



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Seventy-fourth session

### Summary record of the second part (public)\* of the 1931st meeting

Held at the Palais Wilson, Geneva, on Friday, 6 March 2009, at 10 a.m.

*Chairperson:* Ms. Dah  
*later:* Mr. Calí Tzay

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\* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.1931.

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*The second part (public) of the meeting began at 11.45 a.m.*

1. **The Chairperson** said that she must meet with the United Nations High Commissioner for Human Rights before the end of the meeting and that she would therefore be unable to preside over the closure of the session. Following the customary exchange of courtesies, she invited Mr. Calí Tzay to preside over the meeting in her absence.
2. *Mr. Calí Tzay took the Chair.*

**Prevention of racial discrimination, including early warning measures and urgent action procedures**

3. **Mr. Thornberry** (Coordinator of the Working Group on Early Warning Measures and Urgent Action Procedures) said that the Working Group had drafted several letters regarding affairs that it had considered under the early warning measures and urgent action procedures. He was submitting those letters to the Committee for adoption, after which the Chairperson could address them to the States parties concerned.
4. Regarding the issue between the Australian Government and indigenous peoples in the Northern Territory, he said that the Working Group remained concerned by the fact that the Racial Discrimination Act had been suspended in order to enact the measures contained in the Northern Territory Emergency Response. The Group hoped that the Act would be reinstated as soon as possible. He proposed that the Committee should ask the Australian Government to provide further information on the matter, but should initially do so within the framework of the follow-up procedure.
5. Regarding the situation in the Province of British Columbia in Canada, where there was a dispute between the Government and indigenous people over the privatization of indigenous lands and the termination of the land rights of indigenous communities, he indicated that the Permanent Mission of Canada to the United Nations Office at Geneva had provided oral responses on the issue to the Working Group. The Group was now inviting the Committee to ask the Canadian authorities to provide further written information on the question under the follow-up procedure.
6. In the case of El Salvador, the Working Group had received information from a credible source about the commission of “statistical genocide” in the sense that the existence of indigenous peoples in the country had been ignored in the latest official census. The Working Group invited the Committee to ask the State party, in its draft letter to the Salvadorian Government, to provide information that would allow the Committee to monitor the situation under the follow-up procedure.
7. The Working Group had also deemed it necessary to follow the situation in India, where several dams had been built in the north-east of the country without the prior consent of the indigenous populations living there, and in Indonesia, where numerous conflicts had broken out between palm oil companies and indigenous peoples. The Working Group also invited the Committee to request further information under the follow-up procedure in the draft letters that it would be sending to the authorities of those two countries.
8. The Working Group had decided to classify the grave situation of Hmong refugees in the Lao People’s Democratic Republic as urgent because they were the target of military operations carried out by the national army. The Working Group invited the Committee to ask the Lao Government to provide information on the matter no later than 1 August 2009.
9. The Working Group had also considered a complaint from indigenous communities of Nepal about the fact that they had not been consulted during the framing of the new Constitution, which did not bode well for the future. In the draft letter to the Nepalese Government proposed by the Working Group, the Committee was invited to recommend to

the Government that it should establish mechanisms to ensure the participation of those communities in the formulation of the Constitution and, more generally, in political affairs. The Group was also suggesting that the Committee should draw the Government's attention to its general recommendation No. 23 on the rights of indigenous peoples and request the Government to provide information on the matter no later than 31 July 2009.

10. The draft letter for Peru written by the Working Group dealt with two issues. The first regarded the community of Ancomarca, which had suffered from a water shortage following the Government's decision to authorize the extraction of groundwater in the region. The other issue, which the Committee had considered previously under its early warning measures and urgent action procedures, was the situation of the Achuar people and other groups affected by the extraction of hydrocarbons in the Corrientes River Basin. Since Peru was scheduled to appear before the Committee at its seventy-fifth session, in August 2009, it could provide further information on the matter at that time.

11. Finally, in the case of Tanzania, the Working Group's draft letter explicitly stated that the situation of pastoralist communities whose members had been forcibly evicted and dispossessed of their lands had been considered under the Committee's early warning measures and urgent action procedures. The Government of Tanzania was invited to contact the Committee to discuss those issues to take interim measures to grant access to the pasture land for those pastoralists, to suspend further commercial development of the disputed land and to ensure the security of the pastoralists in question.

12. In all cases except for that of Tanzania, the Working Group had chosen to first ask the concerned States parties to provide further information under the follow-up procedure, even though it had already considered all the aforementioned cases under the early warning measures and urgent action procedures.

