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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Rights of persons belonging to national or ethnic, religious and linguistic minorities

Report of the United Nations High Commissioner for Human Rights

Summary

The first chapter of the report provides a summary of efforts being made by the Office of the United Nations High Commissioner for Human Rights and United Nations human rights machinery to strengthen the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The second chapter reports on capacity-building activities to facilitate and increase the ability of minorities to draw on the United Nations international and regional human rights bodies and mechanisms for the protection of their rights. The third chapter summarizes the most relevant concluding observations on the rights of minorities made by treaty bodies in considering initial and periodic reports of States parties. The fourth chapter provides an update on the work of relevant special procedures mechanisms with regard to the rights of minorities.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Work of the Office of the United Nations High Commissioner for Human Rights at Headquarters and in the field	6–28	3
A. Policing and minority communities.....	7–12	4
B. Sixth meeting of the Inter-agency Group on Minority Issues.....	13–14	5
C. Second session of the Forum on Minority Issues	15–20	5
D. Capacity-building of civil society.....	21–25	6
E. Country engagement activities	26–28	7
III. Treaty bodies.....	29–74	8
A. Concluding observations from treaty bodies	29–66	8
B. General comments from treaty bodies.....	67–74	14
IV. Special procedures	75–80	15
A. Independent expert on minority issues	76	15
B. Special Rapporteur on freedom of religion or belief	77	15
C. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	78	16
D. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.....	79	16
E. Special Rapporteur on contemporary forms of slavery, including its causes and consequences	80	16
V. Conclusions.....	81–85	17

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 13/12, in which the Council requested the United Nations High Commissioner for Human Rights (OHCHR) to present an annual report to the Council containing information on relevant developments of United Nations human rights bodies and mechanisms, as well as on the activities undertaken by the Office of the High Commissioner at Headquarters and in the field that contribute to the promotion of and respect for the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

2. Prior to resolution 13/12, the High Commissioner had submitted reports to the Council pursuant to its decision 2/102, in which it requested the Secretary-General and the High Commissioner to continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies. Accordingly, reports on the rights of persons belonging to national or ethnic, religious and linguistic minorities were submitted under item 2 to the Council at its fourth (A/HRC/4/109), ninth (A/HRC/9/8) and tenth sessions (A/HRC/10/38 and Add.1).

3. The present report contains an outline of the main activities undertaken in the course of 2009 and part of 2010 by OHCHR, both at Headquarters and in the field, to strengthen the promotion and protection of the rights of minorities pursuant to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The report also provides a review of relevant developments arising from treaty-based bodies and special procedures.

4. The report describes the efforts made by OHCHR and the United Nations human rights machinery to strengthen the use of the Declaration. Adopted in 1992 by consensus by the General Assembly, the Declaration is the tool of reference in the promotion and protection of the rights of persons belonging to minorities at national and international levels, and offers important guidance in efforts to advance minority rights within the United Nations and other forums. Given its specific standards on key issues, such as participation, the Declaration is an essential complement to minority-specific human rights treaty provisions, such as article 27 of the International Covenant on Civil and Political Rights and article 30 of the Convention on the Rights of the Child.

5. The activities summarized in the report demonstrate that particular efforts have been made by OHCHR, the independent expert on minority issues and the Forum on Minority Issues to contribute to the promotion and protection of the right of persons belonging to minorities. The fundamental nature of this right is such that, in many cases, other human rights can only be enjoyed or exercised if it is secured. As such, whether in the administration of justice, including law enforcement, or political participation, the right to effective participation is essential to the enjoyment of rights in accordance with the principles of non-discrimination and equality before the law.

II. Work of the Office of the United Nations High Commissioner for Human Rights at Headquarters and in the field

6. The work of OHCHR in 2009 in relation to minorities was guided by the High Commissioner's Strategic Management Plan for the period 2008–2009. In this regard, particular focus was placed on the thematic area of anti-discrimination through effective participation of persons belonging to minorities, particularly in law enforcement institutions

and decision-making. To that end, several capacity-building activities were held with a view to facilitate and increase the ability of minorities to draw on United Nations international and regional human rights bodies and mechanisms for the protection of their rights.

