

# INDIGENOUS PEOPLES

## IV. CONCLUDING OBSERVATIONS

### CERD

- Australia, CERD, A/46/18 (1991) 58 at para. 245.

The situation of the Aboriginal and Torres Strait Islander people requires further affirmative action. Improvements are particularly needed in the area of education, employment, housing, land rights and health services.

- Ecuador, CERD, A/48/18 (1993) 36 at para. 145.

Concern is expressed that economic exploitation of the Amazon region should be undertaken only after full consideration of the interests of the indigenous communities in the preservation of their identity.

- Sweden, CERD, A/49/18 (1994) 30 at para. 200.

Serious concern is expressed about recent legislative measures having a detrimental effect on Sami rights with respect to their traditional fishing, hunting and reindeer-raising activities and about the pace of progress towards the equality of members of ethnic minorities and their integration.

- Canada, CERD, A/49/18 (1994) 47 at paras. 325, 326 and 329.

#### *Paragraph 325*

The slow speed at which negotiations have been undertaken to define aboriginal rights to land and resources in many parts of the country is of concern. The limited scope of the Employment Equity Act of 1986, which covers only 10 per cent of workers in the State party and does not fully guarantee equal employment opportunities for aboriginal peoples or their representation in high-level employment is also of concern.

#### *Paragraph 326*

It is noted with concern that certain social indicators concerning especially, alcoholism, drug abuse, suicide and the incarceration rate, show that aboriginal people may be more affected by social problems than other social groups in the country.

#### *Paragraph 329*

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Measures should be undertaken to ban racist organizations, to improve the employment and health situation of aboriginal people, to speed up negotiations on aboriginal land claims, to enforce remedies existing under the law, and to protect immigrants, especially those of African and Asian origin, against discrimination.

- Australia, CERD, A/49/18 (1994) 78 at paras. 540, 543-545, 547 and 548.

### *Paragraph 540*

The attention paid by the judiciary to the implementation of the Convention is particularly appreciated. The decisions of the High Court of Australia in *Mabo v. Queensland* constitute a very significant development. It is noted with satisfaction that the decision rejected the proposition that Australia was *terra nullius* at the time of colonial settlement and recognized the survival of native title to land where this title had not been validly extinguished.

### *Paragraph 543*

The situation of the Aboriginal and Torres Islander people remains a subject of concern, despite efforts aimed at remedying the injustices inherited from the past. Concern is expressed that Aboriginals continue to die in custody at a rate comparable to that which led to the appointment of the Royal Commission.

### *Paragraph 544*

Legal proceedings for the recognition of native title and for responding to land claims have been protracted. The necessity for claimants to prove that they have maintained their connection with the land and that their title has not been extinguished can be an exigent condition. That persons who identify as Aboriginal but whose ancestors are predominantly non-Aboriginal may not qualify as Aboriginal with respect to land rights may become a further matter of concern. Only a very small percentage of the Aboriginal population will benefit under the Native Title Act.

### *Paragraph 545*

Aboriginals continue to suffer disadvantage in such areas as education, employment, housing and health services. Their participation in the conduct of public affairs is disappointing. It is, once again, noted with concern that, according to various social indicators, Aboriginals are more deeply affected by social problems such as alcoholism, drug abuse, delinquency and incarceration than any other social group in the country.

### *Paragraph 547*

Australia should pursue an energetic policy of recognizing Aboriginal rights and furnishing adequate compensation for the discrimination and injustice of the past. The Commonwealth Government should undertake appropriate measures to ensure a harmonious application of the provisions of the Convention at the federal and state or territory levels. The recommendations adopted by various bodies entrusted with the protection of Aboriginal rights should be fully implemented by all those

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concerned, particularly state and territory governments.

### *Paragraph 548*

Measures to remedy any discrimination suffered by members of non-English-speaking minorities and Aboriginals in the fields of the administration of justice, education, employment, housing and health services should be strengthened and the participation of all in the conduct of political affairs should be promoted. Law enforcement officials should receive more effective training to ensure that, in the performance of their duties, they respect as well as protect human dignity and maintain and uphold the human rights of all. Similarly, the State party should continue to strengthen its education and training programme.

- Peru, CERD, A/50/18 (1995) 41 at paras. 199 and 201-203.

### *Paragraph 199*

Concern is expressed that the socio-economic conditions of certain ethnic groups, particularly of indigenous communities living in rural areas and of indigenous, as well as Peruvians of non-European origin in urban society, remain disadvantageous compared to those of the white population in the urban areas. It is further noted with concern that some effects of the economic and social policy of the Government threaten the enjoyment of the social and economic rights of persons belonging to indigenous communities.

### *Paragraph 201*

As regards implementation of article 6, concern is expressed at allegations of excessive use of violence committed in the past towards the rural population (most of whom are of indigenous descent) by the army and various armed groups as a reaction to terrorism. The role of military courts in this respect needs further explanation and assessment. Concern is expressed over whether impunity is not given too much weight in respect of the prosecution of human rights violations by military and paramilitary groups. Concern is also expressed regarding the adequacy of publicity given to the right of individuals claiming to be victims of racial discrimination to appeal to the Committee under article 14 of the Convention.

### *Paragraph 202*

Effective monitoring mechanisms should be introduced to assess progress achieved in the protection of the rights of indigenous communities.

### *Paragraph 203*

Special efforts should be made within the armed forces to terminate any unlawful violence towards civilians, including persons belonging to indigenous communities, and to secure that perpetrators of human rights violations are brought to justice.

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- Guatemala, CERD, A/50/18 (1995) 58 at paras. 304, 305, 307, 309-311 and 313.

### *Paragraph 304*

The statement that no form of racial discrimination is practised against persons, groups of persons or institutions is not accepted. *De facto* racial discrimination persists in Guatemala against the indigenous communities representing the majority of the Guatemalan people. It is noted with concern that no legal protection is offered in practice against such discrimination.

### *Paragraph 305*

Profound concern is expressed regarding widespread discrimination affecting the indigenous communities and excluding them from the enjoyment of their civil, political, economic, social and cultural rights. It is particularly regretted that members of the indigenous communities, contrary to article 5 (c) of the Convention, are not in any position to participate equally in the conduct of public affairs at all levels.

### *Paragraph 307*

Concern is expressed at the numerous excesses by elements of the military and the civilian self-defense patrols (PACs) against indigenous peoples, including summary executions and other cruel, inhuman or degrading treatment, threats and forcible recruitment into the armed forces.

### *Paragraph 309*

The lack of awareness of members of indigenous communities about recourse procedures, the shortage of practical facilities for them to use their own language in court procedures and the weaknesses of the judicial system are regretted, as is the resulting relative impunity for perpetrators of such violations.

### *Paragraph 310*

Concern is expressed that conditions of extreme poverty and social exclusion are endured, in particular by the indigenous Maya Quiche population. Such conditions adversely affect the enjoyment of the rights guaranteed under article 5 of the Convention such as the right to own property, the right to work, the right to form and join trade unions, and the right to housing, public health and education.

### *Paragraph 311*

Particular concern is expressed that the rate of illiteracy is especially high among indigenous communities.

### *Paragraph 313*

Every effort should be taken to ensure that the members of indigenous communities can effectively enjoy their economic, social, cultural, civil and political rights in accordance with article 5 of the Convention.

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- Mexico, CERD, A/50/18 (1995) 66 at paras. 380, 382, 386, 388, 389, 393 and 395.

### *Paragraph 380*

The situation of extreme poverty and marginalization of the majority of the indigenous population in the State party is a matter of concern. Such a situation has complex causes, some of them stemming from the impact of the encounter of civilizations, as well as the consequences of the recent internationalization of the economy for social policies in Mexico. It has been and still is the responsibility of the Government to improve the economic and social situation of the indigenous population of the State party.

### *Paragraph 382*

Particular concern is expressed that the State party does not seem to perceive that pervasive discrimination being suffered by the 56 indigenous groups living in Mexico falls under the definition given to racial discrimination in article 1 of the Convention. The description of their plight merely as an unequal participation in social and economic development is inadequate.

### *Paragraph 386*

Concern continues regarding the serious discrimination indigenous peoples have to face in respect of the enjoyment of their civil, political, economic, social and cultural rights. Particular concern is expressed at the inequitable treatment of indigenous people in the process of land distribution, including restitution, and at the violent and illegal resolution of many land disputes. The amendment to article 27 of the Constitution and the lack of support given to the bilingual-bicultural education system are also matters of concern.

### *Paragraph 388*

The State party should pursue its efforts to analyse the root causes of the socio-economic marginalization faced by the indigenous population and continue its attempts to harmonize indigenous customs with the positive legal order.

### *Paragraph 389*

Attention is drawn to the necessity of adopting indicators to evaluate the policies and programmes aimed at the protection and promotion of the indigenous peoples' rights.

### *Paragraph 393*

It is strongly recommended that the State party find a fair and equitable solution for the distribution, including restitution, of lands. As far as land disputes are concerned, all necessary steps should be taken to ensure that the rule of law is applied without improper interference, particularly by powerful landowners.

### *Paragraph 395*

The State party should ensure that violations of indigenous peoples' human rights are investigated, and that the victims receive compensation.

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- El Salvador, CERD, A/50/18 (1995) 83 at paras. 490 and 491.

### *Paragraph 490*

The assertion of the State party that, because there are no physical distinctions between the indigenous population and the population as a whole, and because the number of indigenous persons is insignificant, no racial discrimination exists in the State, is not acceptable.

### *Paragraph 491*

It is regretted that no references to the rights of indigenous persons are made in the Constitution, including their right to participate in decisions affecting their lands, culture, traditions and the allocation of natural resources.

- Nicaragua, CERD, A/50/18 (1995) 89 at paras. 533, 535 and 536.

### *Paragraph 533*

The realization of economic and social rights is a matter of continuous concern, particularly as the so-called structural adjustment measures and the privatization of State property have had negative consequences on the enjoyment of the economic, social and cultural rights of the Nicaraguan people, especially on its most vulnerable sectors and the indigenous communities.

### *Paragraph 535*

Concern is expressed at the ratio of communal land to private land in the autonomous regions, with particular regard to the mining rights and at inequalities in the sharing of the benefits of the exploitation of natural resources in the autonomous territories between the regional and the central authorities.

### *Paragraph 536*

Further concern is expressed at the lack of adequate consultation with the regional authorities in the decision-making process by the central authorities, thus leading to insufficient participation of the indigenous groups in decisions affecting their land and the allocation of the natural resources of their land, their cultures and their traditions.

- Colombia, CERD, A/51/18 (1996) 15 at paras. 45, 48, 51 and 55.