13. All of those cases were variations on the same theme: a dispute between the so-called national interest and the rights of indigenous peoples with regard to access to natural resources, in particular water, mineral and forest resources. Indigenous communities were often victims of acts of violence, and their means of subsistence were threatened. Generally speaking, the objective of the Working Group was to reconcile the national interest with the rights of indigenous peoples. It would therefore be interesting for the Committee to engage in dialogue with representatives of the World Bank, the International Labour Organization and non-governmental organizations to find out what methods they used to evaluate the human and environmental impact of the projects carried out in various countries. It would also be interesting to know what the procedure was for consulting indigenous populations before a project was implemented, whether that procedure was always followed, and whether the representatives of indigenous populations were chosen on a discretionary basis or not.

14. Because the Committee had before it a growing number of cases under the early warning measures and urgent action procedures, the Working Group had felt it necessary to scrupulously apply the criteria for determining whether a situation was urgent or not and had consequently deemed some cases inadmissible on the ground that they had been taking place for some time and were not of a particularly urgent nature.

15. In some cases States parties had questioned the validity of the early warning measures and urgent action procedures. Those cases usually involved States parties that had not made the declaration provided for in article 14 of the Convention to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the State party of any of the rights set forth in the Convention.

16. In most cases, the Committee had made use of the early warning measures and urgent action procedures after having received information from members of non-

governmental organizations or population groups who believed that their rights had been violated. However, the Committee still had the option to initiate such procedures itself, and any one of its members could direct his or her colleagues' attention to a specific situation that he or she found alarming and could urge the Committee to consider the issue under those procedures.

17. **Mr. Kemal** observed that the cases brought to the Committee's attention and considered by the Working Group under the early warning measures and urgent action procedures all involved indigenous peoples, but that, contrary to appearances, they were all different from one another because the indigenous peoples were being deprived of their rights for differing reasons.

18. The case of the Hmong, for example, had its origins in the cold war and the agreements reached at the end of the Viet Nam War and the war in Indochina. In other cases, the situation was explained by the greed of transnational corporations that wanted to control the natural resources found on sparsely populated indigenous lands. Dispossessed of their lands and deprived of their rights, the displaced populations were often under threat of extinction.

19. In the case of Australia, it was paternalism that had placed the aboriginal people in their present situation. By negating their culture and traditional way of life, unjustified interference in the internal affairs of a people often resulted in their subjugation and oppression.

20. In the case of land privatization in Canada, the Government had taken advantage of the inability of the parties to reach agreement and the resulting divisiveness to impose its own will, to the detriment of the rights of indigenous peoples.

21. In developing countries such as India, Indonesia and Peru, access to natural resources and the construction of infrastructure were what most often posed problems, and it was precisely in that context that disputes erupted, when certain individuals preferred to protect the interests of a privileged few over the common interest. It seemed, however, that attitudes were changing, and that the representatives of the World Bank and the Asian Development Bank had managed to spread the idea that communities must be consulted prior to the implementation of projects that could threaten their traditional way of life.

22. **Mr. Sicilianos** said that he supported all of the Working Group's proposals and was in favour of having the Committee send the letters that had been submitted by the Coordinator of the Working Group to the States parties in question, except in the case of the Lao People's Democratic Republic. On the issue of the Hmong people, it would be preferable for the Committee to adopt a decision, which, for reasons he did not fully understand, it had put off doing for many years.

23. **Mr. Avtonomov** said that, given the large number of cases before the Committee, it would be preferable for the Committee to adhere strictly to the indicators defined in the new guidelines for the early warning measures and urgent action procedures (A/62/18, annex III) in deciding, on a case-by-case basis, what approach to take. It would therefore be advisable for the States parties to become more familiar with those guidelines, so that they would not contest the validity of a procedure when it was applied to them. That being said, it would be even better if, wherever possible, the Committee examined the situation in a State party under its procedure for the consideration of periodic reports submitted by States parties during the Committee's regular sessions.

24. It was true that the Committee had considered the issue of the Hmong, which was a complex problem with a political dimension as well as an ethnic one, on many occasions. In fact, some representatives of that population group who occupied high-level positions in the

army were opposed to the Government, and some Hmong groups, particularly some of those in Viet Nam, had declared the establishment of a new State.

25. It was regrettable that the Lao People's Democratic Republic had broken off its dialogue with the Committee, and he therefore advocated following through on the proposal as stated in the draft letter, to ask the Government to provide its comments no later than 1 August 2009.