A. Policing and minority communities

7. A key concern of persons belonging to minorities is their right to participate in cultural, religious, social, economic and public life. Obstacles to the participation of minorities in the administration of justice, including law enforcement structures, can result in the overrepresentation of minorities as both victims and defendants in the criminal justice system. Contributing to increased participation of minorities in the administration of justice continues to be a priority for OHCHR. In order to improve the participation of minorities in law enforcement structures, such as the police, OHCHR has launched a series of consultations on good/effective practices in policing and minority communities.

8. The initial consultation in this area began with an expert meeting on integration with diversity in policing, organized by OHCHR in Vienna on 15 and 16 January 2008, in cooperation with the independent expert on minority issues, the International Labour Organization (ILO) and the United Nations Office on Drugs and Crime. The expert meeting brought together senior police officials from Europe, Asia, Africa, South America and the Pacific, in addition to representatives of several international organizations, all of whom shared their experiences and made good practices recommendations on policing in minority communities (A/HRC/10/38/Add.1).

9. OHCHR continued its efforts to gather good/effective practices in policing and minorities in order to address the underrepresentation of minorities in the police and the deep alienation that often divides minorities and law enforcement representatives. To this end, during the Durban Review Conference, held from 20 to 24 April 2009, OHCHR organized a side event entitled “Durban commitments and minorities: policing in diverse societies”. The objective of the side event was to share information and raise awareness on effective measures to prevent racial discrimination and encourage participation in the police force of persons belonging to national or ethnic, religious and linguistic minorities. In addition to panel presentations, the side event included film clips from various regions, displaying innovative approaches to encourage the participation and involvement of representatives from minority communities in all aspects of policing, in accordance with several provisions of the 2001 Durban Declaration and Programme of Action.

10. A second consultation, on the same theme, entitled “Expert consultation on good practices in policing and minority communities in Africa” was organized by OHCHR in Johannesburg on 12 and 13 October 2009. Like the 2008 expert meeting, the consultation brought together high-ranking police officials from various countries of southern Africa, in addition to representatives of national human rights institutions and non-governmental organizations, to share and collect good practices. Building on the conclusions reached at the expert meeting, the Johannesburg consultation was an opportunity to identify additional good practices particularly relevant in the subregional context of southern Africa.

11. The participants in the Johannesburg consultation emphasized that policing by a representative police force that had developed effective relationships with minority communities could assist in maintaining public order, reduce levels of criminality and lead to greater communal cohesion. Experts underlined the fact that the police must exercise their functions through a human rights-based approach free of discrimination, and they considered various ways to ensure that the composition of police forces reflect the ethnic, religious and linguistic composition of the population at large. Participants also stressed that a shared understanding of problems and proactive communication between the police

and minorities in arriving at solutions designed to address crimes and other community issues remained essential to progress.

12. As the OHCHR initiative on policing and minority communities evolves, it is expected that the next consultation will offer an opportunity to gather additional effective practices in policing and minority communities. Once a broad range of effective practices covering both normative standards and operational approaches are assembled, they will be compiled and shared to assist in ensuring the participation and representation of minorities in policing.

B. Sixth meeting of the Inter-agency Group on Minority Issues

13. OHCHR hosted the sixth meeting of the Inter-agency Group on Minorities on 18 May 2010. The Group aims to contribute to coordinated progress in the field of minority rights pursuant to article 9 of the Declaration, which calls on specialized agencies and other organizations of the United Nations system to contribute to the full realization of the rights and principles set forth in the Declaration within their respective fields of competence. In addition to several OHCHR staff members working in areas relevant to the Group, representatives of the United Nations Children's Fund, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization, ILO and the Inter-Parliamentary Union (IPU) also took part in the meeting.