### *Paragraph 45*

Concern is expressed at the lack of effective implementation of policies aiming at guaranteeing to indigenous and Afro-Colombian communities control of the quality of their environment and the exploitation of their territories.

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### *Paragraph 48*

Structural discriminatory attitudes towards the indigenous and Afro-Colombian communities, appearing at various levels of the political, economic and social life of the country, are noted. Those discriminatory attitudes relate to, among other things, the right to life and security of persons, political participation, educational and occupational opportunities, access to basic public services, the right to health, the right to adequate housing, the application of the law, and land ownership and use.

### *Paragraph 51*

Efficient mechanisms should be created immediately by the Government to coordinate and evaluate the various policies of protection of the rights of indigenous and Afro-Colombian communities, including their institutional aspects. Such mechanisms should promote full enjoyment of all human rights by the members of these communities and guarantee their life and security, as well as real and adequate participation by representatives of these communities in public life.

### *Paragraph 55*

A stronger commitment to defending the basic rights of indigenous and Afro-Colombian communities, as far as the use and ownership of their land is concerned, is recommended.

- Denmark, CERD, A/51/18 (1996) 17 at para. 72.

Concern is expressed over the delay in compensating members of the indigenous population in Greenland who were relocated to permit the establishment of an air force base in the early 1950s.

- Russian Federation, CERD, A/51/18 (1996) 25 at paras. 138, 139, 147 and 148.

### *Paragraph 138*

Several minority and indigenous groups have no access to education in their own language. When they deal with administrative and judicial matters, they are frequently precluded from using their own language.

### *Paragraph 139*

The absence of effective measures for the protection and preservation of the traditional ways of life and the right to land use of the people of the Northern Territories is of concern, although the need for improvement of their economic, social and cultural situation has been recognized.

### *Paragraph 147*

The State Party should take all appropriate measures to ensure the promotion of minority and indigenous people's languages. Education programmes should be provided in the appropriate languages.

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### *Paragraph 148*

Special attention should be paid to the minority and indigenous groups living in the Northern Territories by taking appropriate and effective measures to promote and protect their rights, especially the rights to use and exploit the land where they are living and to live in their own cultural environment.

- Finland, CERD, A/51/18 (1996) 29 at paras. 177, 178 and 189.

### *Paragraph 177*

As regards the land rights of the Sami people, concern is expressed over the mining and other economic interests of national and international companies which may be threatening the way of life of Samis.

### *Paragraph 178*

Concern is also expressed over the Sami people's participation in the Sami parliament in their mother tongue.

### *Paragraph 189*

The Government should draft and implement a clear policy on Sami land rights in order to better protect and preserve the way of life of this minority group.

- Bolivia, CERD, A/51/18 (1996) 41 at paras. 268, 269 and 284.

### *Paragraph 268*

Note is taken, with concern, of the conditions of extreme poverty principally affecting members of the indigenous population. Poverty is evident in the lack of access to some basic services, such as provision of clean water, medical care, education and electricity.

### *Paragraph 269*

The high rate of illiteracy and the fact that the national language, Spanish, is spoken by only 44 per cent of the population, and the large number of languages and dialects spoken in the country are noted with concern, as they make communication difficult between the various ethnic groups and, in many cases, place indigenous persons at a disadvantage in the defence of their human rights.

### *Paragraph 284*

Immediate attention should be paid to the development of rural areas where many indigenous communities are situated. The Government should consider the expansion of the economic and social infrastructure to enable those communities to be provided with access to clean water, energy, medical care, education, and other essential services. In this regard, special attention is called to the situation

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of the Guaraní people. The Government is encouraged to seek international assistance towards this end.

- Brazil, CERD, A/51/18 (1996) 45 at paras. 297, 299, 301-303 and 307-309.

### *Paragraph 297*

The indigenous, black and mestizo communities suffer from deep structural inequalities and the measures taken by the Government to effectively combat those disparities are still insufficient.

### *Paragraph 299*

Discriminatory attitudes towards the indigenous, black and mestizo populations persist within Brazilian society and are apparent at a number of levels in the political, economic and social life of the country. These discriminatory attitudes concern, *inter alia*, the right to life and security of person, political participation, access to education and employment, access to basic public services, the right to health, the right to decent housing, land ownership, land use and law enforcement.

### *Paragraph 301*

The maintenance of article 6 of the 1916 Civil Code of Brazil, containing a discriminatory restriction on the exercise of civil rights by the indigenous populations which is contrary to the 1988 Constitution of Brazil, is of concern, although it was explained that this provision has become obsolete.

### *Paragraph 302*

The fact that illiterate citizens, who are found especially among the indigenous, black or mestizo populations, or other vulnerable groups, cannot be elected in political elections is contrary to the spirit of article 5 (c) of the Convention.

### *Paragraph 303*

Particular note is taken of the fact that indigenous populations encounter serious discrimination in regard to the enjoyment of their civil, political, economic, social and cultural rights. Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police. Concern is also expressed about their social protection and the discrimination they suffer in the spheres of health, education, culture, employment, access to public office and housing.

### *Paragraph 307*

The State Party should amend article 6 of the 1916 Civil Code of Brazil, which is contrary to its 1988 Constitution. The State Party should also take measures to allow illiterate citizens from the most underprivileged population groups to be elected in political elections.

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### *Paragraph 308*

The Government should put more vigorously into practice its determination to defend the fundamental rights of indigenous people, blacks, mestizos and members of other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death. The authorities should systematically prosecute those guilty of such crimes, whether they are members of private militias or State officials, and should take effective preventive measures, especially through training for the members of the military police. In addition, the State Party should ensure that the victims of such acts receive compensation and are rehabilitated.

### *Paragraph 309*

The State Party should adopt fair and equitable solutions for the demarcation, distribution and restitution of land. To that end, where land disputes are concerned, everything possible should be done to prevent discrimination against indigenous people, blacks or mestizos by the big landowners.

- Venezuela, CERD, A/51/18 (1996) 65 at paras. 469, 471, 472, 475 and 476.

### *Paragraph 469*

Doubts were expressed whether victims of racial discrimination have effective remedies at their disposal for seeking just and adequate reparation from the competent tribunals. The State party's legal system does not include any provisions for compensation of victims of racial discrimination, most of whom belong to various indigenous groups.

### *Paragraph 471*

Concern was expressed about the insufficient measures to ensure bilingual education of indigenous peoples and to prevent the destruction of their cultural heritage.

### *Paragraph 472*

Concern is expressed that, in practice, there are separate prison facilities for persons of the indigenous population.

### *Paragraph 475*

Further efforts should be made to strengthen the system of bilingual education in order to cover the whole of the indigenous population, 40 per cent of which remains illiterate, and to prevent the destruction of the indigenous cultural heritage.

### *Paragraph 476*

Appropriate measures should be taken to provide health-care services for indigenous communities, particularly those located in remote regions of the country.

- Guatemala, CERD, A/52/18 (1997) 14 at paras. 75, 79-81, 83, 89, 92 and 93.

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### *Paragraph 75*

Concern is expressed that a climate of violence and intimidation still exists in the State party and that the detrimental effects of that climate are mostly borne by the indigenous population. This seriously jeopardizes the conditions of security of persons as referred to in article 5 (b) of the Convention.

### *Paragraph 79*

Concern is expressed that the indigenous population does not enjoy effective protection and remedies in the national courts from violations of human rights and fundamental freedoms owing to the lack of interpreters and the insufficient availability of public legal defenders.

### *Paragraph 80*

Concern is expressed that officials of the State party continue to enjoy impunity from criminal prosecution for abusing and violating the human rights of poor people, especially indigenous people and women. This has led people to take the law into their own hands and has resulted in a significant number of lynchings, a situation which reflects the despair and lack of confidence of the population in the effective exercise of justice.

### *Paragraph 81*

Despite the Government's efforts, the problems of allocation of land and/or compensation continues, especially with respect to the return of lands to the indigenous peoples after the end of the armed conflict. Of special concern are confrontations arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened.

### *Paragraph 83*

It is noted with concern that adequate and proportionate participation of the indigenous population in Parliament, in the public service and in public life at the national level has not been achieved; in particular, members of indigenous communities are under-represented among judges and in the administration of justice.

### *Paragraph 89*

The State party should provide for access to the judiciary by all members of the population, in particular by furnishing adequate interpretation services for indigenous people at all levels of judicial proceedings.

### *Paragraph 92*

The State party should take measures to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population, including those persons returning to the territory after the end of the armed conflict.

### *Paragraph 93*

The importance that land holds for indigenous peoples and their spiritual and cultural identity,

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including the fact that they have a different concept of land use and ownership, is stressed. The State party should use the provisions of ILO Convention No. 169 as a guideline for resolving land distribution issues and consider, in the light of that Convention, the question of compensation for properties that cannot be restituted.

- Mexico, CERD, A/52/18 (1997) 42 at paras. 299, 306, 307, 309, 312, 314, 316 and 319-322.

### *Paragraph 299*

The State party has not fully succeeded in eliminating endemic poverty, which has aggravated the social inequalities that affect indigenous populations.

### *Paragraph 306*

In certain situations, an individual's right to enjoy equal treatment in the courts is not effectively guaranteed for members of indigenous groups. Specifically, they are not guaranteed the right to express themselves in their own languages during legal proceedings.

### *Paragraph 307*

Concern was expressed over the right to security of the person, particularly for indigenous inhabitants and illegal immigrants. This right to security of person has in certain cases been violated by representatives of the forces of law and order, paramilitary groups and landowners. All too often, those responsible for these crimes have gone unpunished.

### *Paragraph 309*

With respect to the enjoyment of economic, social and cultural rights, it is noted with concern that the members of indigenous groups live in extreme poverty. Another source of concern is the land delimitation and distribution process, which does not seem to have fully respected the land rights of the indigenous populations.

### *Paragraph 312*

The absence of local and federal legislation guaranteeing indigenous populations the possibility of a bilingual and bicultural education remains a source of concern.

### *Paragraph 314*

The situation in the State of Chiapas remains unstable and of considerable concern, since political negotiations have been suspended. This tense situation is aggravating the precariousness of the indigenous populations living in that region.

### *Paragraph 316*

The State party should continue its efforts to improve the effectiveness of measures and programmes designed to ensure that members of all population groups, especially the 56 indigenous groups, fully enjoy their political, economic, social and cultural rights. The State party should devote due attention

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to the legislative changes required as well as to the development of programmes to foster awareness of human rights, particularly among representatives of the State.

### *Paragraph 319*

The State party should also take the necessary steps to allow citizens from indigenous populations to be elected in political elections and to have access to the civil service.

