2000 when CERD expressed concern that the official definition of minorities was restricted to Estonian citizens; it recommended that the quota system for immigration be applied without discrimination and expressed concern about a prospective reduction in minority language teaching. The Committee requested more detailed information in the next report concerning the enjoyment of rights under Articles 5(d) and (e) on the part of the Russian-speaking population.

#### Ethiopia

Ethiopia acceded in 1976. Its implementation was reviewed in 1997<sup>65</sup> because its seventh/twelfth reports have been overdue since 1989.

**Fiji**

Fiji succeeded in 1973. Its implementation was reviewed in 1996<sup>66</sup> because its sixth/thirteenth reports have been overdue since 1984.

**Finland**

Finland ratified in 1970.\* Its thirteenth/fourteenth reports were considered in 1999, when the Government was recommended to meet all the requirement of Article 4; to redouble its efforts to resolve the dispute over Sami land rights; to alleviate the situation of the Roma minority and of immigrants with respect to housing, employment and education; and to ensure that access to services or places intended for public use be not denied on the grounds of ethnic or national origin.<sup>67</sup> Its fifteenth report was considered in 2000, when CERD welcomed certain new measures but expressed concern over continuing discrimination against the Roma, that questions of Sami land rights had not yet been settled, that police and prosecutors were hesitant in responding to racially motivated crime, over differential rates of unemployment, over reports that a significant percentage of Finns declare themselves to be racist, and that the media often present immigrants and minorities – in particular the Roma – in a negative light. Noting that the only way of obtaining reparation for damage as a result of racial discrimination was through penal proceedings, CERD recommended that Finland consider introducing alternative means of remedy.

**France**

France acceded in 1971.\* Its ninth/eleventh reports were considered in 1994.<sup>68</sup> It was recommended to strengthen its laws against actions that are discriminatory in effect; to provide compensation for victims; to prohibit racist organizations; to improve training of law enforcement officials; to provide effective protection against discrimination regarding the rights to work and housing, in both the public and private sectors; and to explain whether languages other than French may be used in official settings. Its twelfth/fourteenth reports were considered in March 2000, when CERD expressed concern about the paucity of information for monitoring the implementation of the Convention; it recommended that France ensure the effective prohibition of actions which are discriminatory in effect; that it monitor all tendencies which may give rise to racial or ethnic segregation and counter their negative consequences; ensure the effective protection of the exercise, without discrimination, of the rights to work and housing, in both the public and the private sectors, and provide compensation to the victims of racial discrimination; and reinforce existing measures to ensure that access to places or services intended for use by the general public is not denied to any person on grounds of national or ethnic origin.

**Gabon**

Gabon ratified in 1980. Its second/ninth reports were considered in 1998.<sup>69</sup> It was recommended to supply fuller information on the implementation of Article 4; on the enjoyment by all groups of the rights listed in Articles 5(c) and (e); on the measures for lodging complaints of racial discrimination; and to ensure the training of law enforce-

ment officials, teachers and social workers. Its tenth report has been overdue since 1999.

**Gambia**

Gambia acceded in 1978. Its implementation was reviewed for a second time in 1996<sup>70</sup> because its second/tenth reports have been overdue since 1982.

**Georgia**

Georgia acceded in 1999. Its initial report is due for consideration in 2001.

**Germany**

Germany ratified in 1969. Its thirteenth/fourteenth reports were considered in 1997.<sup>71</sup> CERD expressed concern that

*‘while the State party has accorded the status of ethnic minority and provided special protection to four small ethnic groups traditionally resident in Germany, it has left numerically much larger ethnic groups without any specific protection, in particular members of those ethnic groups who have long-term residence status or who have become German citizens’.*

The Committee again recommended the Government enact a comprehensive anti-discrimination law, and address issues of racial discrimination in the private sector; to cover *de facto* segregation, the investigation and prosecution of xenophobic offences – in particular those committed by the police – compensation for victims, and the respective competences of federal and provincial authorities. Its fifteenth report is due for consideration in 2001.

**Ghana**

Ghana ratified in 1966. Its twelfth/fifteenth reports were considered in 2000, when CERD noted with concern the continuing tensions between ethnic groups in the Northern region, and recommended action to address their root causes. The Committee regretted the lack of information on the country’s demographic composition.

**Greece**

Greece ratified in 1970. Its eighth/eleventh reports were considered in 1992.<sup>72</sup> It was recommended to provide information on the circumstances of Armenian, Gypsy, Muslim, Pomak, and other groups; on judicial proceedings relating to Article 4; and to revise the Nationality Act in so far as it differentiated between ethnic Greeks and non-ethnic Greeks. Its twelfth/fifteenth reports are due for consideration in 2001.

**Grenada**

Grenada has signed, but not ratified.

**Guatemala**

Guatemala ratified in 1983. Its seventh report was considered in 1997.<sup>73</sup> It was recommended to strengthen efforts to change the climate of violence; to fully implement Articles 4, 5 and 6 and provide information on their implementation; to end the impunity of officials

who act illegally; and to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population. Its eighth report has been overdue since 1998.

**Guinea**

Guinea ratified in 1967. Its implementation was reviewed for a second time in 1996 because its second/eleventh reports have been overdue since 1980. These reports were later submitted and considered by CERD in 1999. The Committee asked that the next periodic report should explain how the laws relating to Articles 2 and 4 of the Convention were applied and report on measures taken to reduce inter-ethnic tension in areas of conflict.<sup>74</sup>

**Guinea-Bissau**

Guinea-Bissau has not ratified.

**Guyana**

Guyana ratified in 1977. Its implementation was reviewed for a second time in 1997 because Guyana has yet to submit any report. Its initial/eleventh reports have been overdue since 1978.

**Haiti**

Haiti ratified in 1972. Its implementation was reviewed in 1998<sup>75</sup> because its tenth/thirteenth reports have been overdue since 1992. These reports were later submitted and considered by CERD in 1999. The Committee recommended that the next periodic report should provide full information on the demographic composition of the population, on the means for lodging complaints of racial discrimination, and on foreigners’ enjoyment of the rights listed in Article 5. The Committee recommended that the Government enact legislation for the prevention of racial discrimination in the private sector, and train law enforcement officials in human rights issues.<sup>76</sup>

**Holy See**

Holy See ratified in 1969. Its thirteenth/fifteenth reports, which were considered in 2000, referred to the involvement of ecclesiastics in the genocide in Rwanda. CERD advised the state party to cooperate with the national and international judicial authorities in connection with prosecutions relating to this genocide.

**Honduras**

Honduras has not ratified.

**Hungary**

Hungary ratified in 1967.\* Its eleventh/thirteenth reports were considered in 1996.<sup>77</sup> It was recommended to take more active steps to counter racial violence, to comply fully with Article 4, to supply information on allegations of discrimination and on prosecutions, and pay increased attention to the protection of Gypsies’ human rights. Its fourteenth/fifteenth reports have been overdue since 1996.

**Iceland**

Iceland ratified in 1967.\* Its fourteenth report was considered in 1997.<sup>78</sup> It was recommended to fully implement Arti-

cle 4 and adopt further measures regarding Article 7. Its fifteenth report was due for consideration in August 2000.

**India**

India ratified in 1968. Its tenth/fourteenth reports were considered in 1996.<sup>79</sup> CERD stated that ‘the term “descent” mentioned in Article 1 of the Convention does not solely refer to race’. It affirmed ‘that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention’ and emphasized ‘its great concern that there was no inclination on the side of the State party to reconsider its position’. The Government was recommended to strengthen efforts to protect Article 5 rights, especially for members of scheduled castes and tribes, and their access to work, education, health care, and public places. CERD also called for improved measures to prevent discrimination against these groups, and for the Government to facilitate reparation for discrimination. It asked the Government to provide information on the implementation of Articles 2 and 4. The Government’s preliminary comments include the statement that

*‘the concept of “race” in India as recognised under the Constitution is distinct from “caste”. Communities which fall under the definition of Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention. Nevertheless, the Government of India remains willing to provide information to the Committee on its efforts to eradicate discrimination against Scheduled Castes and Scheduled Tribes’.*<sup>80</sup>

India’s fifteenth report has been overdue since 1998.

**Indonesia**

Indonesia ratified in 1999. Its initial report was due in 2000.

**Iran**

Iran ratified in 1968. Its ninth/twelfth reports were considered in 1993.<sup>81</sup> It was recommended to give more complete effect to all the provisions of the Convention and to supply information on measures guaranteeing the rights listed in Article 5 to individuals belonging to ethnic, linguistic and religious groups. Its thirteenth/fifteenth reports were considered in 1999 when the Government was recommended to bring its legislation into full conformity with Articles 1(1), 4(b) and 5 of the Convention and in its next report to include comprehensive information on the practical implementation of the Convention, particularly on actual complaints. The Government was asked for information on remedies, case law, judicial practice and limitations to the enjoyment of the rights contained in Article 5.<sup>82</sup> The Government then submitted comments regretting that the time allocated to the consideration of the report did not permit some questions and issues to be duly addressed.<sup>83</sup>

**Iraq**

Iraq ratified in 1970. Its eleventh/thirteenth reports were considered in 1997.<sup>84</sup> It was recommended to make its legislation comply with Article 4, to provide economic and social data on the situation of ethnic minorities, and to comply with Security Council resolutions calling for the

release of all Kuwaiti nationals and nationals of other states who might still be held in detention. Its fourteenth report was considered in 1999 when CERD appealed for a climate of peace and understanding between the different Kurdish factions and between Kurds and others living in the northern region. Allegations of ethnic discrimination in two specific areas should be examined by the Government, which should also review its legislation to make it comply fully with Article 4, and ensure that law enforcement officials receive an effective training on matters relating to the Convention.<sup>85</sup> Its fifteenth report has been overdue since 1999.

#### Ireland

Ireland has signed, but not ratified.

#### Israel

Israel ratified in 1979. In March 1994 CERD adopted its decision 1(44) in which it expressed 'its shock at the appalling massacre committed by Israeli settlers against Palestinian worshippers in the Abraham Mosque at Hebron' and requested an urgent report from the Government on measures taken to guarantee the safety and protection of the Palestinian civilians in the Occupied Territory.<sup>86</sup> At the following session the Committee found that the documents received did not supply the information which had been requested and therefore, while explaining in greater detail the information it hoped for, requested the Government to expedite its overdue periodic reports.<sup>87</sup> In March 1997, due to these reports not having been received, CERD decided to review implementation of the Convention in Israel under its prevention procedure the following August. In decision 1(51) it then expressed its opinion that the Convention should be an essential ingredient in the peace process, confirmed its view that the Israeli settlements were illegal, condemned terrorism in all its forms, and rejected certain measures imposed in the Occupied Territories in the wake of the suicide bombings as illegal collective punishment.