**Organizational and other matters** (*continued*)

26. **Mr. Thornberry** said that, regrettably, during the current session, more non-governmental organizations had attended meetings of the Working Group than the meetings held to consider periodic reports under agenda item 5. He wondered whether that was because the dozens of non-governmental organizations present at the Palais des Nations had preferred to attend the session of the Human Rights Council that was being held concurrently at the Palais des Nations, rather than the session of the Committee at Palais Wilson, which was less accessible.

27. **Mr. Peter** confirmed that fewer non-governmental organizations had attended the Committee's meetings, but noted with appreciation that those that had participated had reaffirmed their confidence in the Committee, whose concluding observations they looked forward to reading with great interest.

28. One of the States parties, which had been aware that the situation in its country was being considered by the Working Group, had asked to meet with the Working Group to give its own version of the facts. In the same spirit of equity, in another case the Working Group had invited a State party to meet with it to respond to allegations brought before the Committee by a non-governmental organization. That was proof that the work of the Committee was credible and was taken seriously by both non-governmental organizations and States parties.

29. Following an exchange of views among **Mr. Sicilianos**, **Mr. de Gouttes**, **Mr. Avtonomov** and **Mr. Prosper** on the risk that the various treaty bodies might become progressively marginalized, **the Chairperson** said that it was his understanding that the Committee members wanted the issue to be taken up at a higher level and that, in order for the Committee to have greater visibility, it should meet in the Palais des Nations when its session coincided with that of the universal periodic review of the Human Rights Council. He therefore proposed that the Chairperson should bring up the issue with the High Commissioner for Human Rights, along with the possibility of re-establishing the press conferences that had previously been held at the end of each session to convey the outcomes of the Committee's work.

30. *It was so decided.*

31. **Mr. Lindgren Alves** said that he would like to have further information on the content of the letters to be addressed to the Governments of the States parties by the Working Group on Early Warning Measures and Urgent Action Procedures.

32. He had serious reservations about the early warning measures and urgent action procedures, as they dealt with issues which, while important, were not urgent. However, it was understandable that the Committee should resort to them for lack of a better solution. Given that all the complaints considered by the Working Group during the current session involved indigenous peoples, the Committee might wish to suggest, as part of its proposal to be submitted to the Preparatory Committee for the Durban Review Conference, that the United Nations should establish a special body devoted to issues of concern to indigenous peoples, which would meet regularly to deal with those issues in greater depth.

33. As for the complaints regarding the situation of the Hmong people, he supported Mr. Avtonomov's statement. He was not sure that the issue called for urgent action on the part of the Committee. He would also like to know the contents of the letter that the Working Group had proposed to address to the Lao Government.

34. **Mr. Amir** said that he had been the Country Rapporteur for the Lao People's Democratic Republic four years ago and that, at the request of the Committee, he had met with a representative of the State party in New York regarding a decision from the Committee in which it had asked the State party to, inter alia, release three members of the Hmong minority group who had been arrested by the Lao authorities. The representative had indicated that those people were being held for reasons of internal security and that it was up to the Lao Government to deal with that kind of matter.

35. He had then asked the Lao Government to send a representative to meet with the Committee to discuss the possibility of reducing the sentence of the three individuals and he had reported that fact to the Office of the High Commissioner for Human Rights and to the Committee. However, the Lao People's Democratic Republic had not sent a representative and, to his knowledge, there had been no reaction from the Government since then.

36. Since that time, documentation, including photos, of very violent acts had been submitted to the Committee by representatives of the Hmong minority which indicated the names of Hmong individuals who, according to the representatives of that minority group, had been executed by the Lao authorities. However, to his knowledge, neither the Lao Government nor the United Nations office in the Lao People's Democratic Republic had provided the Committee with information on any follow-up of that case.

37. The Working Group had taken up the issue two years earlier, but the Lao People's Democratic Republic had not answered its enquiries then either. According to information provided by representatives of the Hmong community, offences continued to be committed against that community, and urgent action must be taken. The Working Group could either deal with the matter itself and try to obtain new information, or it could hand the case over to those in charge of the Committee's follow-up procedure. In the latter case, the Committee should address a letter to the Lao Government reminding it of its obligations under international law.

38. In the view of the Lao Government, the issue was not one of racial discrimination but rather a political problem affecting the security and integrity of the Lao national territory, because the objective of the Hmong minority was to establish an autonomous, or even independent, territorial entity within the Lao People's Democratic Republic. From that point of view, the issue did not fall within the Committee's sphere of competence.