### *Paragraph 320*

The State party should take all appropriate measures to ensure equal and impartial treatment before the law for all persons, and particularly those from indigenous groups. In particular, the authorities are invited to offer indigenous inhabitants the possibility of expressing themselves in their mother tongue in all judicial proceedings.

### *Paragraph 321*

The State party should exercise greater vigilance in the protection of the fundamental rights of indigenous inhabitants and other vulnerable groups of society, who are regularly the victims of intimidation, violence and serious human rights violations. The authorities should systematically prosecute those responsible for such crimes, regardless of whether they are members of private militias or State officials, and effective preventive measures should be taken, including the training of members of the police force and the army. The State party should also ensure that the victims of such acts are compensated.

### *Paragraph 322*

The State party should find just and equitable solutions to land delimitation, distribution and restitution problems. Everything possible should be done to protect indigenous inhabitants from all forms of discrimination in such matters.

- Panama, CERD, A/52/18 (1997) 46 at paras. 338, 342, 350 and 352.

### *Paragraph 338*

In the light of article 5 of the Convention, it is noted with concern that the issue of land rights of indigenous people has remained unsolved in a great majority of cases. Those land rights seem also to be threatened by the mining activities that have been undertaken, with the approval of the central authorities, by foreign companies, and also by the development of tourism in those regions.

### *Paragraph 342*

It is noted with regret that indigenous people have a low rate of participation in elections and are underrepresented in the public service.

### *Paragraph 350*

It is strongly recommended that the State party actively pursue its current efforts to implement fully

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the right of indigenous people to own property and land. The State party should investigate and monitor the impact of the work of mining companies, including foreign companies, as well as the impact of the current development of tourism, on the enjoyment of basic rights by indigenous peoples.

### *Paragraph 352*

The State party should take appropriate measures to enable indigenous persons to participate in elections and to provide them with equal access to employment in the public service.

- Philippines, CERD, A/52/18 (1997) 55 at paras. 424 and 425.

### *Paragraph 424*

With respect to article 5, paragraphs (a) and (b), of the Convention, there is concern that many reported cases of disappearances, including members of indigenous peoples and Muslim Filipinos, have not yet been fully investigated and brought before the courts.

### *Paragraph 425*

In connection with article 5 (d) (i) and (v) of the Convention, concern is expressed at reports of forced evictions and displacements of indigenous populations in development zones, as well as at reports that specific groups of indigenous peoples have been denied by force the right to return to some of their ancestral lands.

- Denmark, CERD, A/52/18 (1997) 59 at para. 454.

Concern is expressed over the persistent long delay in resolving the compensation claim of the population of Thule, displaced from their traditional hunting grounds and places of settlement.

- Sweden, CERD, A/52/18 (1997) 65 at para. 508.

Further measures should be taken to ensure the use by Sami of their own language.

- Argentina, CERD, A/52/18 (1997) 69 at paras. 548 and 553.

### *Paragraph 548*

With regard to the transfer of ancestral lands and property to indigenous communities, it is noted with concern that problems continue to exist in practice and that, in some cases, enormous difficulties, which are often caused by land owners, are delaying these transfers. Concern is also expressed that

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some communities are reported to have been subjected to intimidation and pressures to renounce their claims to such land.

### *Paragraph 553*

With regard to the transfer of land to indigenous communities, the implementation of provisions adopted for that purpose should be closely monitored by local and federal authorities, including the judicial authorities, in order to prevent and clarify any misunderstanding of such provisions.

- Russian Federation, CERD, A/53/19 (1998) 25 at para. 47.

Further measures should be taken in order to provide minorities and indigenous groups with elementary education in their own languages.

- Cameroon, CERD, A/53/18 (1998) 53 at paras. 263 and 271.

### *Paragraph 263*

Protection of the rights of minorities and indigenous peoples to enable them to live in harmony in their environment is, especially as regards the Pygmies and Boro, a subject of concern in the light of article 2, paragraph 2, of the Convention.

### *Paragraph 271*

With a view to promoting and protecting the rights of minorities and indigenous peoples, the State party should take all appropriate measures, particularly as regards deforestation that may harm such population groups.

- Cambodia, CERD, A/53/18 (1998) 55 at paras. 290, 293 and 299.

### *Paragraph 290*

The law stating that Khmer nationals are those whose parents are Khmer nationals, makes it difficult for persons belonging to minority groups, in particular ethnic Vietnamese and indigenous people, to establish their citizenship.

### *Paragraph 293*

Concern is expressed about the situation of the indigenous peoples (also referred to as Highland Peoples, Khmer Loeu or Hill Tribes Peoples), and to their lack of legal status, as well as the insufficient legal framework to protect their rights, culture and traditional lands. The rights of indigenous peoples have been disregarded in many government decisions, in particular those relating to citizenship, logging concessions and concessions for industrial plantations. The lack of participation of the indigenous people in the management of natural resources and in other activities

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of concern to them is also a matter of concern.

### *Paragraph 299*

The State party should recognize the citizenship of the indigenous peoples, as well as their use of lands, forests and other natural resources, and their distinct and unique identity, culture and way of life. The State party should ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent.

- Peru, CERD, A/54/18 (1999) 21 at paras. 148, 152, 154-156 and 158.

### *Paragraph 148*

The close relationship between socio-economic underdevelopment and the phenomena of ethnic or racial discrimination against part of the population, chiefly the indigenous and peasant communities, is noted with concern.

### *Paragraph 152*

With respect to the right to equal treatment before the courts, it is noted with concern that interpreters are not, in practice, available to monolingual indigenous people and that legislation has not been translated into indigenous languages.

### *Paragraph 154*

It is noted that the indigenous population, the members of which often have no identity papers and are illiterate, is thus deprived of the possibility of exercising its civic and political rights.

### *Paragraph 155*

Major shortcomings in the health services provided for the rural population in the Andes and in Amazonia are noted, as are allegations of forced sterilization of women belonging to indigenous communities. It is also noted that there is a difference of almost 20 years between the life expectancy of people of indigenous origin and that of the rest of the population.

### *Paragraph 156*

With regard to the right to employment, reports that access to jobs and promotions is often influenced by racial criteria, while certain minor or disparaged jobs are left to persons of indigenous or African origin, are of concern.

### *Paragraph 158*

Reports that the Constitution no longer totally guarantees that the communal property of indigenous populations is inalienable and unavailable for use are of concern.

- Costa Rica, CERD, A/54/18 (1999) 24 at paras. 194, 202 and 203.

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### *Paragraph 194*

The land rights of indigenous peoples in the State party is of concern. Despite the efforts made, problems relating to the allocation of land and/or compensation persist. Of special concern have been confrontations arising over the ownership of property, in the course of which indigenous people were killed and vandalism occurred.

### *Paragraph 202*

The State party should intensify its efforts to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population. The importance that the land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership, is stressed. In this regard, the approval by the Legislative Assembly of the Bill for the autonomous development of indigenous people would be of great importance.

### *Paragraph 203*

The State party should make additional efforts to facilitate equal access to the courts and administrative bodies, particularly for the indigenous population, the black minority, refugees and immigrants, in order to ensure equality for all persons.

- Chile, CERD, A/54/18 (1999) 37 at paras. 374, 375, 377, 378 and 380.

### *Paragraph 374*

While it is noted that intentional discrimination against indigenous persons is an offence punishable by law, and that the National Security Act prohibits fascist organizations, concern remains about the current absence of comprehensive legislation in full accordance with articles 2, paragraph 1 (d) and 4, of the Convention.

### *Paragraph 375*

Concern is expressed over land disputes between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and arbitrary arrests of members of the indigenous population.

### *Paragraph 377*

Having recognized its part in the discrimination experienced by the indigenous population, the State party should consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which, *inter alia*, will significantly contribute to the process of reconciliation in the society as a whole.

### *Paragraph 378*

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It is recommended that the Constitution be amended to incorporate a prohibition of racial discrimination and that the scope of the Indigenous Act be extended to cover discrimination in effect in accordance with article 1, paragraph 1, of the Convention.

### *Paragraph 380*

The State party should use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities, and should continue to provide instruction on human rights standards in schools and organize training programmes for, in particular, law enforcement officials.

- Uruguay, CERD, A/54/18 (1999) 41 at paras. 417, 425, 427 and 431.

### *Paragraph 417*

The *de facto* social and economic marginalization of the Afro-Uruguayan and indigenous communities has generated discrimination against them.

### *Paragraph 425*

In view of the situation that only a few cases of racial discrimination have reached the courts or administrative bodies, concern is expressed about the effective access to protection and remedies against acts of racial discrimination against, in particular, the Afro-Uruguayan and indigenous communities.

### *Paragraph 427*

The State party should establish specific protection measures, such as affirmative action programmes, for members of the Afro-Uruguayan and indigenous communities, to guarantee their enjoyment of all the rights enumerated in the Convention.

### *Paragraph 431*

The State party should make additional efforts to facilitate equal access to the courts and administrative bodies for persons belonging to the Afro-Uruguayan and indigenous communities, in order to ensure equality of all persons.

- Colombia, CERD, A/54/18 (1999) 44 at paras. 456, 463, 464, 468, 469, 473, 476 and 478.

### *Paragraph 456*

The fact that the State party recognizes that Afro-Colombian and indigenous communities continue to be the victims of systemic racial discrimination, which has resulted in their marginalization, poverty and vulnerability to violence, is welcomed.

### *Paragraph 463*

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Concern is expressed at reports indicating that violence in Colombia has been largely concentrated in areas where indigenous and Afro-Colombian communities live; that increasingly, these communities have been targeted by armed groups; and that the Government's tactics in fighting the drug trade have led to a further militarization of these regions, creating an atmosphere that is conducive to human rights violations and the destruction of cultural autonomy and identity.

### *Paragraph 464*

Concern is expressed that the climate of impunity may severely impact the rights of indigenous and Afro-Colombian communities, as these minority communities are subjected disproportionately to violations of international human rights and humanitarian norms.

### *Paragraph 468*

Within the community of displaced persons, women are disproportionately represented. Thus, concern is expressed that government programmes are not responsive to the needs of many indigenous and Afro-Colombian women who are subjected to multiple forms of discrimination based on their gender, race or ethnicity and displaced status.

### *Paragraph 469*

Concern is expressed that development and resource exploration programmes on land subject to the property rights of indigenous and Afro-Colombian communities have been pursued without sufficient consultation with the representatives of these communities and without sufficient concern for the environmental and socio-economic impact of these activities.

### *Paragraph 473*

Concern is expressed that few land titles have been allocated under legislative programmes recognizing the property rights of indigenous and Afro-Colombian communities and that bureaucratic obstacles appear to have complicated the process.