In 1998, in its concluding observations on Israel's seventh/ninth reports, the Committee regretted that its dialogue with the state representatives had not always been of a constructive nature.<sup>88</sup> The Government was recommended to extend its legislation against racial hatred, to supply more details of its application, to introduce comprehensive legislation in accordance with Article 5, to reinforce its efforts to reduce the gap between the living standards of the Jewish majority and the Arab minority, to ensure the right of return, and to describe the government's vision of the future of its Arab, Bedouin and Druze citizens. Its tenth report has been overdue since 1998.

#### Italy

Italy ratified in 1976.\* Its eighth/ninth reports were considered in 1995.<sup>89</sup> It was recommended to strengthen measures against racial violence and xenophobia, to supply fuller information on the implementation of Articles 2–6, and on the operation of reception centres for foreigners and refugees at frontiers. Its tenth/eleventh reports were considered in 1999, when the Government was recommended to strengthen measures for preventing discrimination against foreigners and Roma, and improve

the training of law enforcement officials. It was asked in its next report to provide demographic data and information on the implementation of Article 6.<sup>90</sup> Its twelfth report has been overdue since 1999.

#### Jamaica

Jamaica ratified in 1971. Its implementation was reviewed in 1993 because its eighth/fourteenth reports have been overdue since 1986. It is scheduled for further review.

#### Japan

Japan ratified in 1995. Its initial/second report is due for consideration in 2001.

#### Jordan

Jordan acceded in 1974. Its ninth/twelfth reports were considered in 1998.<sup>91</sup> It was recommended to clarify the scope of the Labour Act and to furnish information on the number of complaints, judgments and compensation awards resulting from racist acts. Its thirteenth report has been overdue since 1999.

#### Kazakhstan

Kazakhstan has not ratified.

#### Kenya

Kenya has not ratified.

#### Kiribati

Kiribati has not ratified.

#### Kuwait

Kuwait acceded in 1968. Its thirteenth and fourteenth periodic reports were considered in 1999, when CERD recommended the revision of the penal code to give effect to Article 4, an improvement of the measures for guaranteeing that foreign domestic workers enjoy the rights listed in the Convention without any discrimination, that the Government find a solution to the problems faced by the *bidoon* (non-citizens), an intensification of the training of law enforcement officials, and, in its next report, that the Government includes information on the implementation of Article 6.<sup>92</sup> Its fifteenth report has been overdue since 1998.

#### Kyrgyzstan

Kyrgyzstan ratified in 1997. Its initial report was considered in 1999, when the Government was recommended to ensure that its legislation conforms with Article 4(b), to supply further information on the enjoyment of the rights listed in Article 5(e) and on the measures taken to resolve the underlying problems which had resulted in clashes between ethnic Kyrgyz and Uzbek inhabitants of the Osh Oblasty.<sup>93</sup>

#### Lao People's Democratic Republic

The Lao People's Democratic Republic acceded in 1974. Its implementation was reviewed in 1996 because its sixth/thirteenth reports have been overdue since 1985.

#### Latvia

Latvia acceded in 1992. Its initial/third reports were considered in 1999, when CERD recommended that domes-

tic legislation take into account the definition of racial discrimination in Article 1(1) of the Convention and the provisions of Article 4, that it keep under review the processes and eligibility for naturalization, that it maintain the provisions for 'mother tongue' education and prioritizes the training of judges and lawyers in human rights standards.<sup>94</sup> The Government challenged the observation that the naturalization procedure may not be easy enough. It reported that the OSCE High Commissioner for National Minorities had expressed satisfaction with the current situation. It stated that 95.6 and 96 per cent respectively of the applicants for naturalization passed the language and history tests at the first attempt. It challenged suggestions of unjustified differences in the rights of citizens and non-citizens.<sup>95</sup> Its fourth report has been overdue since 1999.

#### Lebanon

Lebanon acceded in 1971. Its sixth/thirteenth reports were considered in 1998.<sup>96</sup> It was recommended to work for the gradual elimination of political confessionalism; to fully implement Article 4; to ensure equal treatment for members of ethnic groups, refugees and foreign workers; and allocate appropriate resources for teaching in the light of Article 7. Its fourteenth report has been overdue since 1998.

#### Lesotho

Lesotho acceded in 1971. Its seventh/fourteenth reports were considered in 1999, when CERD expressed concern about the

*'recent incidents of tension between Lesotho nationals and Asian and South African white factory owners which resulted in kidnapping, violence and the flight of about one hundred Asian nationals from the country for fear of persecution'*.

The Committee drew attention to its General Recommendation XI on non-citizens and the obligation to report fully upon legislation on foreigners and its implementation.

#### Liberia

Liberia acceded in 1976. Its initial/eleventh reports have been overdue since 1977. The situation is being considered under the prevention procedure.<sup>97</sup>

#### Libyan Arab Jamahiriya

Libyan Arab Jamahiriya acceded in 1968. Its eleventh/fourteenth reports were considered in 1998.<sup>98</sup> It was recommended to enact specific legislation in fulfilment of Article 4, to train law enforcement officials about the provisions of the Convention, and to enhance awareness of it in connection with Article 7. Its fifteenth report has been overdue since 1998.

#### Liechtenstein

Liechtenstein ratified in 2000.

#### Lithuania

Lithuania ratified in 1998. Its initial report has been overdue since 1999.

#### Luxembourg

Luxembourg ratified in 1978.\* Its ninth report was considered in 1997.<sup>99</sup> It was recommended to implement Article 4 fully, to increase penalties for acts of slander and/or defamation of a racist character, to provide training for criminal justice personnel, and to supply information on complaints and their outcomes. Its tenth/eleventh reports have been overdue since 1997.

#### Madagascar

Madagascar ratified in 1969. Its implementation was reviewed in 1996 because its tenth/fifteenth reports have been overdue since 1988.

#### Malawi

Malawi acceded in 1996. Its initial/second reports have been overdue since 1997.

#### Malaysia

Malaysia has not ratified.

#### Maldives

The Maldives acceded in 1984. Its third/fourth reports were considered in 1992.<sup>100</sup> It was recommended to enact specific legislation in order to give effect to its obligations as a state party. Its implementation was reviewed in 1999 because its fifth/eighth reports have been overdue since 1993.

#### Mali

Mali acceded in 1974. Its implementation was reviewed in 1994 because its seventh/thirteenth reports have been overdue since 1987. It is scheduled for further review.

#### Malta

Malta ratified in 1971.\* Its eleventh/twelfth reports were considered in 1996.<sup>101</sup> It was recommended to ensure that the Criminal Code complies with Article 4, and to provide information about action in fulfilment of Article 7. Its thirteenth/fourteenth reports were considered in March 2000, when the Committee noted that there had been claims of racial discrimination in housing, particularly in rental accommodation, and recommended that the Government consider expanding the remit of the Employment Commission so that it can cover all aspects of racial discrimination.

#### Marshall Islands

Marshall Islands have not ratified.

#### Mauritania

Mauritania ratified in 1988. Its initial/fifth reports were considered in 1999, when CERD expressed concern about

*'allegations that some groups of the population, especially the black communities, are still suffering from various forms of exclusion and discrimination. While the Committee notes with satisfaction that Mauritanian legislation has abolished slavery and servitude, it also notes that, in some parts of the country, vestiges of practices of slavery and involuntary servitude could still persist, despite the State party's efforts to eradicate such practices'*.

CERD recommended that the Government take all necessary legislative measures to ensure that Articles 2, 4 and 6 are expressed in national law, that it intensify its efforts to promote the national languages, and, in its next report, supply more demographic data and more information on the implementation of Article 5.<sup>102</sup> The Government replied that CERD's concluding observations were unbalanced since they were based mainly on the country rapporteur's reliance on allegations made in the US Department of State's report. The Government denied the existence of any 'vulnerable ethnic groups' or that practices of exclusion and discrimination had ever existed in Mauritanian society. The delegation stated that slavery had been practised in the geographical area but had not been racial and not left any stronger marks in Mauritania than elsewhere. It continued that contrary to any concept of a division between Arabs and others, the links between the various communities had been solidified by a common religion and the struggle for a common destiny. Furthermore, it said, Mauritania remained committed to the Convention.<sup>103</sup>

#### Mauritius

Mauritius acceded in 1972. Its eighth/twelfth reports were considered in 1996.<sup>104</sup> It was recommended to extend its legislative prohibition of racial discrimination to cover Article 4(b) and all matters of private law, and to supply more information on the practical application of the law. Its fourteenth report was considered in 2000 when CERD requested further information on legal provisions, on the causes of recent rioting, on the ethnic composition of the population, and on relevant activities of the Human Rights Commission and the Committee on Poverty.

#### Mexico

Mexico ratified in 1975. Its eleventh report was considered in 1997.<sup>105</sup> It was recommended to bring its legislation fully into line with Article 4; to take all appropriate measures to ensure equal and impartial treatment for all persons, particularly those from indigenous groups who are regularly the victims of intimidation, violence and serious human rights abuses; to ensure prosecution of offenders; to improve police training; and to seek just solutions to problems of land distribution and restitution. Further information was requested on various matters. Its twelfth report has been overdue since 1998.

#### Micronesia

Micronesia has not ratified.

#### Monaco

Monaco ratified in 1995. Its initial report has been overdue since 1996.

#### Mongolia

Mongolia ratified in 1969. Its implementation was reviewed in 1997 because no report had been received since 1988. Its eleventh/fifteenth reports were considered in 1999, when CERD recommended the enactment of a comprehensive law against discrimination, meeting the provisions of Articles 4–6 of the Conven-

tion, and that the Government continue to explore ways of providing specific protection to all ethnic groups living in the territory.<sup>106</sup>

#### Morocco

Morocco ratified in 1970. Its twelfth/thirteenth reports were considered in 1998.<sup>107</sup> It was recommended to bring the Penal Code into conformity with Article 4, and to supply information on legislative reforms, cases of racially-motivated offences, and the Consultative Council on Human Rights. Its fourteenth report has been overdue since 1998.

#### Mozambique

Mozambique acceded in 1983. Its implementation was reviewed in 1993 and again in 1999 because its second/eighth reports have been overdue since 1986.<sup>108</sup>

#### Myanmar<sup>109</sup>

Myanmar has not ratified.

#### Namibia

Namibia acceded in 1982. Its fourth/seventh reports were considered in 1996.<sup>110</sup> It was recommended to eliminate discriminatory laws and practices, and combat discrimination in the fields of education, employment, health care, housing, land distribution, and property. Information was requested on complaints filed and judgments on acts of racial discrimination. Its eighth report has been overdue since 1997.

#### Nauru

Nauru has not ratified.