14. The meeting of the Group offered, *inter alia*, an opportunity for the coordination of measures to improve the implementation of the Declaration. The measures discussed included:

(a) Encouraging agencies, programmes, funds and departments of the United Nations to support the implementation of recommendations arising out of the Forum on Minority Issues. To this end, IPU cited the organization, in accordance with a recommendation of the Forum, of an international conference entitled "Promoting inclusive parliaments: the representation of minorities and indigenous peoples in Parliament", to be held in November 2010;

(b) The finalization of a publication entitled "Marginalized minorities in development programming: a UNDP resource guide and toolkit", to respond to minority issues in development processes (the UNDP representative informed the participants that the guide had been completed and its launch and roll-out were being planned. It is expected that the guide will be used as a reference document in many agencies of the United Nations system);

(c) Follow-up to Council resolution 13/12 on the rights of persons belonging to national or ethnic, religious and linguistic minorities. (Participants expressed their satisfaction that, in the resolution, the Council welcomed the interagency cooperation of United Nations agencies, funds and programmes on minority issues, led by the Office of the High Commissioner, and urged them to further increase their cooperation.);

(d) The revision, by participants, of draft terms of reference for the Group, to be adopted at its next meeting.

C. Second session of the Forum on Minority Issues

15. Consistent with the concern regarding participation of persons belonging to minorities, and pursuant to Council resolution 6/15, the second session of the Forum on Minority Issues, held on 12 and 13 November 2009, focused on the issue of minorities and effective political participation. A key reference for the session was article 2 (2) of the

Declaration, which provides for the right of persons belonging to national or ethnic, religious and linguistic minorities to participate effectively in cultural, religious, social, economic and public life.

16. The Forum was chaired by Barbara Lee, a Congresswoman and chairperson of the Congressional Black Caucus, a civil rights organization in the United States of America. The work of the Forum was also guided by the independent expert on minority issues, Gay McDougall. The session of the Forum was attended by representatives of United Nations mechanisms, bodies and specialized agencies, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, academics, experts on minority issues and civil society representatives. More than 500 people were accredited to participate, including delegates from more than 45 States.

17. OHCHR provided substantive support to the Forum. In this regard, one of its contributions was a document on the work of OHCHR and human rights bodies regarding minorities and the right to effective participation (A/HRC/FMI/2009/5). The document also contained a description of thematic advice, capacity-building and field engagement activities carried out by OHCHR and aimed at advancing the right of persons belonging to minorities to participate in decision-making.

18. The Forum made thematic, action-oriented recommendations intended to increase the inclusion and recognition of minorities in decision-making processes, while enabling them to maintain their own identity and characteristics. The Forum submitted the recommendations made at its second session to the Council at its thirteenth session (A/HRC/13/25).

19. During the Forum, OHCHR organized, on 13 November 2009, a panel discussion entitled "The Minorities Declaration: challenges and opportunities". The event brought together a panel of six experts that examined the extent to which regional organizations, civil society actors and other stakeholders had been using the Declaration as a tool and source of reference in their work. The event also offered an opportunity for the panellists and the other participants to identify positive examples and main obstacles relevant to the use of the Declaration. Proposals aimed at encouraging its wider use at the international, regional and country levels were also made. Most participants commented that the Declaration was imbued with legal authority by virtue of the fact that it is rooted in equality and non-discrimination, principles well established under international law and international human rights law. The need to use the Declaration more widely was also stressed.

20. On 11 November 2009, prior to the Forum, OHCHR and Minority Rights Group International organized a half-day preparatory workshop for civil society and other minority representatives. The purpose of the workshop was to provide a briefing for interested parties on substantive and procedural lessons learned from the first session of the Forum, in order to maximize the effectiveness of their participation in the second.

D. Capacity-building of civil society

21. With regard to the capacity-building of civil society, OHCHR continued its Minority Fellowship Programme in 2009, to empower representatives of minority communities by providing them with human rights training to enable them to better secure their rights at the national level through improved use of the United Nations human rights mechanisms. In 2009, participants in the programme came from Australia, Costa Rica, the Islamic Republic of Iran, Israel, Kyrgyzstan, Mauritania, Pakistan and the Syrian Arab Republic.