### *Paragraph 476*

The State party should implement affirmative and effective measures to ensure increased employment opportunities for minority and indigenous communities in both the public and private sectors and should advance the social, political, economic, and educational status of historically marginalized communities.

### *Paragraph 478*

The State party is urged to take comprehensive steps to protect the security and promote the well-being of the large internally displaced population, consisting mainly of persons of the indigenous and Afro-Colombian communities and, as a matter of extreme priority, to guarantee the security of indigenous and Afro-Colombian community leaders and human rights defenders across the country who have sought to protect the rights of those communities.

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- Australia, CERD, A/55/18 (2000) 17 at paras. 31, 32, 35, 36, 38, 39 and 41.

### *Paragraph 31*

It is noted that the devolution of power to legislate on the “future acts” regime has resulted in the drafting of state and territory legislation to establish detailed “future acts” regimes which contain provisions further reducing the protection of the rights of native title claimants. Noting that the Commonwealth Senate rejected one such regime, it is recommended that close scrutiny be given to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples will not be reduced further.

### *Paragraph 32*

Concern is expressed at the unsatisfactory response to Committee decisions 2 (54) (March 1999) and 2 (55) (August 1999) and at the continuing risk of further impairment of the rights of Australia’s indigenous communities. All aspects of decisions 2 (54) and 2 (55) are reaffirmed. The State party should 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, which stresses the importance of securing the “informed consent” of indigenous peoples.

### *Paragraph 35*

While acknowledging the significant efforts that have taken place to achieve reconciliation, concern is expressed about the apparent loss of confidence by the indigenous community in the process of reconciliation. The State party should take appropriate measures to ensure that the reconciliation process is conducted on the basis of robust engagement and effective leadership, so as to lead to meaningful reconciliation, genuinely embraced by both the indigenous population and the population at large.

### *Paragraph 36*

The conclusions of the “National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families” are noted and the measures taken to facilitate family reunion and to improve counselling and family support services for the victims are acknowledged. Concern is expressed that the Commonwealth Government does not support a formal national apology and that it considers inappropriate the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to “assist the people whom they affected”. It is recommended that the State party consider the need to address appropriately the extraordinary harm inflicted by these racially discriminatory practices.

### *Paragraph 38*

It is noted with grave concern that the rate of incarceration of indigenous people is disproportionately high compared with the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal

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process. It is recommended that the State party increase its efforts to seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.

### *Paragraph 39*

Concern is expressed about the minimum mandatory sentencing schemes with regard to minor property offences. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends that the State party review all laws and practices in this field.

### *Paragraph 41*

Efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians are acknowledged. Serious concern remains about the extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights. Serious concern remains about the extent of the dramatic inequality still experienced by an indigenous population that represents only 2.1 per cent of the total population of a highly developed industrialized State. It is recommended that the State party ensure, within the shortest time possible, that sufficient resources are allocated to eradicate these disparities.

- Finland, CERD, A/55/18 (2000) 41 at para. 214.

It is regretted that the question of land ownership of the Sami has not yet been resolved and that Finland has not acceded to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Furthermore, concern is expressed about activities authorized by State bodies in Sami reindeer-breeding areas which may threaten Sami culture and their traditional way of life. The State party is urged to pursue its efforts, together with the Sami people, towards the adequate resolution of the land dispute, giving due consideration in this respect to General Recommendation XXIII.

- Sweden, CERD, A/55/18 (2000) 57 at paras. 337 and 338.

### *Paragraph 337*

While new legislation which gives individuals the right to use the Sami language in legal and administrative proceedings is noted, it is stressed that this right is recognized only in respect of some geographic regions. It is recommended that the State party consider the extension of these rights to all Sami territory.

### *Paragraph 338*

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Concern is expressed over the issue of land rights of the Sami people, in particular hunting and fishing rights which are threatened by the privatization of traditional Sami lands. It is recommended that the Government introduce legislation recognizing traditional Sami land rights and reflecting the centrality of reindeer husbandry to the way of life of Sweden's indigenous people.

- Argentina, CERD, A/56/18 (2001) 18 at paras. 45 and 49-52.

### *Paragraph 45*

The measures designed to give greater autonomy to the National Institute of Indigenous Affairs, to build its capacity and to elaborate a national plan for indigenous peoples is welcomed with satisfaction. The progress made thus far by the Institute in the context of the transfer of estate land to the indigenous communities that have traditionally occupied it is noted with interest.

### *Paragraph 49*

It is noted with concern that the territories where indigenous peoples have settled coincide with the areas with the highest index of unmet basic needs, and that the poverty and unemployment indices among indigenous populations and other vulnerable groups have risen as a result of the economic crisis. The State party should take steps to alleviate this situation.

### *Paragraph 50*

It is noted with concern that, although progress has been made to consult with indigenous peoples to participate in decisions which affect them with a view to securing their agreement, there are still situations where consultation and participation do not occur. It is recommended that the State party find ways and means to facilitate such participation.

### *Paragraph 51*

It is noted with concern that difficulties arise in some cases of transferring estate land to indigenous peoples. Difficulties arise primarily because of the existence of individual title deeds and because of the conflict of jurisdiction between national and provincial governments. The relevant provisions of General Recommendation XXIII are recalled and it is recommended that the State party take steps to overcome these difficulties.

### *Paragraph 52*

The lack of a social security system which takes into account the specific needs of indigenous peoples is noted with concern. Steps should be taken in this regard.

- Bangladesh, CERD, A/56/18 (2001) 21 at paras. 66 and 71.

### *Paragraph 66*

Affirmative action programmes to ensure the enjoyment of the rights contained in article 5(e) of the

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Convention by the socially and economically disadvantaged groups are welcomed. This is particularly the case with the tribal population of the Chittagong Hill Tracts.

### *Paragraph 71*

Reports of human rights violations by security forces present in the Chittagong Hill Tracts affecting the tribal population, including reports of arbitrary arrests and detentions and ill-treatment are of concern. It is recommended that the State party implement effective measures to guarantee to all Bangladeshis, without distinction based on race, colour, descent, or national or ethnic origin, the right to security of person and protection by the State against violence or bodily harm.

- Japan, CERD, A/56/18 (2001) 34 at paras. 163 and 175.

### *Paragraph 163*

The Committee notes with interest the recent jurisprudence recognising the Ainu people as a minority people with the right to enjoy its unique culture.

### *Paragraph 175*

The State party should take steps to further promote the rights of the Ainu, as indigenous people. Attention is drawn to General Recommendation XXIII on the rights of indigenous peoples that calls, *inter alia*, for the recognition and protection of land rights as well as restitution and compensation for loss. The State party is also encouraged to ratify and or use as guidance ILO Convention No. 169 on Indigenous and Tribal Peoples.

- Sri Lanka, CERD, A/56/18 (2001) 56 at para. 335.

The situation of the country's indigenous people, the Veddas, and the creation of a national park on their ancestral forestland is of concern. In this context, attention is drawn to the Committee's general recommendation XXIII calling upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

- Trinidad and Tobago, CERD, A/56/18 (2001) 58 at para. 351.

The absence in the State party's report of specific information on the indigenous population as well as other relatively small ethnic groups of the State party, and particularly the absence of a specific categorization of the indigenous population as a separate ethnic group in official statistics on the population is of concern. The Government is encouraged to include the indigenous population in any statistical data as a separate ethnic group, and to actively seek consultations with them as to how they prefer to be identified, as well as on policies and programmes affecting them.

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- United States of America, CERD, A/56/18 (2001) 64 at para. 400.

It is noted with concern that treaties signed by the Government and Indian tribes, described as “domestic dependent nations” under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government. Further concern is expressed with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The State party should ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and the attention of the State party is drawn to general recommendation XXIII on indigenous peoples which stresses the importance of securing the “informed consent” of indigenous communities and calls, *inter alia*, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

- Viet Nam, CERD, A/56/18 (2001) 68 at para. 421.

Concern is expressed about the alleged population transfer to territories inhabited by indigenous groups, disadvantaging them in the exercise of their social, economic and cultural rights.

### ICCPR

- Venezuela, ICCPR, A/48/40 vol. I (1993) 61 at para. 310.

Further measures should be taken pursuant to article 27 of the Covenant, in order to guarantee indigenous peoples their own cultural life and the use of their own language.

- Mexico, ICCPR, A/49/40 vol. I (1994) 33 at paras. 177 and 182.

#### *Paragraph 177*

The situation of indigenous populations is of concern. Article 27 of the Constitution concerning agrarian reform is often implemented to the detriment of persons belonging to such groups. The delay in resolving problems relating to the distribution of land has weakened the confidence of these populations in both local and federal authorities. Moreover, these persons are subject to special laws, particularly in Chiapas, which could create a situation of discrimination within the meaning of article 26 of the Covenant.

#### *Paragraph 182*

Consideration should be given to more equitable land distribution within the framework of agrarian

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reform and take into account the rights and aspirations of indigenous populations in that connection. Furthermore, measures for the implementation of article 4 of the Constitution should be considerably strengthened. Indigenous populations should have the opportunity to participate in decision-making on matters that concern them.

- New Zealand, ICCPR, A/50/40 vol. I (1995) 38 at para. 182.

It is regretted that despite improvements, Maori still experience disadvantages in access to health care, education and employment. The proportion of Maori in Parliament and other high public offices, liberal professions and the senior rank of civil service remains low and is also of concern.

- Paraguay, ICCPR, A/50/40 vol. I (1995) 42 at para. 213.

It is of concern that poverty and lack of education, particularly among indigenous people, adversely affect many people in their ability to enjoy civil and political rights.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at paras. 290 and 302.

### *Paragraph 290*

It is of concern that aboriginal rights of Native Americans may, in law, be extinguished by Congress. The high incidence of poverty, sickness and alcoholism among Native Americans, notwithstanding some improvements achieved with the Self-Governance Demonstration Project, is also of concern.

### *Paragraph 302*

Steps should be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished. The Government should ensure that there is a full judicial review in respect of determinations of federal recognition of tribes. The Self-Governance Demonstration Project and similar programmes should be strengthened to continue to fight the high incidence of poverty, sickness and alcoholism among Native Americans.

- Sweden, ICCPR, A/51/40 vol. I (1996) 17 at paras. 90 and 98.

### *Paragraph 90*

It is noted that the legislative provisions adopted recently by the Riksdag and providing for the right of everyone to fish and hunt on public lands may have adverse consequences for the traditional rights of the Sami people.

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### *Paragraph 98*

The recognized customary rights of the Sami people should be fully protected in the light of article 27 of the Covenant.

- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at para. 221.

It is noted that social and economic disparities are pervasive in the country. High levels of poverty and illiteracy, lack of opportunities, and discrimination against the indigenous population, women and the poor contribute to widespread violation of human rights.

- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at paras. 320 and 337.

### *Paragraph 320*

The existence of racial and other discrimination against black and indigenous persons is of particular concern. It is noted that the Government has been pursuing a process of demarcation of indigenous lands in Brazil as a means of addressing the rights of the indigenous communities, but it is regretted that the process is far from complete.

### *Paragraph 337*

Immediate steps should be taken to guarantee the rights of individuals belonging to racial minorities and indigenous communities, especially with regard to their access to quality health services and education. Such steps should ensure greater school enrolment and reduce the incidence of school drop-out. All necessary measures should be taken to ensure that the process of demarcation of indigenous lands be speedily and justly settled.

- Denmark, ICCPR, A/52/40 vol. I (1998) 14 at para. 69.

Concern is expressed at the long delay in resolving the dispute arising from the claim for compensation by members of the indigenous minority of Greenland in respect of their displacement from their lands and loss of traditional hunting rights as a result of the construction of the military base at Thule. The Committee is also concerned that the people of Greenland are not able to enjoy fully certain Covenant rights and freedoms, including those provided for in article 12.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at paras. 215 and 225.

### *Paragraph 215*

The impact of violence on the part of the security forces, which curtails the enjoyment by members

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of indigenous groups of their rights under article 27 of the Covenant, is of concern. Despite the legislation enacted to allow the indigenous communities to enjoy the use of their traditional lands in a communal way, discrimination and other obstacles to the full enjoyment of the rights protected under article 27 of the Covenant continue to exist.

### *Paragraph 225*

Further measures, such as those of the "*Justicia Communal*", should be taken to ensure that members of indigenous groups are protected against violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their culture, language and religion. The legislation on indigenous communities should be enacted without delay.

### *See also:*

- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at para. 250.
- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at para. 307.

Further measures should be adopted to ensure the rights of members of indigenous populations and the black minorities are protected under the Covenant, particularly articles 2, paragraph 1, 26 and 27. The importance of education is particularly stressed and the Government is urged to take appropriate measures to reduce the illiteracy rate among members of indigenous populations and the black minorities.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 292.

Further measures should be taken to ensure that members of indigenous groups are protected against the adverse effects of the oil exploitation within the country and are enabled to enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity and traditional livelihood.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 156.

The Committee is concerned about the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.

- Chile, ICCPR, A/54/40 vol. I (1999) 44 at para. 218.

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Concern is expressed that hydroelectric and other developments might affect the way of life and rights of persons belonging to indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. When planning actions that affect members of indigenous communities, primary attention must be paid to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.

- Canada, ICCPR, A/54/40 vol. I (1999) 48 at para. 230.

The State party acknowledged that the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to dispose freely of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). Decisive and urgent action should be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The practice of extinguishing inherent aboriginal rights should also be abandoned as incompatible with article 1 of the Covenant.

- Cambodia, ICCPR, A/54/40 vol. I (1999) 57 at para. 311.

Immediate measures should be taken to ensure that the rights of members of indigenous communities to enjoy their cultural traditions, including their agricultural activities, are respected.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 331.

All necessary measures should be taken to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs, culture and traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources. Appropriate measures should also be taken to increase their participation in the country's institutions and the exercise of the right to self-determination.

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- Norway, ICCPR, A/55/40 vol. I (2000) 22 at para. 81.

While legislative reform work in the field of Sami land and resource rights is in progress, traditional Sami means of livelihood, falling under article 27 of the Covenant, do not appear to enjoy full protection in relation to various forms of competing public and private uses of land. Lawsuits by private landowners leading to judicial prohibition of reindeer herding and high legal costs for the Sami are a particular concern in the absence of satisfactory legal aid.

- Guyana, ICCPR, A/55/40 vol. I (2000) 53 at paras. 379 and 380.

### *Paragraph 379*

Members of the indigenous Amerindian community do not enjoy fully the right to equality before the law. The right of indigenous peoples to enjoy their own culture is threatened by logging, mining, delays in the demarcation of their traditional lands, or the demarcation of insufficient land to enable them to pursue their traditional economic activities, and there appears to be no effective means to enable members of Amerindian communities to enforce their rights under article 27.

### *Paragraph 380*

Effective measures of protection that enable members of indigenous communities to participate in decisions which affect them and to enforce their right to enjoy their rights under the Covenant should be implemented.

- Australia, ICCPR, A/55/40 vol. I (2000) 71 at paras. 504, 506-512, 522 and 523.

### *Paragraph 504*

The establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner in 1993 is welcomed.

### *Paragraph 506*

With respect to article 1 of the Covenant, the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs is noted. That sufficient action has not been taken in that regard is of concern.

### *Paragraph 507*

The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

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### *Paragraph 508*

Despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (*Mabo*, 1992; *Wik*, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, in many areas native title rights and interests remain unresolved and the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and the effect on their interests in native title lands, particularly pastoral lands.

### *Paragraph 509*

The State party should take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, it is recommended that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

### *Paragraph 510*

The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use.

### *Paragraph 511*

In the finalization of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), the State party should give sufficient weight to the values described above.

### *Paragraph 512*

While noting the efforts by the State party to address the tragedies resulting from the previous policy of removing indigenous children from their families, the continuing effects of this policy remain of concern.

### *Paragraph 513*

The State party should intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy (arts 2, 17 and 24).

### *Paragraph 522*

Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles of the Covenant.

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### *Paragraph 523*

The State party is urged to reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected.

- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(11).

The delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule is regretted. Reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements are of concern.

- Argentina, ICCPR, A/56/40 vol. I (2001) 38 at para. 74(7).

The advances made in the protection of the rights of the indigenous peoples, the devolution of national and provincial land to indigenous communities through the National Registry of Indigenous Communities, and the promotion of multicultural and multilingual education, are noted with satisfaction.

- Peru, ICCPR, A/56/40 vol. I (2001) 45 at para. 76(21).

Recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors, are of concern. The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(28).

The State party is commended for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wishes to exploit natural resources in areas they inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. However, the lack of any information regarding the practical implementation of those constitutional provisions is regretted.

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- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at paras. 85(10) and 85(29).

### *Paragraph 85(10)*

In ratifying the Covenant the State party accepted the obligations contained in article 2, paragraphs 1 and 2, to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to take the necessary steps to adopt, if they do not already exist, measures to give effect to those rights. The State party's claim that the principles of the Constitution prevent it from giving effect to the provisions of the Covenant and, for example, the fact that personal jurisdiction has been maintained for members of the military and some rights of members of indigenous communities are not being recognized, is of concern. The limitations of its Constitution should not be put forward as a reason for non-compliance with the Covenant, but the necessary reforms should be drawn up to achieve such compliance.

### *Paragraph 85(29)*

Although the State party has made efforts to improve the situation of members of indigenous communities, it is regrettable that it has not been possible to adopt legislation designed to guarantee the full enjoyment of all their rights under the Covenant, including the restitution of communal lands, the elimination of discrimination in employment and education and participation in other areas of the life of society. The State party should continue its efforts to guarantee members of indigenous communities the enjoyment of all the rights recognized by article 27 of the Covenant and adopt comprehensive legislation for this purpose. It should also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.

## ICESCR

- Panama, ICESCR, E/1992/23 (1991) 24 at para. 136.

It is noted that the indigenous peoples were among the most disadvantaged in the society and that the rate of illiteracy among them was quite high despite the provisions for compulsory education. In this regard, note was taken of the fact that the indigenous population lived on reservations, often in remote areas, and were determined to maintain their traditions, customs and laws.

- Australia, ICESCR, E/1994/23 (1993) 36 at paras. 150, 153, 158 and 162.

### *Paragraph 150*

The situation of disadvantaged groups in the educational system is of particular concern. The situation of the Aboriginals and Torres Strait Islanders in education which affects their prospects for future employment, as well as the problems of illiteracy among the adults of this group, the majority of

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which did not have primary and secondary education is noted.

### *Paragraph 153*

As regards the implementation of article 15 of the Covenant, it is of concern that Aboriginals and Torres Strait Islanders do not have sufficient opportunities to fully involve themselves in creating awareness of their cultural heritage.

### *Paragraph 158*

In addition, the importance of taking steps to monitor more closely the general situation of Aboriginals and Torres Strait Islanders and other disadvantaged groups, particularly in education and culture, is emphasized.

### *Paragraph 162*

It is recommended that action be taken to provide Aboriginal artists with opportunities to participate in international fora in order to promote awareness of their indigenous culture.

- Mexico, ICESCR, E/1994/23 (1993) 47 at paras. 233 and 236.

### *Paragraph 233*

The economic, social and cultural situation of many indigenous groups who suffer from the difficult conditions brought about by the economic situation and by the imbalance of wealth in the country is noted with concern. The difficulties being experienced by these groups in preserving their culture and in teaching their language are also noted. Although the Government publishes and distributes textbooks in 25 languages free of charge, overall government programmes devoted to these groups nevertheless remain inadequate.

### *Paragraph 236*

Resources should be made available for indigenous groups to enable them to preserve their language, culture and traditional way of life, and at the same time to promote the economic, social and cultural rights provided for in the Covenant. The State party should take energetic steps to mitigate any negative impact that the North American Free Trade Agreement (NAFTA) might have on the enjoyment of the rights set out in the Covenant.

- Suriname, ICESCR, E/1996/22 (1995) 37 at paras. 163 and 170.

### *Paragraph 163*

With regard to education, it is noted that education is provided only in Dutch, the official language of the State party. It is regretted that no efforts are being made by the Government to promote the use of Sranan Tongo, which is spoken by most Surinamese, or to preserve the native languages of the various indigenous groups. Education provided in Dutch only may serve as a contributing factor to the high incidence of school drop-outs.

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### *Paragraph 170*

With regard to education, it is recommended that the Government consider promoting the use of Sranan Tongo in schools and elsewhere and make efforts to preserve the native languages of indigenous groups.

- Paraguay, ICESCR, E/1997/22 (1996) 22 at paras. 71, 80 and 83.

### *Paragraph 71*

The plight of the indigenous population, as well as the estimated 200,000 landless mestizo peasant families is of concern. The main reason for hunger and malnutrition among the indigenous population and the deprivation of their rights is linked to the severe problem of obtaining access to traditional and ancestral lands. Though recognized by Law 904/81 and other subsequent laws, this right remains in abeyance. Eighty documented claims for legalizing indigenous access to traditional land have been pending for a number of years. All indigenous groups in the Chaco were expelled from their traditional land by cattle ranchers or industrial enterprises.

### *Paragraph 80*

The apparent failure to disseminate the Covenant in the various sectors of society, particularly in the Guarani language, is regretted. It is noted that little has been done to inform the general population, and particularly the indigenous population, of its fundamental rights.