#### Nepal

Nepal acceded in 1971. Its ninth/thirteenth reports were considered in 1998.<sup>111</sup> It was recommended to provide more information on the implementation of Article 4, on the effective enjoyment of rights under Article 5, on the processing of complaints of racial discrimination, to ensure the training of key personnel, and to fully observe the human rights of refugees and displaced persons. Its fourteenth report was considered in 2000 when CERD reiterated its earlier recommendation that the state party report on the implementation of practical and substantive measures to eradicate the practice of the caste system, including measures for the prevention of caste-motivated abuse, and the prosecution of state and private actors who are responsible for such abuses.

#### Netherlands

Netherlands ratified in 1971.<sup>\*</sup> Its tenth/twelfth reports were considered in 1998.<sup>112</sup> It was recommended to improve its official practice in pursuing complaints of discrimination, to guard against trends towards *de facto* segregation in schooling, to take further action to ensure equality of opportunity in education and employment, to improve the coordination of implementation measures and to supply more information about the new law and commission for equal treatment. When its thirteenth report was considered in August 2000, CERD expressed

concern that the unemployment rate among minority groups remained four times higher than that of the native Dutch population, that protections against labour market discrimination appeared insufficient, that a disproportionately high number of members of minorities were leaving the police forces, and that there was *de facto* segregation in the schools in some localities.

#### New Zealand

New Zealand ratified in 1972. New Zealand offers a particularly interesting case for the study of policies relating to indigenous peoples. In 1840 the increasing number of settlers from Britain prompted the signing of a treaty at Waitangi between Maori chiefs and the British Crown, acknowledging the sovereignty of Queen Victoria. By the 1850s, the settler interests were considered paramount by both the government and private companies, often contrary to the Treaty of Waitangi. From 1860–72 there was a series of land wars. Maori attempts to reopen discussion on the Treaty were rebuffed. A more radical Maori protest movement began in the 1970s and in 1975 the Treaty of Waitangi Act established a tribunal to investigate land claims and related matters. Ten years later its powers were extended to cover claims retrospective to 1840. In subsequent years many statutes have recognized the treaty as a source of law, although there are difficulties due to the English and Maori versions of the Treaty differing, particularly in suggesting that the chiefs retained sovereignty of their resources while the Crown obtained 'governance'. However, the Treaty is now widely accepted as the founding document of the nation and as the most important instrument in the continuing evolution of relations between Maori and Pakeha (non-Maoris of European descent).

New Zealand's ninth periodic report summarized five principles derived from the Treaty: (i) Kawanatanga, acknowledging the sovereignty of the Crown; (ii) Rangatiratanga, guaranteeing the Maori the control and enjoyment of resources; (iii) Equality, the legal equality of Maori and other citizens; (iv) Cooperation, requiring consultation on major issues of common concern; and (v) Redress, the responsibility of the Crown for the resolution of grievances arising from the Treaty. Its tenth/eleventh reports were considered in 1995 when CERD complimented the state party on its comprehensive report and expressed satisfaction with the arrangements for publicizing it, and the dialogue with the Committee, throughout the country. The Government was recommended to continue to give careful attention to the concerns expressed about proposals to settle Maori grievances and land claims, to take additional steps to implement Article 4(b) and to provide further information regarding its immigration policy.<sup>113</sup> Its twelfth/thirteenth reports have been overdue since 1995.

#### Nicaragua

Nicaragua acceded in 1978. Its fifth/ninth reports were considered in 1995.<sup>114</sup> It was recommended to fully implement Article 4 and to take steps in the fields of teaching, education, culture and information to implement its obligations under Article 7. Its tenth/eleventh reports have been overdue since 1997.

#### Niger

Niger ratified in 1967. Its eleventh/fourteenth reports were considered in 1998.<sup>115</sup> It was recommended to bring the Penal Code into conformity with Article 4, to furnish information on *de facto* ethnic segregation, and to provide information on the implementation of Article 5 (c) and (d) (ix), and Article 7. Its fifteenth report has been overdue since 1998.

#### Nigeria

Nigeria acceded in 1967. Its thirteenth report was considered in 1995.<sup>116</sup> It was recommended to meet the requirements of Articles 1(1) and 4; to review the effectiveness of measures to protect rights under Article 5; to provide remedies regarding Article 6; and to investigate situations of ethnic disorder and their causes, including any possibly unlawful orders, with a view to remedial measures and ensuring that no one can act with impunity. Its fourteenth/fifteenth reports have been overdue since 1996.

#### Norway

Norway ratified in 1970.<sup>\*</sup> Its twelfth/thirteenth reports were considered in 1997.<sup>117</sup> It was recommended to prohibit all racist organizations and the dissemination of racist propaganda, to maintain a record of racist incidents, to ensure access to work and housing on a non-discriminatory basis, to promote tolerance with regard to immigrants, and to clarify the status of the Convention in domestic law. Its fourteenth report was considered in 2000 when CERD regretted the lack of progress in monitoring racial discrimination by improved record-keeping, the failure to prohibit racist organizations, the lack of protection against discrimination for people seeking to rent or buy a home, and reports of racial discrimination in access to public services.

#### Oman

Oman has not ratified.

#### Pakistan

Pakistan ratified in 1966. Its tenth/fourteenth reports were considered in 1997.<sup>118</sup> It was recommended to bring its prohibition of discrimination into line with Articles 1(1) and 4(b) of the Convention; to provide information on the implementation of Article 5 (a), (b), (c), and (e); to attend to the training of law enforcement officials and others; and to furnish specific information on the federally-administered Tribal Areas and the North-West Frontier Province. Its fifteenth report has been overdue since 1998.

#### Palau

Palau has not ratified.

#### Panama

Panama ratified in 1967. Its tenth/fourteenth reports were considered in 1997.<sup>119</sup> It was recommended to comply fully with Article 4; to ensure the full enjoyment by different groups, such as indigenous people and members of the black and Asian minorities, of the rights in Article 5 (e) (iii), (iv) and (v); to enable indigenous persons to participate in elections; and to improve the training of law enforcement officials. Its fifteenth report has been overdue since 1998.

**Papua New Guinea**

Papua New Guinea acceded in 1982. Its second/ninth reports have been overdue since 1985. It was requested in 1992 to supply further information on the situation in Bougainville, and was considered under the procedure for prevention from 1994 to 1998.

**Paraguay**

Paraguay has not ratified.

**Peru**

Peru ratified in 1971.\* Its eighth/eleventh reports were considered in 1995.<sup>120</sup> It was recommended to implement effectively the provisions of the Convention, introducing monitoring mechanisms, and making special efforts within the armed forces to end any unlawful violence towards civilians – including persons belonging to indigenous communities – and to ensure that perpetrators of human rights violations are brought to justice. Its twelfth/thirteenth reports were considered in 1999 when CERD recommended that the Government bring its legislation into line with the Convention, in particular with Article 4; that it ensure that the most underprivileged are enabled to enjoy the rights listed in Article 5; that justice personnel are trained in the prevention of racial discrimination and that the Government enables a genuine dialogue with NGOs about combating racial discrimination.<sup>121</sup> Its fourteenth report has been overdue since 1998.

**Philippines**

Philippines ratified in 1967. Its eleventh/fourteenth reports were considered in 1997. CERD expressed concern about the lack of clarification of whether Presidential Decree 1350–A of 1978 was in full conformity with the provisions of Article 4 of the Convention, and over the lack of information on the implementation of Article 5. The Government was recommended to review its legislation and other action in implementation of obligations under Articles 4 and 5; to strengthen the court system and the independence of the judiciary in order to guarantee the rights in Article 6; to disseminate information about remedies, and to supply information about the protection of the rights of indigenous communities and Muslim Filipinos, as an integral part of the implementation of the Convention.<sup>122</sup> The Government replied that in view of Presidential Decree 1350–A of 1978, it believed that the Committee had been wrong to state that there was no specific legislation prohibiting racial discrimination.<sup>123</sup> Its fifteenth report has been overdue since 1998.

**Poland**

Poland ratified in 1969.\* Its thirteenth/fourteenth reports were considered in 1997, when CERD expressed concern over serious violence directed against Jews and Roma. It recommended that the Government improve its measures to protect the rights listed in Article 5 and increase its efforts to give children belonging to minorities fuller access to education in their own languages.<sup>124</sup> Its fifteenth report has been overdue since 1998.

**Portugal**

Portugal acceded in 1982.\* Its third/fourth reports were considered in 1991.<sup>125</sup> It was recommended to supply information on progress in the criminal prosecution of incitement and discrimination, and in dealing with ‘skin-head’ violence. Its fifth/seventh reports were considered in 1999, when CERD recommended further steps to harmonize domestic legislation with the Convention; an intensification of efforts to prevent violence against Blacks, Roma, immigrants and foreigners; and asked the Government to provide information on a variety of issues in its next report.<sup>126</sup> Its eighth/ninth reports have been received.

**Qatar**

Qatar acceded in 1976. Its eighth report was considered in 1993.<sup>127</sup> It was recommended to bring legislation into line with the Convention, to explain the criteria by which a *Sharia’h* court would determine an appropriate punishment for racial discrimination, and consider the relation between *Sharia’h* and civil proceedings for compensation. Its ninth/twelfth reports have been overdue since 1993. It is scheduled for review.

**Republic of Korea**

The Republic of Korea acceded in 1978.\* Its eighth report was considered in 1996.<sup>128</sup> It was recommended to introduce legislation in implementation of Article 4, to supply information on the effectiveness of the protection of rights under Article 5, to ensure that persons of foreign origin are not subject to discrimination due to their ethnicity, and to improve the situation of migrant workers. Its ninth/tenth reports were considered in 1999, when the Government was recommended to ensure that Articles 2 and 4 were fully reflected in domestic law, and, in its next report, to explain the practical implementation of Article 5. Further measures should be taken to ensure that persons of foreign or partly foreign origin are not subject to discrimination based on ethnic origin.<sup>129</sup>

**Republic of Moldova**

The Republic of Moldova acceded in 1993. Its initial/third reports have been overdue since 1994. It is scheduled for review.

**Romania**

Romania acceded in 1970. Its ninth/eleventh reports were considered in 1995.<sup>130</sup> It was recommended to clarify the implementation of Article 4 and the Law on Minorities, to collect data on resident foreigners and ensure that they are not subjected to harassment, to provide information on the protection of Roma and Sinti rights and to improve the training of law enforcement officials. Its twelfth/fifteenth reports were considered in 1999, when CERD recommended the Government revise its legislation to reflect the provisions of Articles 1(d) and 4(b); furthermore, it recommended measures to prevent racist practices in the mass media; affirmative action for the Roma; consideration of means to prevent segregation in effect, in line with CERD’s General Recommendation XIX; and the continuation of training programmes in human rights.<sup>131</sup>

**Russian Federation**

The Russian Federation ratified in 1969.\* Its fourteenth report was considered in 1998.<sup>132</sup> It was recommended to outlaw organizations that promote racist objectives; to protect against discrimination the rights to nationality, freedom of movement and residence; to develop judicial training; to protect human rights in Chechnya, Ingushetia and North Ossetia; and to provide fuller information on various issues concerning implementation of the Convention. Its fifteenth report has been overdue since 1998.