39. **Mr. Thornberry** (Coordinator of the Working Group on Early Warning Measures and Urgent Action Procedures) said that the letter concerning the Hmong minority dealt with the situation of persons in a particular province and with attacks by army troops on 6 December 2008. The Working Group was concerned by reports that the Armed Forces had denied indigenous populations access to their traditional food sources. United Nations reports published in 2008 had also spoken of a critical food situation. In its letter, the Working Group enquired about the reasons for those military operations. It also asked for information about the safety of Hmong refugees who were repatriated to the Lao People's Democratic Republic from refugee camps in Thailand and urged the State party to accept United Nations assistance to help manage the repatriation process. In that context, there was a risk of new developments that would require urgent action.

40. The type of situation that could give rise to action by the Working Group under the early warning measures and urgent action procedures was determined on the basis of a list of indicators concerning the scope and gravity of the situation. It had already been said

many times before that the procedures did not apply only to situations of a broad scope but could also be employed to address smaller-scale threats that jeopardized the existence of a particular community, as in the case, for example, of incursions into the territory of an indigenous population. He also recalled that any Committee member who felt that a situation called for urgent action could approach the Working Group directly and request that it should evaluate the situation and make a recommendation on the subject. He was aware that the working methods of the Working Group needed to be examined regularly, but the revised indicators had only been in use for two years. It would therefore be preferable to maintain them until the next review of that procedure.

41. The United Nations system had several mechanisms concerning the situation of indigenous peoples, such as the United Nations Permanent Forum on Indigenous Issues and the Special Rapporteur on indigenous peoples and their relationship to land, but those mechanisms did not always carry the same weight as the working group of a treaty body, whose observations were an important signal to Governments.

42. **Mr. Sicilianos** proposed that, in future sessions of the Committee, a briefing should be organized midway through each session on the cases that the Working Group was considering in order to keep the Committee apprised of its efforts.

43. He also proposed that the contents of the letter to be addressed to the Lao People's Democratic Republic concerning the situation of the Hmong people should be the subject of a decision taken by the Committee under the early warning procedure. Unlike the letters written by the Committee, its decisions were included in its annual report to the General Assembly.

44. **The Chairperson**, supported by **Mr. de Gouttes**, approved of Mr. Sicilianos' suggestion and said that the Committee would consider it during its next session so that the Committee members would have time to prepare and be duly informed about the issue.

45. **Mr. Sicilianos** urged the Committee to consider his suggestion during the current session rather than the next session.

46. Following an exchange of views among **Mr. Aboul-Nasr**, **Mr. Avtonomov**, **Mr. Lindgren Alves**, **Mr. Sicilianos**, **Mr. Diaconu**, **Mr. Thornberry** and **the Chairperson**, the latter concluded that during the current session the Committee would address a letter prepared by the Working Group to the Lao People's Democratic Republic and that it would reconsider the issue at its next session so that the Committee members would have time to prepare. If the Committee had not received any information by that time, it would then take a decision on the situation in the Lao People's Democratic Republic as Mr. Sicilianos had proposed.

47. **Mr. Schackel** (Secretary of the Committee) said that the documents concerning the early warning procedure that had been prepared prior to the session had been distributed to all the Committee members, but that those documents did not include the new elements considered during the current session.

48. He confirmed that the Committee's next session would be held from 3 to 28 August 2009. He also pointed out that the Committee's extranet site, which would be particularly useful as a way to keep the Committee members updated about new developments between sessions, was now up and running.

49. **Mr. Huang** said that he would like to know which countries would participate in the Committee's next session and who the country rapporteurs would be.

50. **The Chairperson** said that the persons designated to fulfil that function were as follows: Azerbaijan (Mr. de Gouttes); Chad (Mr. Ewomsan); Chile (Mr. Avtonomov); China (Mr. Sicilianos); Colombia (Mr. Diaconu); Ethiopia (Mr. Peter); Greece (Mr.

Lindgren Alves); Monaco (Mr. Kemal); Panama (Mr. Lahiri); Peru (Mr. Calí Tzay); the Philippines (Mr. Thornberry); Poland (Mr. Amir); the United Arab Emirates (Mr. Prosper).

**Closure of the seventy-fourth session**

51. **The Chairperson** declared the seventy-fourth session of the Committee on the Elimination of Racial Discrimination closed.

*The meeting rose at 13.05 p.m.*