### *Paragraph 83*

Energetic measures should be taken to eliminate the forms of discrimination to which indigenous peoples are subjected in the enjoyment of their economic, social and cultural rights. It is essential that particular attention be paid to the land problems which affect them and that genuine political will be displayed to solve these problems in a human rights context. It is also recommended that a detailed study be carried out, under government auspices, on the socio-economic situation of indigenous women.

- Guatemala, ICESCR, E/1997/22 (1996) 29 at paras. 127, 128, 140 and 142.

### *Paragraph 127*

Extreme concern is expressed over the adverse effects which the economic and social disparities existing in the country have on the enjoyment of economic, social and cultural rights by the majority of the population, particularly by the indigenous and rural populations of Guatemala, as well as by other vulnerable groups in society, especially children, persons with disabilities and elderly persons.

### *Paragraph 128*

Far-reaching racial discrimination, extreme poverty and social exclusion in relation to the indigenous populations negatively affect the enjoyment of economic, social and cultural rights by these

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populations, and are matters of deep concern.

### *Paragraph 140*

All legislative and other reforms should take into account the need to promote equality and reverse the devastating effects of discrimination against the indigenous populations, particularly through affirmative action.

### *Paragraph 142*

It is urgently recommended that the effective implementation of trade-union rights and the labour laws be addressed. The protection of such rights requires that particular attention be accorded to the enforcement of labour laws, consistent with the provisions of the Covenant, especially in view of the considerable need of the indigenous and other disadvantaged groups in society to enjoy economic opportunities and social mobility.

- Russian Federation, ICESCR, E/1998/22 (1997) 27 at paras. 100, 109 and 116.

### *Paragraph 100*

The situation of the indigenous peoples, many of whom live in poverty and have inadequate access to food, and some of whom suffer from malnutrition, is of concern. Particular concern is expressed for those whose food supply is based on fishing and an adequate stock of reindeer, and who are witnessing the destruction of their environment by widespread pollution. Reports that the economic rights of indigenous peoples are violated with impunity by oil and gas companies which sign agreements under circumstances which are clearly illegal, and that the State party has not taken adequate steps to protect the indigenous peoples from such exploitation are alarming.

### *Paragraph 109*

It is noted with alarm that malnutrition and hunger have developed among the poorer segments of the population. In this respect, particular concern is expressed for the plight of the homeless, families without income, large families, and indigenous people in the northern part of the country, where the infrastructure for food delivery is inadequate.

### *Paragraph 116*

Action should be taken to protect the indigenous peoples from exploitation by oil and gas companies, and to ensure their access to traditional and other sources of food.

- Peru, ICESCR, E/1998/22 (1997) 33 at paras. 141, 144, 156 and 157.

### *Paragraph 141*

The greatest obstacles to the fulfilment of economic, social and cultural rights are, *inter alia*, the acute forms of discrimination that particularly affect women, indigenous people and other minority

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groups, and the great inequalities permeating society.

### *Paragraph 144*

The insufficient fulfilment of the right to education of the indigenous and black populations is of concern. For example, about 22 per cent of Quechua-speaking persons in the State party, and among them 31 per cent of females over six years old, receive no schooling at any level. This situation has lately been aggravated as a result of the decline in government expenditures relative to gross domestic product.

### *Paragraph 156*

The introduction and implementation of social-justice measures, i.e. political, economic and social reforms, are needed in order to break the vicious circle of violence and counter-violence and to win over the indigenous population, the peasants and other underprivileged sectors of society.

### *Paragraph 157*

The Government is called upon to make a greater effort to translate the Covenant into appropriate indigenous languages and to give more publicity to its provisions.

- Canada, ICESCR, E/1999/22 (1998) 63 at paras. 392, 393, 404 and 418.

### *Paragraph 392*

The gross disparity between aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights is of concern. There has been little or no progress in the alleviation of social and economic deprivation among aboriginal people. In particular, deep concern is expressed at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to aboriginal communities on reserves. The delegation of the State party conceded that almost a quarter of aboriginal household dwellings required major repairs and lacked basic amenities.

### *Paragraph 393*

The direct connection between aboriginal economic marginalization and the ongoing dispossession of aboriginal people from their lands, as recognized by the Royal Commission on Aboriginal Peoples is of concern. The recommendations of the Commission that policies which violate aboriginal treaty obligations and the extinguishment, conversion or giving up of aboriginal rights and title should on no account be pursued by the State party are endorsed. It is of great concern that the recommendations of the Royal Commission on Aboriginal Peoples have not yet been implemented, in spite of the urgency of the situation.

### *Paragraph 404*

It is noted that aboriginal women living on reserves do not enjoy the same right as women living off

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reserves to an equal share of matrimonial property at the time of marriage breakdown.

### *Paragraph 418*

Concrete and urgent steps should be taken to restore and respect an aboriginal land and resource base adequate to achieve a sustainable aboriginal economy and culture.

- Cameroon, ICESCR, E/2000/22 (1999) 56 at paras. 337 and 353.

### *Paragraph 337*

Concern is expressed about the protection of the rights of the Baka Pygmies, particularly their right to an adequate standard of living including the right to food, which have been adversely affected by the depletion of the natural resources of the rainforest upon which they depend for subsistence, and by the compulsory acquisition by the Government of their land.

### *Paragraph 353*

The State party is urged to take effective measures to protect the right of the Baka Pygmies to an adequate standard of living, particularly their right to food, when negotiating contracts for projects which impact negatively on their lives.

- Mexico, ICESCR, E/2000/22 (1999) 62 at paras. 380, 387 and 404.

### *Paragraph 380*

The persisting plight of indigenous populations is of concern, particularly those of Chiapas, Guerrero, Veracruz and Oaxaca, who have limited access to, *inter alia*, health services, education, work, adequate nutrition and housing.

### *Paragraph 387*

The presence of numerous military and paramilitary forces within the indigenous community of Chiapas and other states in the region is of concern. Allegations that these elements interfere with the supervision and implementation of development programmes and the distribution of economic and social assistance is of particular concern.

### *Paragraph 404*

The State party is urged to take more effective measures to ensure access to basic health-care services for all children and to combat malnutrition, especially among children belonging to indigenous groups living in rural and remote areas.

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- Australia, ICESCR, E/2001/22 (2000) 66 at paras. 373-375, 380, 381 and 390.

### *Paragraph 373*

It is noted that Parliament passed a motion expressing commitment to reconciliation with the indigenous populations of Australia as an important national priority, and a "deep and sincere regret" for past policies that have negatively affected them. It is also noted that the Council for Aboriginal Reconciliation presented to the Australian people its final proposals for a Document of Reconciliation towards the development of measures to improve the position of the indigenous populations of Australia.

### *Paragraph 374*

The allocation of 2.3 billion Australian dollars for indigenous programmes is noted.

### *Paragraph 375*

The partnership between the State party and indigenous communities in initiatives aimed at providing greater access for indigenous peoples to culturally appropriate health services is welcomed, as is the allocation of significant resources for the improvement of indigenous health in general.

### *Paragraph 380*

Despite the efforts and achievements of the State party, deep concern is expressed that the indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education.

### *Paragraph 381*

It is noted with regret that the amendments to the 1993 Native Title Act have affected the reconciliation process between the State party and the indigenous populations, who view these amendments as regressive.

### *Paragraph 390*

The State party is encouraged to pursue its efforts in the process of reconciliation with Australia's indigenous peoples and its efforts to improve the disadvantaged situation they are in.

- Finland, ICESCR, E/2001/22 (2000) 73 at para. 451.

It is recommended that the State party settle the question of Sami land title as a matter of high priority.

- Morocco, ICESCR, E/2001/22 (2000) 82 at para. 552.

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The State party is urged to adopt the draft labour code and to ensure that the provisions thereof are in conformity with articles 6, 7 and 8 of the Covenant, as well as with the relevant ILO conventions to which Morocco is party. In this regard, the State party is strongly encouraged to ratify ILO Conventions Nos. 87 (on trade unions), 138 (on minimum age), 169 (on indigenous and tribal peoples) and 12 (on the worst forms of child labour).

- Venezuela, ICESCR, E/2002/22 (2001) 29 at paras. 83, 85 and 90.

### *Paragraph 83*

It is of concern that the Ombudsman's Office does not place adequate emphasis on the monitoring of the enjoyment of economic, social and cultural rights by the citizens of Venezuela, especially by the indigenous people, and that there is no case law relating directly to the provisions of the International Covenant on Economic, Social and Cultural Rights.

### *Paragraph 85*

The discrimination against indigenous people is deplored, particularly with regard to access to landownership, housing, health services and sanitation, education, work and adequate nutrition. Particular concern is expressed about the adverse effects of the economic activities connected with the exploitation of natural resources, such as mining in the Imataca Forest Reserve and coal-working in the Sierra de Perijá, on the health, living environment and way of life of the indigenous populations living in these regions.

### *Paragraph 90*

It is of deep concern that the efforts of the State party to improve the situation of its people are inadequate, and that there is still an alarmingly high level of poverty in Venezuela, especially among the indigenous peoples, and that economic, social and cultural rights are not integrated into the Government's anti-poverty programme.

- Honduras, ICESCR, E/2002/22 (2001) 33 at paras. 121, 130, 132, 136, 140, 151 and 159.

### *Paragraph 121*

The persisting discrimination against indigenous populations, especially in the fields of employment and the protection of traditional ancestral and agricultural lands is of concern.

### *Paragraph 130*

The occurrence of forced evictions, especially among peasants and indigenous populations and in the areas where mining activities are conducted, without adequate compensation or appropriate relocation measures is of concern.

### *Paragraph 132*

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The lack of measures undertaken by the State party to address effectively the problem of excessive deforestation which negatively affects the environmental habitat of indigenous populations is deeply regretted.

### *Paragraph 136*

The limited possibilities for indigenous peoples to education and to have access to the judicial system in their native languages are matters of concern.

### *Paragraph 140*

It is recommended that the State party recognize the economic, social and cultural rights of indigenous populations as a distinct minority group and ensure more effective protection against discrimination, especially in the field of employment, health and education.

### *Paragraph 151*

The State party should review its legislation and adopt all appropriate measures with a view to continuing agrarian reform and land tenure issues, in such a manner as to take account of the needs of the *campesinos* and of the land rights of indigenous populations.

### *Paragraph 159*

The State party should undertake measures to ensure that indigenous populations are able to be educated and to have access to the judicial system in their own languages.

- Bolivia, ICESCR, E/2002/22 (2001) 52 at paras. 269, 274, 276, 279, 285, 293 and 300.