**Rwanda**

Rwanda acceded in 1975. In March 1996 CERD issued a declaration on the conflict in Rwanda<sup>133</sup> which underlined the importance of the UN Assistance Mission for Rwanda and recommended the convening of a constitutional conference. In March 1998 it received a delegation from the Government and discussed the prevailing circumstances. In 1999 CERD expressed its concerns in decisions 4(52) and 5(53); in the latter CERD called for a new round of discussions to establish an international human rights monitoring presence in the country. Rwanda’s eighth/twelfth reports were considered in March 2000, when CERD expressed concern over the prevalence of impunity. The Committee took note of the Government’s attempts to reduce the numbers detained on charges of participation in the genocide, but expressed concern over reports of forced relocations and of attempts to intimidate judicial authorities seeking to investigate and address human rights violations committed since 1994 against ethnic Hutus.

**Saint Kitts and Nevis**

Saint Kitts and Nevis has not ratified.

**Saint Lucia**

Saint Lucia succeeded in 1990. Its implementation was reviewed in 1998 because its initial/fifth reports have been overdue since 1991.

**Saint Vincent and the Grenadines**

Saint Vincent and the Grenadines acceded in 1981. Its implementation was reviewed in 1992 because its second/ninth reports have been overdue since 1984.

**Samoa**

Samoa has not ratified.

**San Marino**

San Marino has not ratified.

**Sao Tome and Principe**

Sao Tome and Principe has not ratified.

**Saudi Arabia**

Saudi Arabia ratified in 1997. Its initial report has been overdue since 1998.

**Senegal**

Senegal ratified in 1972.\* Its ninth/tenth reports were considered in 1994.<sup>134</sup> It was recommended to provide information on the implementation of Articles 5–7, and to

intensify efforts to find a solution to the problems in the Casamance region. Its eleventh/fourteenth reports have been overdue since 1993. Its review was postponed in 2000 at the request of the Government.

**Seychelles**

The Seychelles acceded in 1978. Its implementation was reviewed in 1997 because its sixth/eleventh reports have been overdue since 1989.

**Sierra Leone**

Sierra Leone ratified in 1972. Its fourth/sixteenth reports have been overdue since 1976. It is scheduled for a third review.

**Singapore**

Singapore has not ratified.

**Slovakia**

Slovakia succeeded in 1993.\* Its initial/third reports were considered in 2000 when CERD expressed concern that two municipalities had issued decrees banning Roma, and about the length of time taken to cancel these; that ‘skin-head’ violence against Roma persisted; that Roma are disadvantaged in education, in health, and are the hardest hit by unemployment. The Committee recommended a review of the legislation regarding residence permits.

**Slovenia**

Slovenia succeeded in 1992. Its initial/fourth reports were considered in 2000 when CERD noted variations in the levels of protection provided to different minority groups and expressed concern about the lack of information on action against incitement to racial hatred. The state party was recommended to improve the training of public officials on issues of racial discrimination.

**Solomon Islands**

Solomon Islands succeeded in 1982. Its implementation was reviewed in 1996 because its second/ninth reports have been overdue since 1985.

**Somalia**

Somalia ratified in 1975. Its implementation was reviewed in 1995 and 1996 because its fifth/twelfth reports have been overdue since 1984.

**South Africa**

South Africa ratified in 1999.\*

**Spain**

Spain acceded in 1968.\* Its thirteenth report was considered in 1996.<sup>135</sup> It was recommended to adopt more effective measures to punish racist actions and to fully implement Article 4; to ensure the enjoyment of the rights under Article 5, particularly by the Gypsy community; and to supply information on the results of these measures. Its fourteenth/fifteenth reports were considered in March 2000, when CERD noted with concern that remarkably few court cases had been identified as incidents of racial

discrimination despite the increase in attacks on foreigners. It expressed concern about the violence against Moroccan nationals in the El Ejido region of Almeria, the high drop-out rates and absences of Roma children in primary schools, and reports of racist attitudes on the part of the police and Civil Guard officers.

#### Sri Lanka

Sri Lanka acceded in 1982. Its third/sixth reports were considered in 1995.<sup>136</sup> It was recommended to sensitize members of the law enforcement agencies, security and armed forces about human rights, and to explain the coordination of the activities of the various human rights organizations. Its seventh/ninth reports have been overdue since 1995. It is scheduled for review.

#### Sudan

Sudan acceded in 1977. Further information was requested in connection with the eighth report which was considered in 1994.<sup>137</sup> It was recommended to take further steps in the implementation of Article 4, to curtail police powers so that judges decide on the legality of detainment, to see that any excesses by the security forces are punished, to build confidence between the Arab and non-Arab communities and ensure that there are no legal barriers contributing to their separation. When in 1999 the situation was considered under the procedure for prevention, the Committee recalled its earlier concerns, mentioning in decision 5(54) ‘a vast programme of ethnic cleansing’ directed at minorities in the Nuba Mountains.<sup>138</sup> Its ninth/eleventh reports are due for consideration in 2001.

#### Suriname

Suriname succeeded in 1984. Its implementation was reviewed for a second time in 1997 because no report had been submitted. Its initial/seventh reports have been overdue since 1985.

#### Swaziland

Swaziland acceded in 1969. Its fourth/fourteenth reports were considered in 1997.<sup>139</sup> It was recommended that its next report contain information on a variety of issues identified by the Committee. Its fifteenth report has been overdue since 1998.

#### Sweden

Sweden ratified in 1971.<sup>\*</sup> Its twelfth report was considered in 1997.<sup>140</sup> It was recommended, while reviewing its legislation, to fully implement the Convention, in particular Article 4; to furnish information on complaints of discrimination and their outcomes; and to reinforce the policy of promoting equal opportunity for immigrants, refugees and ethnic minorities. Its thirteenth report was considered in 2000 when CERD expressed concern about the popularity of music which promotes racial hatred; about discrimination against the Roma; the delay in introducing legislation to recognize traditional Sami land rights; *de facto* segregation in housing; and discrimination in recruitment to employment. The Committee recommended the prohibition of racist organizations and more effective measures against racial discrimination in access to public places or services.

#### Switzerland

Switzerland acceded in 1994. Its initial report was considered in 1998.<sup>141</sup> It was recommended to enact a comprehensive anti-discrimination law, to review certain components of its immigration policy, to monitor tensions which may give rise to segregation, to fully implement Article 4 and to improve training for law enforcement officials. Its second report has been overdue since 1997.

#### Syrian Arab Republic

The Syrian Arab Republic acceded in 1969. Its ninth/eleventh reports were considered in 1991.<sup>142</sup> The Committee welcomed the assurance that certain gaps in the information supplied would be remedied in the next report. Its twelfth/fifteenth reports were considered in 1999, when CERD recommended the monitoring of segregation in effect; action to ensure that all persons belonging to ethnic and national groups can enjoy the rights listed in Article 5; training programmes for law enforcement officials; and that it furnish information on the number of complaints, judgments and compensation awards arising from acts of racial discrimination, so as to permit an evaluation of the implementation of Articles 4 and 6.<sup>143</sup>

#### Tajikistan

Tajikistan acceded in 1995. Its initial/second reports have been overdue since 1996.

#### Thailand

Thailand has not ratified.

#### The former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia succeeded in 1994.<sup>\*</sup> Its initial/third reports were considered in 1997.<sup>144</sup> It was recommended to provide more information on the various minorities’ participation in public life; and of their enjoyment, on a non-discriminatory basis, of human rights, including their participation in the educational system; on the effectiveness of legal remedies, and the numbers of complaints and their outcomes. Its fourth report has been overdue since 1998.

#### Togo

Togo acceded in 1972. Its implementation was reviewed in 1996 because its sixth/thirteenth reports have been overdue since 1983.

#### Tonga

Tonga acceded in 1972. Its eleventh/thirteenth reports were considered in 1998.<sup>145</sup> It was recommended to supply detailed information about the implementation of the Convention, particularly Articles 4 and 5, and to incorporate in the school curricula subjects intended to promote ‘tolerance’ among different ethnic groups. Its fourteenth report was considered in March 2000, when CERD reiterated that states parties were obliged to legislate if they were to fulfil their obligations under Article 4. Noting that the right to marriage between a Tongan and a non-Tongan was dependent upon the consent of the Principal Immigration Officer, the Committee queried whether this was compatible with Article 5(d).

#### Trinidad and Tobago

Trinidad and Tobago ratified in 1973. Its seventh/tenth reports were considered in 1995.<sup>146</sup> It was recommended to implement Article 4(b), to publicize available remedies for racial discrimination, and to train police officials in the observance of human rights. Its eleventh/thirteenth reports have been overdue since 1994. It is scheduled for review.

#### Tunisia

Tunisia ratified in 1967. Its ninth/twelfth reports were considered in 1994.<sup>147</sup> It was recommended to introduce specific legislation to implement Article 4, and to supply information about the protection of the rights in the Convention and the remedies available to victims. Its thirteenth/fifteenth reports have been overdue since 1994. It is scheduled for review.

#### Turkey

Turkey signed in 1972. It is therefore bound by Article 18 of the Vienna Convention on the Law of Treaties (1969) to refrain from acts which would defeat the object and purpose of the ICERD. However, Turkey has not followed up its signature with ratification of the Convention. The Turkish government may feel unwilling to justify its anti-discriminatory policies before CERD, but at the same time it wishes to protect those of its nationals who work in other European countries. That may help explain its statements about CERD in connection with its expressions of support for the work of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance appointed by the Commission on Human Rights. Thus, in connection with implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination, the Secretary-General in 1997 reported to the Economic and Social Council that he had received a statement about contemporary racism declaring that

*‘However important the Convention may be, the Government of Turkey is of the opinion that it is no longer capable of responding to the exigencies created by today’s racism. The historical and political context in which the Committee on the Elimination of Racial Discrimination was drawn up gave prominence to official policies of racial discrimination and segregation pursued by certain States which had emerged from the process of decolonization in southern Africa. Therefore the provisions of the Committee do not coincide with the concerns observed in the fight against more contemporary forms of racism, particularly in Europe today. More especially, where manifestations of racism against foreigners are concerned, the Committee is completely lacking in authority’.*<sup>148</sup>

This statement confuses the Convention and the Committee; it takes no account of CERD’s continuing examination of the effectiveness of the measures adopted by other states to protect foreign workers from racial discrimination, or of Committee decisions such as the General Recommendation XIX about the relevance of Article 3 of the Convention to the avoidance of forms of segregation in effect. The Government of Turkey has contributed financially to the programme of action and to the conven-

ing of the World Conference. It declares that contemporary forms of racism must be combated ‘by all available means’<sup>149</sup> yet it stands aside from what it describes as ‘the only major instrument that seeks to create a methodology and an institution to fight collectively against racism’. This is a strange paradox.