### *Paragraph 269*

Particular concern is expressed about the marginalisation of, and discrimination against, indigenous communities who constitute the majority of Bolivia's rural population, and suffer from inadequate access to basic education, adequate housing, and health services. Moreover, it is of concern that the State party does not acknowledge the economic, social and cultural rights of indigenous populations as a distinct group.

### *Paragraph 274*

The Committee deplores the practice of child labour and the exploitation of children in domestic work, in particular the existence of the practice of indigenous *criaditos*, which remains outside the control of the State party.

### *Paragraph 276*

Concern is expressed about the large housing shortage, the incidence of forced evictions with respect to peasants and indigenous populations in favour of mining and lumber concessions, and the absence of effective measures to provide social housing for low income, vulnerable and marginalised groups.

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### *Paragraph 279*

The limited possibilities for indigenous populations to enjoy education in their mother tongue and to use their mother tongue in their dealings with public authorities are matters of concern.

### *Paragraph 285*

The State party is urged to take remedial action against the marginalisation of, and discrimination against, indigenous populations in all sectors of society.

### *Paragraph 293*

The State party is urged to ratify ILO Convention 182 (worst forms of child labour), and to take effective measures to eradicate the phenomenon of *criaditos*.

### *Paragraph 300*

The State party is encouraged to enact the Penal Proceedings Code, which renders three of the main indigenous languages, namely Quechua, Aymara and Tupi Guarani, languages of judicial and administrative procedures.

- Panama, ICESCR, E/2002/22 (2001) 73 at paras. 450, 466 and 478.

### *Paragraph 450*

Notwithstanding the absence of legal discrimination and the rights granted to indigenous communities by the Constitution, there is deep concern about the persisting disadvantage faced in practice by members of indigenous communities and, in particular, about the marked disparities in the levels of poverty, literacy, access to water, employment, health, education and other basic social services. It is also of concern that the issue of land rights of indigenous peoples has not been resolved in many cases and that their land rights are threatened by mining and cattle ranching activities which have been undertaken with the approval of the State party and have resulted in the displacement of indigenous peoples from their traditional ancestral and agricultural lands.

### *Paragraph 466*

The State party should consider ratifying the ILO Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries. Particular attention should be paid to improving poverty and literacy rates and access to water, employment, health, education and other basic social services for indigenous peoples. It is recommended that the issue of land rights of indigenous peoples be fully resolved so as to avoid their coming under threat by mining and cattle ranching activities that result in their displacement from their traditional ancestral and agricultural lands.

### *Paragraph 478*

Literacy programmes should be established for adults, especially for indigenous peoples and in rural areas.

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- Nepal, ICESCR, E/2002/22 (2001) 83 at para. 576.

Projects involving privatization of water supply should provide for continued, assured and affordable access to water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society.

- Japan, ICESCR, E/2002/22 (2001) 90 at paras. 592, 597 and 624.

### *Paragraph 592*

The persisting *de jure* and *de facto* discrimination against minority groups in Japanese society is of concern, particularly, against the Buraku and Okinawa communities, the indigenous Ainu people and people of Korean descent, especially in the fields of employment, housing and education.

### *Paragraph 597*

It is of concern that the State party has not ratified certain significant ILO Conventions, such as Conventions No. 105 (1957) concerning the abolition of forced labour, No. 111 (1958) concerning discrimination (employment and occupation) and No. 169 (1989) concerning the indigenous and tribal peoples in independent countries.

### *Paragraph 624*

The State party should ratify ILO Conventions No. 105 (1957) concerning the abolition of forced labour, No. 111 (1958) concerning discrimination (employment and occupation) and No. 169 (1989) concerning indigenous or tribal peoples in independent countries.

## CEDAW

- Peru, CEDAW, A/50/38 (1995) 79 at para. 438.

Reports of rape, gang rape and custodial rape which had been documented by human rights organizations, especially those occurring in the "emergency zones" and affecting indigenous and peasant women, are of concern.

- Paraguay, CEDAW, A/51/38 (1996) 16 at para. 124.

The State party's initiatives to provide bilingual education are acknowledged but concern remains about the inadequacy of those initiatives, which posed a major obstacle to women's access to social and economic opportunities, since a large percentage of the female population spoke only Guaraní, the predominant aboriginal language. The high illiteracy and drop-out rates are major impediments to the advancement of women.

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- Canada, CEDAW, A/52/38/Rev.1 part I (1997) 42 at para. 333.

Concern is expressed over the programmes directed at aboriginal women which might have discriminatory effects.

- Australia, CEDAW, A/52/38/Rev.1 part II (1997) 111 at paras. 397 and 404.

### *Paragraph 397*

The continuing adverse situation of Aboriginal and Torres Strait Islander women is of concern. Major causes of concern included a higher incidence of maternal mortality, lower life expectancy, reduced access to the full range of health services, a high incidence of violence, including domestic violence, and high unemployment rates. Their situation, as well as that of migrant women, was further compromised by an apparent rise in racism and xenophobia.

### *Paragraph 404*

The Government is encouraged to collect statistical data on the participation of Aboriginal and Torres Strait Islander women in the workforce, in decision-making, in politics and administration, and in the judiciary with a view to enhancing programmes that would benefit them. The Government might include representatives of those communities when it presented its next report to the Committee.

- Mexico, CEDAW, A/53/38/Rev.1 part I (1998) 32 at para. 403.

Efforts should be continued to reduce poverty among rural women, particularly indigenous women, and to work together with non-governmental organizations, making special efforts to promote education, employment and health programmes conducive to the integration of women into the development process, both as beneficiaries and as protagonists.

- Panama, CEDAW, A/53/38/Rev.1 part II (1998) 64 at para. 199.

Concern is expressed at the fact that 53 per cent of the female population is illiterate, the majority of these being indigenous women. The persistence of gender stereotypes, which results in a large number of adolescent girls terminating their education at an early age to marry or to undertake domestic work, is also of concern.

- New Zealand, CEDAW, A/53/38/Rev.1 part II (1998) 68 at para. 279.

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Concern is expressed at the unsatisfactory situation of M ori women with respect to the high number of M ori girls leaving school early, higher-than-average teenage pregnancy rates, the continuing low number of M ori women in tertiary education, their employment situation, their absence from the judiciary and political decision making, their health situation and access to health services and higher-than-average incidences of domestic violence.

- Thailand, CEDAW, A/54/38/Rev.1 part I (1999) 24 at para. 240.

Legislation and other measures to effectively protect the rights of hill-tribe women and girls should be introduced.

- Finland, CEDAW, A/56/38 part I (2001) 29 at paras. 305 and 306.

### *Paragraph 305*

Concern is expressed at the continuing discrimination against immigrant and minority women living in Finland, particularly Roma and Sami women, who suffer from double discrimination, based on both their sex and ethnic background.

### *Paragraph 306*

Studies should be undertaken on the participation of minority women in society and effective measures should be taken to eliminate discrimination against them and strengthen efforts to combat racism and xenophobia in Finland.

## CAT

- Australia, CAT, A/56/44 (2001) 22 at paras. 52 and 53.

### *Paragraph 52*

Concern is expressed about legislation imposing mandatory minimum sentences, which has allegedly had a discriminatory effect regarding the indigenous population (including women and juveniles), who are over-represented in statistics for the criminal justice system.

### *Paragraph 53*

The State party should continue its efforts to address the socio-economic disadvantage that *inter alia*

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leads indigenous Australians to come disproportionately into contact with the criminal justice system. Legislation imposing mandatory minimum sentences should be kept under careful review to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups.

- Canada, CAT, A/56/44 (2001) 24 at paras. 58 and 59.

### *Paragraph 58*

The over-representation of aboriginal people in prison throughout the criminal justice system is of concern.

### *Paragraph 59*

The creation of a new investigative body for receiving and investigating complaints regarding the Convention, including allegations related to members of the indigenous population, should be considered.

## CRC

- Bolivia, CRC, CRC/C/16 (1993) 13 at para. 36.

The disparities in the status and treatment of children in Bolivia conforming to distinctions based on race, sex, language and ethnic or social origin is of concern. Vulnerable groups of children, including girl children, indigenous children and children living in poverty, are particularly disadvantaged in their access to adequate health and educational facilities and are the primary victims of such abuses as sale and trafficking, child labour and sexual and other forms of exploitation.

- Mexico, CRC, CRC/C/24 (1994) 12 at paras. 34, 41 and 43.

### *Paragraph 34*

The unequal distribution of the national wealth in the country and the disparities and discrepancies in the enforcement of the rights provided for under the Convention between the different regions of the country, to the detriment of rural children and children belonging to minorities or indigenous communities, is of concern.

### *Paragraph 41*

The best interests of the child must be a guiding principle in the application of the Convention and the authorities should undertake all appropriate measures to the maximum extent of their available resources to ensure that sufficient resources are allocated to children, particularly children living

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and/or working in the streets, children belonging to minority groups or indigenous communities and other vulnerable children.

### *Paragraph 43*

Urgent measures should be adopted to combat discrimination against children belonging to the most vulnerable groups, particularly children subject to abuse or violence within the family, children living and/or working in the streets and children belonging to indigenous communities, including measures to eliminate and prevent discriminatory attitudes and prejudices such as those based on gender.

- Colombia (preliminary), CRC, CRC/C/24 (1994) 18 at para. 74.

The large proportion of Colombian children who continue to live in extreme poverty, despite the fact that Colombia has one of the most favourable economic growth rates and one of the lowest amounts of per capita foreign indebtedness in the region, is of grave concern. Many children in Colombia, including a large proportion of rural and indigenous children, have been economically and socially marginalized and have limited or no access to adequate education or health care services.

- Nicaragua, CRC, CRC/C/43 (1995) 10 at para. 42.

The apparent persistence of discriminatory attitudes directed towards girls, children born out of wedlock, children from poorer income groups and children belonging to minority and indigenous groups remains of concern.

### *See also:*

- Paraguay, CRC, CRC/C/66 (1997) 29 at para. 187.
- Canada, CRC, CRC/C/43 (1995) 16 at paras. 85 and 94.

### *Paragraph 85*

The special problems still faced by children from vulnerable and disadvantaged groups, such as aboriginal children, with regard to the enjoyment of their fundamental rights, including access to housing and education, are of concern.

### *Paragraph 94*

Efforts should be strengthened to ensure that children from vulnerable and disadvantaged groups, such as aboriginal children, benefit from positive measures aimed at facilitating access to education and housing. Research should be developed on the problems relating to the growing rate of infant mortality and suicide among children within aboriginal communities.

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- Guatemala, CRC, CRC/C/54 (1996) 31 at paras. 194, 199, 204, 206, 219, 220 and 227.