#### Turkmenistan

Turkmenistan acceded in 1994. Its initial/second reports have been overdue since 1995.

#### Tuvalu

Tuvalu has not ratified.

#### Uganda

Uganda acceded in 1980. Its implementation was reviewed in 1991 because its second/ninth reports have been overdue since 1983. It is scheduled for review.

#### Ukraine

Ukraine ratified in 1969.<sup>\*</sup> Its thirteenth report was considered in 1998.<sup>150</sup> It was recommended to monitor tensions which may give rise to segregation; to comply fully with Article 4; to improve the training of law enforcement officials; to provide more details about complaints of racial discrimination; and restore the rights of repatriated members of minorities, including the Crimean Tatars. Its fifteenth report has been overdue since 1998.

#### United Arab Emirates

The United Arab Emirates acceded in 1974. Its eleventh report was considered in 1995.<sup>151</sup> It was recommended to discharge all obligations in fulfilment of Article 4; to prevent acts of ill-treatment against foreign workers, especially foreign women domestic workers, and ensure that they are not subjected to racial discrimination. Its twelfth/thirteenth reports have been overdue since 1997.

#### United Kingdom of Great Britain and Northern Ireland

The United Kingdom of Great Britain and Northern Ireland ratified in 1969. Its fourteenth report was considered in 1997.<sup>152</sup> It was recommended to comply with all the provisions of Article 4; to strengthen efforts for the full enjoyment of the rights listed in Article 5, with close attention being given to the treatment of people detained in police stations; to supply a review of the operation of the Race Relations Act and of prosecutions for offences of a racist character; and to monitor the implementation of the Asylum and Immigration Act. Its fifteenth report was considered in 2000 when CERD welcomed the use of ethnic monitoring in employment and the criminal justice system, while expressing concern that the legislation was not comprehensive in scope, that racist attacks and harassment were continuing, that some deaths in police and prison custody had not led to prosecutions, that the dispersal of asylum-seekers might impinge upon their rights, that there is racial harassment and bullying in schools, and that insufficient information had been supplied about the settled Roma and access to schools for Travellers.

**United Republic of Tanzania**

The United Republic of Tanzania acceded in 1972. Its implementation was reviewed in 1995 because its eighth/thirteenth reports have been overdue since 1987.

**United States of America**

The United States of America (USA)'s notification of ratification in 1994 was accompanied by a statement that the Senate's advice and consent was subject, *inter alia*, to the following reservations:

*'(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent to which they are protected by the Constitution and laws of the United States.*

*(2) That the Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in Article 1 to fields of "public life" reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and to spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of Article 2, subparagraphs (1)(c) and (d) of Article 2, Article 3 and Article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.'*

Article 20 of the Convention provides that a reservation incompatible with the object and purpose of the Convention shall not be permitted; it shall be considered incompatible if at least two-thirds of the states parties object to it. Two-thirds of the states parties have not objected to the USA's reservations, so that might have been an end to the matter were it not contended that international opinion has changed since 1965. The Vienna Declaration in 1993 stressed the importance of limiting the number and extent of reservations to human rights treaties. The Human Rights Committee, which monitors implementation of the ICCPR, has issued its General Comment 24 on reservations<sup>153</sup> in which it maintains that human rights treaties are not a web of inter-state exchanges of mutual obligations. The principle of inter-state reciprocity has no place in human rights, therefore the absence of protest by states cannot imply that a reservation is compatible with a Convention. It therefore falls to the treaty monitoring body to determine whether reservations are acceptable. General

Comment 24 elaborates on the criteria to be employed. The ninth meeting of those chairing the six human rights treaty bodies<sup>154</sup> expressed firm support for the approach reflected in General Comment 24. The chairpersons said that a monitoring body to perform its function of determining the scope of the provisions of a relevant convention cannot be performed effectively if it is precluded from exercising a similar function in relation to reservations. When CERD considers the USA's initial/third reports, which have been overdue since 1995, it will have to formulate its view on the compatibility of the USA's reservations with the object and purpose of the Convention. (NB. The USA submitted its initial report as MRG went to press.)

**Uruguay**

Uruguay ratified in 1968.\* Its eighth/eleventh reports were considered in 1991.<sup>155</sup> The twelfth/fifteenth reports were considered in 1999, when CERD recommended that legislation be introduced to see that Article 4 is fully reflected in domestic law, that steps be taken to see that members of the Afro-Uruguayan and indigenous communities are able to enjoy the rights listed in Article 5, and that the next report provide more information on the circumstances of ethnic groups and on measures to implement Article 7.<sup>156</sup>

**Uzbekistan**

Uzbekistan acceded in 1995. Its initial/second reports were considered in 2000 when CERD welcomed the ratification of the core human rights instruments and the creation of national institutions for the protection of human rights. The Committee expressed concern over reported incidents of inter-ethnic conflict and of racial discrimination against refugees; it recommended further measures for the protection of economic, social and cultural rights; the monitoring of the protections required under Articles 4–6 of the Convention, and the strengthening of educational programmes.

**Vanuatu**

Vanuatu has not ratified.

**Venezuela**

Venezuela ratified in 1967. Its tenth/thirteenth reports were considered in 1996.<sup>157</sup> It was recommended to bring legislation into full compliance with Article 4; to ensure the effective implementation of Article 5(e); to strengthen protections for the indigenous population in respect of bilingual education, health care services, violence associated with conflicts over land, and to provide more information on agrarian reform; to provide separate prisons for indigenous persons; and to strengthen the functioning of human rights organs. Its fourteenth/fifteenth reports have been overdue since 1996.

**Viet Nam**

Viet Nam acceded in 1982. Its second/fifth reports were considered in 1993.<sup>158</sup> It was recommended to furnish further information on development plans relating to ethnic minorities, particularly those living in the mountainous regions; on implementation of Article 4; on the protection

of rights to freedom of movement, opinion and religion; and on the handling of complaints of racial discrimination. Its sixth/ninth reports have been overdue since 1993. It is scheduled for review.

**Yemen**

Yemen acceded in 1972. Its ninth/tenth reports were considered in 1992.<sup>159</sup> It was recommended to fully implement Articles 2, 4, 5(e), 6 and 7 of the Convention and to supply information on the status of the Convention in domestic law. Its eleventh/thirteenth reports have been overdue since 1993. It is scheduled for review.

**Yugoslavia**

Yugoslavia ratified in 1967. CERD considered the ninth/tenth periodic reports of the Federal Government in 1990. Members were told that relations between Croats and Serbs had deteriorated because the government of the Croatian republic had rejected demands for a referendum on the creation of an autonomous Serbian region within the republic. Tension in Kosovo<sup>160</sup> was attributed to 'the aspiration of a part of the Albanian national minority to make the province a republic'.<sup>161</sup> Bosnia & Herzegovina, Croatia and Slovenia became independent in 1992, followed by the Former Yugoslav Republic of Macedonia in 1993. In August 1993 CERD held a closed meeting to reflect on whether it might have done more to explore and draw attention to the signs of conflict, then four meetings in which it considered updating information supplied by the Government of Yugoslavia. It concluded that 'by not opposing extremism and ultranationalism on ethnic grounds, State authorities and political leaders [had] incurred serious responsibility'.<sup>162</sup> In the ensuing years CERD employed its procedures for the prevention of racial discrimination to keep the situation under continuous review. When the eleventh/fourteenth periodic reports were considered in 1998 the Committee expressed concern at persisting violations in Kosovo, such as the failure to promptly bring an arrested person before a judge, ill treatment of people in detention, the impunity enjoyed by those responsible, and the disproportionate use of force. It added

*'Although the State party has argued that its recent actions in Kosovo and Metohija were carried out exclusively with a view to combating terrorism, the Committee notes with serious concern that a great number of the victims of recent events are civilians, including women and children, whose deaths cannot be justified by any means'.*

The Government was recommended in its next periodic report to furnish information on a variety of matters relating to implementation of the Convention. CERD expressed its opinion that a solution for Kosovo and Metohija should include a status of the highest level of autonomy; it urged that incidents following recent military operations there be independently investigated and that the state party cooperate with the International Criminal Tribunal for the Former Yugoslavia.<sup>163</sup> The head of the Yugoslav delegation responded in a letter<sup>164</sup> stating that the Committee's conclusions appeared to be

*'influenced by reports of some mass media and unconfirmed or hyperbolic allegations about otherwise quite legitimate actions by the police in suppressing terrorist activities of the Albanian separatists in Kosovo'.*

In its 1999 decision 1(54), referring to information submitted by the state party about events in Kosovo, CERD regretted the state's unwillingness to acknowledge that some of its present and past actions might have contributed to the escalation of the conflict or to responsibility for the disproportionate use of force by law enforcement agencies and the military.<sup>165</sup> In the following year, in its decision 1(55), CERD reiterated that

*'(a) Any attempt to change or to uphold a changed demographic composition of an area against the will of the original inhabitants, by whatever means, is a violation of international human rights and humanitarian law; (b) persons shall be given the opportunity to return safely to the places they inhabited before the beginning of the conflict and their safety shall be guaranteed, as well as their effective participation in the conduct of public life; (c) all those who commit violations of international humanitarian law or war crimes shall be held individually responsible for such acts.'*

Yugoslavia's fifteenth report has been overdue since 1998.

**Zambia**

Zambia ratified in 1972. Its seventh/eleventh reports were considered in 1993.<sup>166</sup> It was recommended to incorporate the provisions of the Convention in domestic law, particularly those of Articles 4(b) and (c); and to ensure that law enforcement officials receive training in the protection of human dignity and the upholding of rights irrespective of race, colour, descent, or national or ethnic origin. Its twelfth/fourteenth reports have been overdue since 1995.

**Zimbabwe**

Zimbabwe acceded in 1991. Its initial report was considered in 1996.<sup>167</sup> It was recommended to legislate in order to fulfil obligations under Article 4, to reduce the harmful consequences of the racial segregation created by the parallel systems of public and private schools, to provide more information on programmes of land distribution, and to provide the numbers of complaints and information on court cases concerning racial discrimination. Its second/fourth reports were considered in March 2000, when CERD expressed concern that the new Prevention of Discrimination Act does not adequately address all aspects of Article 4, that the Government had encountered difficulties when trying to reduce segregation in the school system, and regretted that there had been little progress with respect to land redistribution.

# Monitoring ICERD

When two states make a treaty it will usually be in their interest to monitor each other's compliance with its provisions. When there are over 150 parties to the treaty they cannot all monitor each other, so a UN human rights treaty obliges the parties to submit periodic reports and establishes a committee to examine them on behalf of everyone concerned. Only states can nominate candidates for election to CERD. Consideration has to be given to equitable geographical distribution, which was once agreed as four members who are nationals of African states, four of Asian states, three of Eastern European states, three of Latin American states, and four of states in the West European and Other group. The different groups do not always agree on candidates so the election result does not always match this norm.

## CERD membership – August 2000

**African group:** three members, two men, one woman. Two are diplomats or former diplomats with legal qualifications.

**Asian group:** four members, three men, one woman. Two are former diplomats with legal qualifications and one is a lawyer.

**East European group:** two members, both male. One is a diplomat, the other is a former diplomat with legal qualifications.

**Latin American group:** three members, all men. Two are former diplomats and one has legal qualifications.

**West European and Other group:** six members, five men, one woman. Five have legal qualifications.

It is clear from the operation of the Committee that it is the states parties which call the tune. Because they have seen racial discrimination as a matter for their foreign policies (e.g. in relation to *apartheid*) they have often nominated diplomats for election. As a result CERD may show more understanding for the states parties' views than some other treaty bodies. A treaty body is not a court. It cannot make authoritative interpretations of the treaty. When a state delegation attends it meets with the Committee on equal terms.

The reluctance of states to monitor one another can create problems for treaty bodies. An illustration has been provided in the entry about the USA and its reservation on ICERD. A reservation incompatible with the object and purpose of a treaty is impermissible and, in the

case of ICERD, becomes void if two-thirds of the states parties object to it. Yet very few states choose to object. Should the treaty monitoring body draw attention to any reservation which it finds to be incompatible with the object and purpose of the treaty? The Human Rights Committee has argued that it should, but this is currently a matter of hot dispute.

The synopsis has shown the limits to CERD's ability to monitor states parties' fulfilment of their obligations. Many reports are overdue, and the Committee's review procedure can be disregarded with impunity. Certain variations may have been hinted at, for some states seem to take CERD's recommendations very seriously, while others are defensive. The synopsis has shown how the examination of reports can reveal major issues (as in the case of Australia). It has shown how sensitive states can be to the use of information from other sources (as with Mauritania). But it has not brought out the weaknesses in the Committee itself (because members do not always ask the right questions or handle issues as well as they might).<sup>168</sup> Nor does the examination of reports make allowance for conflicts within states. CERD has to avoid being identified with any party in the dispute over indigenous rights in Australia. It can take no account of conflicts which can arise within federal states, between the central government and other governmental organs exercising devolved powers, or, as in the case of the USA, between the executive and the legislature.<sup>169</sup> It is the central government which is the party to the treaty and must discharge its obligations.

In some, particularly Western, states there are NGOs which try to monitor their governments' fulfilment of treaty obligations, and some CERD members have proven very receptive to information, written and oral, from their representatives. Western NGOs need to remember, however, that among state delegations there is often great resentment over what are seen as double standards within the UN (e.g. the enforcement of Security Council resolutions relating to Iraq but not those relating to Israel). Diplomats representing African and Asian states in the South frequently resent what they perceive as lectures on human rights standards delivered by Europeans and North Americans; they have little difficulty pointing to weaknesses in the records of the countries from which criticism originates. This influences the climate within which NGOs have to operate.

# The World Conference and beyond

If everything goes according to plan, the climax of the World Conference will be the adoption of a declaration and programme of action. The High Commissioner for Human Rights, as Secretary-General of the Conference, has been invited to draw up a draft declaration and programme of action for consideration by the Conference. This is to be based on the regional preparatory meetings and seminars, and on the suggestions of UN member states, specialized agencies, treaty bodies and concerned NGOs. Draft texts will be circulated to delegations. The delegations of Senegal and Nigeria, acting on behalf of the African group of states, will probably play a leading role in seeking the agreement of delegations. Preparation for the regional conferences should therefore include consideration of proposals concerning the declaration and the programme of action.

If the declaration follows the pattern of previous conferences it will be divided into a preamble and an operative part. The preamble may consist of three sections: introduction, developments, and principles. The introductory paragraphs will explain the convening of the Conference as a conclusion to the Third Decade to Combat Racism and Racial Discrimination which started in 1993.

The paragraphs on developments may summarize the main changes in the world situation since the previous conference, i.e., globalization, how new insecurities have underlain an increase in ethnic conflicts, the great improvements in communication and their relevance, labour migration, the contemporary significance of the mass media for the mandate of the Conference, etc. They may express relief at the ending of *apartheid* and note relevant developments at the UN, like the Migrant Workers' Convention, the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, the Draft Universal Declaration on Indigenous Rights, the agreement to establish an International Criminal Court, etc.

The paragraphs on principles may note that racism and racial discrimination are violations of human rights, the importance of more effective preventive measures when systematic and massive violations are threatened, the goal of universal ratification of ICERD, the importance of effective legal protections and of remedies for victims of racial discrimination, the comparable importance of measures in respect of education and training, and the contribution that can be made by the mass media. It may note that now that *de jure* segregation has been abrogated the new challenge is that of *de facto* segregation; it may endorse the principle of multi-ethnic societies, and reiterate that the right to self-determination is not a legal justifi-

fication for the action of groups which seek to secede from the states of which they form part.<sup>170</sup>

Some of the statements in the preamble and in the early part of the operative section will be rhetorical. Rhetoric, which is the art of persuasion, plays an important part in declarations, but if it is to fulfil its function of inspiring action it must be fresh. The repetition of tired phrases which have been used on many previous occasions can encourage only cynicism. Some of the phraseology which came into use in the 1960s reflects the understanding of its time. For example, ICERD's preamble affirms the 'necessity of speedily eliminating racial discrimination throughout the world'. It identifies two causes of racial discrimination: colonialism and the dissemination of doctrines of racial superiority. Today it is apparent that racial discrimination will not be speedily eliminated and that its causes are more varied and complex.

## Suggestions for consideration

There are old truths which need reiteration, whenever possible in fresh language directed to a new generation. One such truth which should be repeated in the first operative paragraph is that all human beings are born equal in dignity and rights, but this paragraph should not go on (as has been the case on previous occasions) to state that any doctrine of racial superiority is therefore scientifically false, because a moral proposition cannot be the source of a proposition about scientific validity, while a political assembly is not qualified to pronounce on scientific validity. It would be more appropriate to continue by referring to the way that the processes of globalization bring the peoples of the world ever closer, but in relations which draw attention to social and economic inequalities and sometimes exacerbate them; it is this which increases the likelihood that some will be treated less favourably because of their race, colour, descent or ethnic or national origin.

All over the world migrant workers are either regarded with hostility as competitors for scarce employment or are restricted to the low-paid jobs that others do not want. Even when their descendants are nationals of the countries in which they live any difference in appearance, language or religion may make them targets for hostility when times are bad. This, and the scorn displayed towards indigenous peoples, are major issues to be borne in mind when drafting the paragraphs about practical action which will follow. These might include:

- All states should be parties to ICERD; they should make incitement to racial hatred an offence punishable by law and give very serious consideration to allowing the right of individual petition under Article 14.
- Policies to combat racist ideology need to identify and address the reasons why certain kinds of people are attracted to such doctrines and movements.
- States should introduce effective measures to protect all residents against racial discrimination in the fields of public life, in both the public and private sectors, and to provide remedies for victims.
- Educational programmes should address all modes of thought which encourage any belief in the natural superiority or inferiority of particular peoples. Such beliefs are to be found in all regions of the world.
- UNESCO has a significant part to play, but educational measures should not be limited to schools. Training programmes for people in particular occupations, such as law enforcement officials, can be very important.<sup>171</sup> Within such programmes, it can be helpful to publicize examples of good practice and to draw up codes of practice.
- That states which have not yet established national commissions on human rights should take note of what such bodies have accomplished. Being able to speak with greater authority and expertise than private individuals, they can help make governmental policies more effective.<sup>172</sup>

Operative paragraphs about specific matters might include recommendations regarding: migrant workers, members of minorities, indigenous peoples,<sup>173</sup> the equal protection of women and men,<sup>174</sup> the protection of children, the rights of refugees, *de facto* segregation,<sup>175</sup> the work of the Special Rapporteur of the Commission on Human Rights on contemporary forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

If the hopes for the World Conference are realized, the declaration will be followed by a programme of action setting out objectives for various UN agencies and for member states. Those who draft such a programme will derive little guidance from the *Revised Programme of Action for the Third Decade to Combat Racism and Racial Discrimination, 1993–2003*.<sup>176</sup> It includes an Introduction which describes the ultimate goals of the Decade, but fails to specify proximate and practical goals. Much of the programme remains unimplemented, not only for lack of resources.

Those who drafted this programme, like the ICERD itself, paid little attention to the importance of the mass media in shaping and disseminating images of other peoples. Television, radio, the press and now the internet have a great potential for both increasing and reducing racial discrimination. Measures for the control of racist propaganda on the internet are not easily harmonized with the right to freedom of expression. Sporting events,

both international and national, can exercise great influence on national and ethnic relations but this influence has not hitherto featured in the programmes of the Decades. The World Conference might decide which bodies within the UN could best take up the issues with international organizations dealing with the mass media and with sport. Though these fields are not squarely within the scope of ICERD, the Conference could invite states, in their periodic reports under the Convention, to describe actions that they have taken to prevent racial discrimination in connection with them.

The first of the regional preparatory conferences will be the European one. The knowledge that its outcome will be studied by those participating in subsequent regional conferences, might stimulate European governments to demonstrate the possibilities of a regional programme of action. Some of what could be its component parts are already in place. The institutions for monitoring implementation of the Framework Convention for the Protection of National Minorities have started work.<sup>177</sup> Because certain states in Central and Eastern Europe wished to join institutions in the West, like the OSCE, the Council of Europe and the EU, they have had to meet the human rights standards of those institutions and attend to the advice of the High Commissioner for National Minorities and the views expressed in the European Parliament. The European Monitoring Centre on Racism and Xenophobia, recently set up in Vienna, may inform implementation of EU policy.