### *Paragraph 194*

The steps taken to secure a durable peace within Guatemala are welcomed, particularly by enhancing the enjoyment of human rights, including for the indigenous peoples. In this connection, the adoption of the Agreement on the Identity and Rights of Indigenous Peoples and the Agreement on Socio-Economic Aspects and the Agrarian Situation is noted.

### *Paragraph 199*

High levels of poverty and illiteracy and discrimination against the indigenous population and those living in poverty contribute to widespread violations of human rights.

### *Paragraph 204*

Insufficient measures have been adopted to promote widespread awareness of the principles and provisions of the Convention to adults and children alike, particularly to those belonging to indigenous populations, in the light of article 42 of the Convention. The failure to provide sufficient activities to train and educate professionals working with or for children about the Convention is regretted.

### *Paragraph 206*

In view of the historical disparities affecting indigenous children and children belonging to groups living below the poverty line, as well as girls, the Committee is concerned about the adequacy of measures to ensure the effective implementation of the economic, social and cultural rights of children at the national, regional and local levels, in the light of articles 2, 3 and 4 of the Convention.

### *Paragraph 219*

Information and education about children's rights should be disseminated among children and adults alike. Consideration should be given to the translation of such information into the main indigenous languages and appropriate measures should be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy.

### *Paragraph 220*

The inclusion of children's rights in the school curricula should be pursued as a measure to enhance respect for the indigenous culture and multiculturalism and to combat paternalistic and discriminatory attitudes which, as recognized by the State party, continue to prevail in society.

### *Paragraph 227*

Greater efforts should be focused on providing for compulsory and free primary education, eradicating illiteracy and ensuring the availability of bilingual education for indigenous children. Moreover, greater efforts should be made in training qualified teachers. Such measures will contribute

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to the prevention of any form of discrimination on the basis of language with regard to the right to education.

- Panama, CRC, CRC/C/62 (1997) 19 at paras. 115, 123, 124 and 129.

### *Paragraph 115*

The persisting disparities in relation to the low access to education of children living in rural areas, indigenous children and refugee children, who do not enjoy a system of education adequate to their cultural values and identity, are of concern. The low rates of retention, the high rates of repetition and school drop-outs, especially at the end of primary education, and the persistent problem of illiteracy amongst these groups, are also matters of concern.

### *Paragraph 123*

Measures aimed at developing a culture of human rights and at changing attitudes towards children in general, and particularly children belonging to indigenous groups, should be taken. Information and education about children's rights should be disseminated to children and adults alike. Such information should be translated into the different languages spoken by indigenous people. Moreover, the existence of a high level of illiteracy in the country requires the use of the media in a manner adapted to the various levels of the audiences in the country.

### *Paragraph 124*

Children's rights should be included in the school curricula as a measure of enhancing respect for indigenous culture, promoting multiculturalism and combating the paternalistic attitudes prevailing in society. In this regard, technical cooperation from appropriate international, intergovernmental and non-governmental organizations, including the High Commissioner/Centre for Human Rights and UNICEF, is encouraged.

### *Paragraph 129*

Greater efforts should be focused on eradicating illiteracy and on increasing access to school education by indigenous children and children living in rural areas. This will require greater efforts in training teachers. Furthermore, all necessary measures should be taken to fight school drop-outs and ensure retention.

- Paraguay, CRC, CRC/C/66 (1997) 29 at paras. 195 and 208.

### *Paragraph 195*

Concern is expressed over the fact that adequate measures have not yet been taken to fully guarantee, in practice, the right of indigenous students to education in their native language.

### *Paragraph 208*

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All appropriate measures should be undertaken, including information campaigns, to prevent and combat all prevailing forms of discrimination against girls and minority or indigenous children, especially those living in rural areas, with a view, *inter alia*, to promoting their access to basic services.

- Australia, CRC, CRC/C/69 (1997) 16 at paras. 95, 104 and 114.

### *Paragraph 95*

The special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living and levels of services, particularly in education and health, are of concern.

### *Paragraph 104*

The unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system and the tendency to normally refuse applications for bail for them is of concern.

### *Paragraph 114*

Further steps should be taken to raise the standards of health and education of disadvantaged groups, particularly Aboriginals, Torres Strait Islanders, new immigrants, and children living in rural and remote areas. Measures need to be taken to address the causes of the high rate of incarceration of Aboriginal and Torres Strait Islander children. Research should be continued to identify the reasons behind this disproportionately high rate, including investigation into the possibility that attitudes of law enforcement officers towards these children because of their ethnic origin may be contributing factors.

- Honduras, CRC, CRC/C/87 (1999) 26 at para. 126.

All necessary measures should be taken to protect children belonging to indigenous and ethnic groups against discrimination and to guarantee their enjoyment of their rights.

- Nicaragua, CRC, CRC/C/87 (1999) 54 at para. 243.

All necessary measures should be taken to protect children belonging to indigenous groups and to guarantee that they enjoy all the rights recognized in the Convention, with special emphasis on their access to health and education.

- Venezuela, CRC, CRC/C/90 (1999) 10 at paras. 45 and 48.

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### *Paragraph 45*

Effective measures should continue to be taken to reduce economic and social disparities. Measures to prevent discrimination against the most disadvantaged groups of children, including girls, children belonging to indigenous and other ethnic groups, children with disabilities, children born out of wedlock and children living and/or working in the streets, should be reinforced.

### *Paragraph 48*

Efforts to ensure the immediate registration of the birth of all children, including measures in cooperation with non-governmental organizations and with the support of international organizations, should be taken to ensure that birth registration procedures are widely known and understood by the population at large. In this regard, the situation of children belonging to indigenous groups and to illegal immigrant families deserves special attention.

- Mexico, CRC, CRC/C/90 (1999) 34 at paras. 177, 180, 185, 187 and 188.

### *Paragraph 177*

The measures implemented to protect the rights of children belonging to vulnerable groups need to be reinforced. Measures to reduce economic and social disparities, including between urban and rural areas, to prevent discrimination against the most disadvantaged groups of children, such as girls, children with disabilities, children belonging to indigenous and ethnic groups, children living and/or working on the streets and children living in rural areas, should be increased.

### *Paragraph 180*

Greater efforts are needed to ensure that all children are registered, especially those belonging to the most vulnerable groups. Measures should be strengthened to ensure the immediate registration of the birth of all children, especially of those living in rural and remote areas and belonging to indigenous groups.

### *Paragraph 185*

The persistence of regional disparities in access to health care and the high rates of malnutrition among children under five years of age and those of school age, especially in rural and remote areas and among children belonging to indigenous groups remain of concern. Effective measures should continue to be taken to ensure access to basic health care and services for all children. More concerted efforts need to be taken to guarantee equal access to health care and to combat malnutrition, with special emphasis on children belonging to indigenous groups and children living in rural and remote areas.

### *Paragraph 187*

The situation of children belonging to indigenous groups regarding their access to education and the low relevance of the current bilingual educational programmes available to them is especially of concern. Efforts should be taken to strengthen educational policies and the system in order to reduce

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regional disparities in access to education and to strengthen ongoing retention programmes and vocational training for drop-out students. Effective measures should continue to be taken to improve the educational situation of children belonging to the most vulnerable groups, in particular, with regard to bilingual education programmes for children belonging to indigenous groups. Technical assistance in this area, *inter alia*, from UNICEF and UNESCO, is encouraged.

### *Paragraph 188*

The living conditions of children belonging to indigenous groups is of concern. Effective measures should be taken to protect children belonging to indigenous groups against discrimination and to guarantee their enjoyment of all rights.

### *See also:*

- Costa Rica, CRC, CRC/C/94 (2000) 37 at paras. 224 and 234.
  - Peru, CRC, CRC/C/94 (2000) 64 at para. 369, 372, 377 and 378.
  - Colombia, CRC, CRC/C/100 (2000) 64 at paras. 354, 355, 369, 371, 374 and 375.
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- Burundi, CRC, CRC/C/100 (2000) 17 at paras. 162 and 163.

### *Paragraph 162*

Deep concern is expressed about the poor situation of Batwa children and the lack of respect for almost all of their rights, including the rights to health care, to education, to survival and development, to a culture and to be protected from discrimination.

### *Paragraph 163*

The State party should urgently gather information on the Batwa people, strengthen the representation of Batwa in national policy-making and elaborate a plan of action to protect the rights of Batwa children, including those rights related to minority populations and indigenous peoples.

- Guatemala, CRC, CRC/C/108 (2001) 47 at paras. 245, 246, 253, 254, 269, 270 and 283.

### *Paragraph 245*

It is recognized that material on the promotion of human rights was disseminated by both governmental agencies and non-governmental organizations, but these measures need to be strengthened, in particular in rural areas and among indigenous children.

### *Paragraph 246*

Efforts should be increased to translate informative material into the main indigenous languages and more creative methods should be developed to promote the Convention, including through audio-visual aids such as picture books and posters, in particular at the local level.

## INDIGENOUS PEOPLES

### *Paragraph 253*

It is of concern that the principle of non-discrimination (art. 2) is not fully implemented for children belonging to indigenous groups; urban and rural poor children, girls, children with disabilities, and displaced children, especially with regard to their access to adequate health and educational facilities.

### *Paragraph 254*

All necessary measures should be taken to end discrimination. In this respect, the State party is encouraged to monitor discrimination against children, in particular those belonging to indigenous groups, urban and rural poor children, girls, children with disabilities, and displaced children, and to develop, on the basis of the results of such monitoring, comprehensive strategies for implementing specific and well-targeted actions aimed at ending all forms of discrimination.

### *Paragraph 269*

It is noted that the State party has implemented a number of food and nutrition programmes for children in schools, such as the “Happy Heart” programme. However, by noting the high rates of both chronic and severe malnutrition still affecting, in particular, children under five in rural areas, especially those belonging to indigenous groups, deep concern is expressed that there are no governmental policies to reduce and combat malnutrition among babies and children under five.

### *Paragraph 270*

The Committee reiterates its prior recommendation that the State party develop a comprehensive nutritional programme in order to prevent and combat malnutrition, particularly among children under five, and assess the impact of the programme on those affected, with a view eventually to improving its effectiveness. It is recommended that the State party seek international cooperation from, among others, UNICEF and WHO.

### *Paragraph 283*

Serious concern is expressed that the Committee’s previous recommendation, encouraging the reform of the juvenile justice system to ensure its full compatibility with the principles and provisions of the Convention, has not yet been implemented because of the postponement of the entry into force of the Children and Adolescent Code of 1996. In particular, the concern about the doctrine of “irregular situation” is reiterated and it is noted that legal assistance for children is not mandatory and that the presence of a translator for indigenous children is not required.