Member states of the Council of Europe, in addition to considering its contribution to the World Conference, might also consider recommending an extension to the mandate of the European Commission against Racism and Intolerance (ECRI). This is developing a central role in regional action, but it could be authorized to do more. For example, in the UK, the Home Secretary has set targets for his office, the Prison, the Police, the Fire and the Probation Services, to recruit, maintain and secure the career progression of staff of ethnic minority origin. Tables have been prepared of the proportions of staff in different career categories relative to the proportions of ethnic minority people in the local population. Managers have been set targets for minority representation by the years 2002, 2004, 2007 and 2009. When the work of units is subjected to periodic inspection one of the criteria of evaluation will be their degree of success in meeting these targets.<sup>178</sup> Most European governments are not yet in a position to formulate equal opportunity employment policies with this precision, and do not yet have the apparatus to monitor implementation of their policies this closely, but ECRI could be authorized to explore with them the steps they are taking to check on the effectiveness of their non-discrimination policies and to build this into a regional programme.

The *Programme of Action for the Third Decade* includes a section entitled 'Basic Research and Studies' which reads as if it were drafted without any consultation with researchers in this field. It raises the possibility of research into such matters as 'Integration or preservation of cultural identity in a multi-racial or multi-ethnic society'. This is an area in which much research is currently in progress and research workers would have much to contribute to an overall international programme of action.

Those who draft it might also recommend states in all regions to make full use of social research in devising their national policies.

Any programme of action adopted by the Conference will surely indicate ways in which UN bodies like the International Labour Organization (ILO) can investigate the incidence of racial discrimination within their spheres of operation. One topic of special concern in Europe but relevant to most parts of the world is that of residential segregation. In many cities there is a physical separation between where the rich and the poor people live. This separation excludes the poorer people from many facilities and is a factor for national disunity. Migrants to the cities settle in the poorest localities so that differences of ethnic origin are compounded with differences of social class. The Habitat Agenda adopted at the UN Conference on Human Settlements in 1996 highlighted this issue but failed to underline the way in which patterns of inequality, once established, can then be a major cause of the transmission of inequality from one generation to the next. Habitat, as a UN agency, should be encouraged to give these problems greater priority in connection with the avoidance of racial discrimination.

# Outlook

Some international conventions attract few ratifications. In 1965, those who argued for a convention against racial discrimination suspected that many states would consider the General Assembly's 1963 Declaration Against All Forms of Racial Discrimination a sufficient response and would be unwilling to accept the quite onerous obligations entailed by ratification of a convention. Why then did they accept the proposal? Why has the number of states parties steadily risen, from 41 in 1970, 107 in 1980, 129 in 1990 to 156 in 2000?

Knowledge of the harm that has sprung from doctrines of racial superiority and fear of a revival of Nazism was the first spur. Then newly independent African states saw a convention as a way of putting pressure on racist regimes in Southern Africa. States which had no colonies supported the movement for decolonization partly in order to build alliances and advance their own political interests. Racial discrimination was represented as a characteristic of colonialism. Allegations that some other state practised it could serve political purposes. Thus in 1971 the Government of Panama used its report under ICERD as a vehicle to complain about racial discrimination practised by the USA in the Panama Canal Zone. This inspired Cyprus to employ it in criticism of the Turkish occupation of part of that island and Arab states to complain that Israel's occupation of Arab lands was a form of racial discrimination.

In 1971 the General Assembly added the expression 'racism' to its vocabulary without ever explaining what the word designated that was not already covered by 'racial discrimination'. This vagueness suited the interests of states wishing to use the language of General Assembly resolutions for foreign policy purposes. It opened the door to the unilluminating debate about whether Zionism was a form of racism. Political considerations overrode the argument for stressing the common elements in discrimination on grounds of race, sex, language, religion, political opinion and social origin in Article 26 of ICCPR. That argument demanded precision in the use of words in order to develop the law of human rights. The very political phase of the Convention's life may now be over (however, states may have had their own reasons for supporting the proposal for a Third World Conference. Racial discrimination remains a weak point in the self-image which the most powerful states present and other states may welcome an opportunity to voice grievances about the way these states treat their nationals, not least in their controls upon immigration).

At the centre of the present phase of the Committee's life is the reporting process, but the preparation of reports every two years has become a burden for even the biggest of states. CERD has greatly improved its working methods since the Cold War era but further reform is necessary. The time pressures on CERD are greater than on the other treaty bodies because of the Convention's shorter

reporting cycle. A two-year cycle is appropriate because racial and ethnic conflicts can escalate rapidly, but if a backlog of unconsidered reports is to be avoided, members need to agree priorities, to distribute their time accordingly, and to refine the issues for dialogue with reporting states.<sup>179</sup> States parties do not yet have the confidence in the jurisprudence of CERD (or of the other UN human rights treaty bodies) that, for example, European governments have in the European Court of Human Rights. The reasons are obvious. The court in Strasbourg has to decide highly specific legal issues after hearing detailed arguments. The issues before CERD can often be approached from widely different perspectives and may have to be decided hastily. The next election of members, in 2002, should therefore be seen as an opportunity to strengthen the expertise in international law within the membership. If CERD's function is to develop it has to proceed with care in order to build up its authority.

In future a more significant part may be played by the submission of communications under Article 14 from individuals or groups of individuals who believe they are victims of failures on the part of states to fulfil their obligations. When all states parties have made the necessary declaration, and the availability of the remedy is well-known, this function of CERD could become a very important aspect of its work which would complement the procedure for the examination of periodic reports. Its membership would then have to be restricted to highly qualified lawyers. However, states currently do not want any closer UN involvement in what they regard as delicate internal matters.

Fifty years ago the concept of discrimination was unknown to international law and to the laws of states. No one could then have foretold the migrations of peoples, the expansion in world trade, and the explosion in new means of communication that were going to accelerate the meetings between peoples and generate new forms of racial discrimination. European governments were affected early. During the latter part of the twentieth century they had to recognize that racial discrimination was not simply something practised elsewhere. They had to revise their ideas about the nature of racial discrimination in order to understand that some of their own actions might, unintentionally, have a discriminatory effect. Organizations and individuals in their countries could be responsible for racial discrimination and the victims were entitled to protection. Governments in some other regions of the world have not yet come under the same pressure to act. Only when human rights defenders can identify certain abuses as violations of rights protected by a treaty and when governments, for reasons of internal electoral advantage or external reputation, feel obliged to rectify them, will it be possible on a global scale to realize the vision which underlies ICERD.

# Recommendations

MRG recommends that:

1. The World Conference against Racism should call for universal ratification of the Convention and should encourage the High Commissioner for Human Rights to explore ways of helping the least populous states to fulfil their reporting obligations.
2. The World Conference against Racism should encourage states parties to make declarations under Article 14 of ICERD recognizing the competence of CERD to receive communications from individuals and groups of individuals who believe their rights under the Convention have not been protected. This would reflect a commitment to the vision and objectives of the World Conference.
3. States participating in the World Conference that are party to ICERD could take this opportunity to arrange meetings in order to consider ways and find means to improve the fulfilment of reporting obligations under the Convention. In addition to addressing the need to be more diligent in the execution of this obligation, MRG urges states parties to give effect to CERD's Concluding Observations by taking appropriate action.
4. The World Conference should consider the contribution to anti-discrimination action that could be made by institutions whose influence was not sufficiently considered when ICERD was drafted: for example, the mass media and organized sport, and any similar activities, in order to associate them with its programme. The World Conference should encourage states parties to comment on any related developments when submitting periodic reports under the Convention.
5. MRG calls upon states to give attention to the links between economic exclusion and racial discrimination in the implementation of their obligations under ICERD, and when developing and promoting the action-oriented aims of the World Conference.
6. The World Conference should urge all states parties to ICERD to give effect to the Convention within their domestic legislation and to ensure its full and effective application. In pursuit of this objective the World Conference should initiate programmes with relevant UN bodies and NGOs aimed at providing greater visibility and awareness of ICERD and CERD at the local level.
7. The World Conference should encourage UN agencies, including the ILO and UNESCO, within their

given fields of operation, to institute regional research programmes into the incidence and causes of racial discrimination, and the best means of combating it.

8. The World Conference should press appropriate UN bodies, such as Habitat, to give high priority to the need to analyse trends towards *de facto* racial segregation in the residential areas of cities and to identify measures that will prevent the transmission of racial inequality from one generation to the next.
9. The World Conference, in preparing its programme of action against racial discrimination, should encourage the compilation of separate regional programmes of action drawn up by the states of each region. The development of these programmes must be accompanied by a pledge on behalf of individual states and regional inter-governmental organizations to commit adequate resources and establish a monitoring process.
10. The World Conference should recommend that the General Assembly convene a special session in 2002 to consider reports on the implementation of regional programmes for countering racial discrimination and of the action undertaken by UN agencies.

- 1 MRG supports self-identification in the determination of indigenous status.
- 2 See *Human Rights Monitor 37*, Geneva, 1997, pp. 9–10.
- 3 See UN doc. A/51/18, para. 352 regarding India.
- 4 Hannum, H., 'The protection of indigenous rights in the inter-American system', in D.J. Harris and S. Livingstone (eds), *The Inter-American System of Human Rights*, Oxford, Clarendon Press, 1998, pp. 323–43.
- 5 The General Guidelines concerning the form and contents of reports to be submitted by states parties to ICERD explain in paragraph 8 that the ethnic characteristics of the country are of particular importance. 'Many States consider that, when conducting a census, they should not draw attention to factors like race lest this reinforce divisions they wish to overcome. If progress in eliminating discrimination based on race, colour, descent, national and ethnic origin is to be monitored, some indication is needed of the number of persons who could be treated less favourably on the basis of these characteristics. States which do not collect information on these characteristics in their censuses are therefore requested to provide information on mother tongues as indicative of ethnic differences, together with any information about race, colour, descent, national and ethnic origins derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied.'
- The Guidelines in paragraph 9 state that 'The inclusion of information on the situation of women is important for the Committee to consider whether racial discrimination has an impact upon women different from that upon men. Reporting officers are asked to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention. It is also difficult to protect against racial discrimination the rights of persons, both women and men, who belong to any vulnerable groups, such as indigenous peoples, migrants, and those in the lowest socio-economic categories. Members of such groups often experience complex forms of disadvantage which persist over generations and in which racial discrimination is mixed with other causes of social inequality.'
- 6 See doc. A/46/18, ch. 7.
- 7 See doc. A/51/18, paras 587–627.
- 8 See doc. A/40/18, paras 349–70.
- 9 See doc. A/52/18, paras 52–6.
- 10 *Ibid.*, paras 380–405.
- 11 See doc. A/54/18, paras 291–3.
- 12 See doc. A/52/18, paras 520–61.
- 13 See doc. A/53/18, paras 215–34.
- 14 See doc. A/49/18, paras 512–51.
- 15 See doc. A/53/19, paras 5–7.
- 16 See doc. A/47/18, paras 179–99.
- 17 See doc. A/54/18, paras 25–45.
- 18 *Ibid.*, paras 482–503.
- 19 See doc. A/52/18, paras 57–9.
- 20 See doc. A/47/18, paras 115–27.
- 21 See doc. A/49/18, paras 284–91.
- 22 See doc. A/52/18, paras 100–25.
- 23 *Ibid.*, paras 210–34.
- 24 See doc. A/51/18, paras 265–89.
- 25 See doc. A/48/18, paras 453–73.
- 26 See doc. A/50/18, ch. II.
- 27 See doc. A/51/18.
- 28 See doc. A/52/18.
- 29 See doc. A/53/18.
- 30 See CERD/C/247.
- 31 See doc. A/51/18, paras 449–51.
- 32 *Ibid.*, paras 290–314.
- 33 See doc. A/52/18, paras 275–95.
- 34 *Ibid.*, paras 619–37.
- 35 See doc. A/47/18, ch. VII.
- 36 See doc. A/49/18, annexe III.
- 37 Banton, M., *International Action Against Racial Discrimination*, Oxford, Clarendon Press, 1996, pp. 253–67.
- 38 See doc. A/52/18, paras 563–93.
- 39 See doc. A/53/18, paras 281–305.
- 40 *Ibid.*, paras 255–80.
- 41 See doc. A/49/18, paras 298–331.
- 42 See doc. A/51/18, paras 437–9.
- 43 See doc. A/48/18, paras 147–9.
- 44 See doc. A/54/18, paras 362–4.
- 45 See doc. A/50/18, paras 637–68.
- 46 See doc. A/47/18, paras 200–23.
- 47 See doc. A/54/18, paras 365–83.
- 48 See doc. A/51/18, paras 391–426.
- 49 *Ibid.*, paras 38–59.
- 50 See doc. A/54/18, paras 454–81.
- 51 *Ibid.*, paras 108–15.
- 52 See doc. A/47/18, paras 93–114.
- 53 See doc. A/51/18, paras 262–4.
- 54 See doc. A/53/18, paras 306–29.
- 55 *Ibid.*, paras 347–60.
- 56 *Ibid.*, paras 330–46.
- 57 *Ibid.*, paras 111–38.
- 58 *Ibid.*, ch. II.
- 59 See doc. A/54/18, annexe III.
- 60 General Recommendation II, 1972.
- 61 See doc. A/54/18, paras 504–22.
- 62 See doc. A/48/18, paras 128–46.
- 63 See doc. A/49/18, paras 362–87.
- 64 See doc. A/50/18, paras 460–98.
- 65 See doc. A/52/18, paras 406–8.
- 66 See doc. A/51/18, paras 427–30.
- 67 See doc. A/54/18, paras 67–87.
- 68 See doc. A/49/18, paras 116–59.
- 69 See doc. A/53/18, paras 367–87.
- 70 See doc. A/51/18, paras 259–61.
- 71 See doc. A/52/18, paras 152–75.
- 72 See doc. A/47/18, paras 128–41.
- 73 See doc. A/52/18, paras 63–99.
- 74 See doc. A/54/18, paras 523–44.
- 75 See doc. A/53/18, paras 361–6.
- 76 See doc. A/54/18, paras 253–71.
- 77 See doc. A/51/18, paras 106–31.
- 78 See doc. A/52/18, paras 239–54.
- 79 See doc. A/51/18, paras 339–73.
- 80 *Ibid.*, annexe IX.
- 81 See doc. A/48/18, paras 257–77.

- 82 See doc. A/54/18, paras 294–313.
- 83 *Ibid.*, annexe IX.
- 84 See doc. A/52/18, paras 255–74.
- 85 See doc. A/54/18, paras 337–61.
- 86 See doc. A/49/18, annexe III.
- 87 *Ibid.*, paras 73–91.
- 88 See doc. A/53/18, paras 68–93.
- 89 See doc. A/50/18, paras 77–109.
- 90 See doc. A/54/18, paras 116–36.
- 91 See doc. A/53/18, paras 388–99.
- 92 See doc. A/54/18, paras 208–29.
- 93 *Ibid.*, paras 439–53.
- 94 *Ibid.*, paras 384–414.
- 95 *Ibid.*, annexe X.
- 96 See doc. A/53/18, paras 161–89.
- 97 Decision 3(49), see doc. A/51/18, ch. II.
- 98 See doc. A/53/18, paras 235–54.
- 99 See doc. A/52/18, paras 126–45.
- 100 See doc. A/47/18, paras 69–74.
- 101 See doc. A/51/18, paras 374–90.
- 102 See doc. A/54/18, paras 321–36.
- 103 *Ibid.*, annexe XI.
- 104 See doc. A/51/18, paras 539–62.
- 105 See doc. A/52/18, paras 296–327.
- 106 See doc. A/54/18, paras 230–52.
- 107 See doc. A/53/18, paras 400–20.
- 108 See doc. A/54/18, paras 436–8.
- 109 MRG usually refers to Burma, however, we have used 'Myanmar' here because this is the name used by the UN.
- 110 See doc. A/51/18, paras 485–508.
- 111 See doc. A/53/18, paras 421–44.
- 112 *Ibid.*, paras 94–110.
- 113 See doc. A/50/18, paras 399–459.
- 114 *Ibid.*, paras 499–541.
- 115 See doc. A/53/18, paras 445–64.
- 116 See doc. A/50/18, paras 598–636.
- 117 See doc. A/52/18, paras 594–618.
- 118 *Ibid.*, paras 176–209.
- 119 *Ibid.*, paras 328–57.
- 120 See doc. A/50/18, paras 179–204.
- 121 See doc. A/54/18, paras 137–66.
- 122 See doc. A/52/18, paras 409–38.
- 123 *Ibid.*, annexe VIII.
- 124 *Ibid.*, paras 462–83.
- 125 See doc. A/46/18, paras 110–26.
- 126 See doc. A/54/18, paras 88–107.
- 127 See doc. A/48/18, paras 86–99.
- 128 See doc. A/51/18, paras 315–38.
- 129 See doc. A/54/18, paras 46–66.
- 130 See doc. A/50/18, paras 247–78.
- 131 See doc. A/54/18, paras 272–90.
- 132 See doc. A/53/18, paras 24–51.
- 133 See doc. A/51/18, ch. II.
- 134 See doc. A/49/18, paras 332–61.
- 135 See doc. A/51/18, paras 197–218.
- 136 See doc. A/50/18, paras 110–42.
- 137 See doc. A/49/18, paras 444–78.
- 138 See doc. A/54/18, ch. II.
- 139 See doc. A/52/18, paras 358–69.
- 140 *Ibid.*, paras 490–511.
- 141 See doc. A/53/18, paras 52–67.
- 142 See doc. A/46/18, paras 389–402.
- 143 See doc. A/54/18, paras 167–84.
- 144 See doc. A/52/18, paras 512–29.
- 145 See doc. A/53/18, paras 465–80.
- 146 See doc. A/50/18, paras 31–48.
- 147 See doc. A/49/18, paras 160–80.
- 148 E/1997/87, para. 47.
- 149 E/CN.4/1999/15, para. 63.
- 150 See doc. A/53/18, paras 139–57.
- 151 See doc. A/50/18, paras 542–72.
- 152 See doc. A/52/18, paras 21–51.
- 153 CCPR/C/21/rev.1/add.6.
- 154 See doc. A/53/125.
- 155 See doc. A/46/18, paras 127–43.
- 156 See doc. A/54/18, paras 415–35.
- 157 See doc. A/51/18, paras 460–84.
- 158 See doc. A/48/18, paras 330–58.
- 159 See doc. A/47/18, paras 160–78.
- 160 MRG usually refers to Kosovo/a, however we have used 'Kosovo' here because this is the name used by the UN.
- 161 See doc. A/45/18, paras 192–205.
- 162 *Ibid.*, paras 530–47.
- 163 See doc. A/53/18, paras 190–214.
- 164 *Ibid.*, annexe VII.
- 165 See doc. A/54/18, ch. II.
- 166 See doc. A/48/18, paras 236–56.
- 167 See doc. A/51/18, paras 81–105.
- 168 For a summary account of CERD's difficulties in formulating its observations on a recent report from Iraq, see Banton, M., 'Decision-taking in the Committee on the Elimination of Racial Discrimination', in P. Alston and J. Crawford, *The Future of UN Human Rights Treaty Monitoring*, Cambridge, CUP, 2000, pp. 62–3.
- 169 The chair of the US Senate's Committee on Foreign Relations, Senator Jesse Helms, took exception to the Human Rights Committee's General Comment on reservations to human rights treaties and tried to prevent the executive from reporting further until the Committee had revoked it and accepted the USA's views about the validity of reservations. See Grant, S., 'The United States and the international human rights treaty system: For export only?' in Alston and Crawford, *op. cit.*, p. 323.
- 170 For CERD's endorsement of the principle of multi-ethnic societies, see doc. A/48/18, paras 468–9. Noting that groups and minorities sometimes refer to the right to self-determination as a basis for an alleged right to secession, CERD adopted its General Recommendation XXI which recalls the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the UN Charter.
- 171 CERD's General Recommendation XIII calls upon states parties to review and improve the training of law enforcement officials.
- 172 CERD's General Recommendation XVII recommends states parties to establish national institutions, such as human rights commissions, to facilitate their implementation of the Convention.
- 173 CERD's General Recommendation XXIII reaffirms that the provisions of the Convention apply to indige-

nous peoples and calls on states parties, *inter alia*, to ensure that they have equal rights in respect of effective participation in public life.

- 174 CERD's General Recommendation XXIV on Gender-Related Dimensions of Racial Discrimination requests reporting states to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention.
- 175 CERD's General Recommendation XIX observes that while in some countries segregation may have been the result of governmental policies, a condition of partial segregation may arise as an unintended result of the actions of private persons. 'In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that the inhabitants can be stigmatised and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.'
- 176 Annexe to General Assembly resolution 49/146 of 23 December 1994.
- 177 See Barnes, C. and Olsthoorn, M., *The Framework Convention for the Protection of National Minorities: A Guide for Non-Governmental Organizations*, London, MRG, 1999.
- 178 Home Office, *Race Equality – The Home Secretary's Employment Targets*, London, 28 July 1999.
- 179 Recently CERD's summer session has been extended to three weeks, but any further extension would lead to a change in the character of the Committee, as some of its members could not be available for a longer period. For a general discussion of what is described as the crisis in the treaty body system, see Alston and Crawford, *op. cit.*
- NB Paragraph references to the 2000 report A/55/18 were not available at the time of publication.

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- The more recent documents relating to ICERD and the work of CERD can be located on the website of the High Commissioner for Human Rights – [www.unhchr.ch](http://www.unhchr.ch)

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