22. The English-language fellowship lasted over three months and involved intensive training at OHCHR headquarters in Geneva. During the programme, the fellows attended

several briefing sessions on international human rights instruments and mechanisms, including introductions to the work of the Council and its universal periodic review procedure. They also benefited from lectures on the work of the treaty bodies and that of several special procedures. Briefing sessions were also organized for the fellows on the United Nations instruments and mechanisms devoted to minorities, including the Declaration, the work of the independent expert on minority issues and the Forum on Minority Issues. The fellows also had the opportunity to attend, as observers, many important sessions of human rights mechanisms, including the Durban Review Conference.

23. The 2009 and 2010 fellowship programmes also included training activities and workshops at other specialized agencies and several individual and group assignments, including the preparation of presentations on human rights issues in the fellows' respective communities or countries. They also prepared papers on the political participation of minorities in public life, which were used as background material for the second session of the Forum on Minority Issues.

24. The Arabic-language fellowship consisted of a one-month intensive training at OHCHR headquarters in Geneva. The fellowship amounted to a condensed version of the English-language programme, with participants being afforded the opportunity to participate in the second session of the Forum on Minority Issues together with a group of selected former English-speaking fellows.

25. The English-language minority fellowship programme for 2010 was held at OHCHR headquarters from 12 April to 11 June 2010. Like the 2009 programme, it provided intensive training to minority rights advocates, from Colombia, France, Nigeria and Sri Lanka.

E. Country engagement activities

26. OHCHR currently has a network of more than 50 field presences spanning five continents, and its country engagement increasingly includes activities that advance the rights of persons belonging to minorities. For example, in the Republic of Moldova, OHCHR, working with the country team, provided detailed comments on the country's draft anti-discrimination law, to strengthen legal protections of minorities facing discrimination. Although the Organization for Security and Cooperation in Europe had the lead in this area, OHCHR also held a series of consultations with officials from the Ministry of Justice engaged in the preparation of the draft law, with a view to assisting in the adoption of a comprehensive legal instrument prohibiting discrimination on various grounds.

27. In Iraq, OHCHR has been monitoring protection, especially in relation to respect for the principles of non-discrimination and equality before the law. The United Nations Assistance Mission for Iraq has been assessing the feasibility of addressing the concerns of minority communities through an integrated framework strategy with input from OHCHR. The strategy, which is to include specific proposals for activities by various components of the country team and Iraqi actors, will also address (a) the underrepresentation of minorities in the judiciary and law enforcement services; and (b) their overrepresentation among the victims of targeted attacks, abductions, security force misconduct and as subjects of criminal proceedings in certain regional areas.

28. OHCHR began a project on the promotion of the human rights of Afro-descendants in Bolivia (Plurinational State of), Ecuador and Peru. Aimed at strengthening the institutional capacity of Afro-descendant organizations in the Andean region and to enable them to better defend their human rights, the project was launched with a national workshop and a regional human rights training session of trainers, which was held from 9

to 12 February 2010 in Lima. Organized in collaboration with OHCHR field presences in Bolivia (Plurinational State of), Ecuador and the regional office in Chile, colleagues from other field offices in the region also participated in the two activities. A manual on the rights of persons belonging to minorities and a compilation of recommendations by treaty bodies on the promotion and protection of the rights of Afro-descendants in the three countries were prepared for the activity.

III. Treaty bodies

A. Concluding observations from treaty bodies

29. In exercising their competence to receive and consider initial and periodic reports of States parties, treaty bodies can enquire about measures being taken to protect minorities; make observations, particularly when such measures fall short of treaty obligations; and issue recommendations on improving compliance with treaty provisions.

1. Human Rights Committee

Ninety-fifth session (16 March–3 April 2009)

30. In the Committee's concluding observations for its ninety-fifth session, it expressed concern about the use of excessive force by law enforcement officials against racial minorities in Australia, as well as about the greater number of cases of discrimination against persons of Muslim background, despite measures taken by the State party to combat Islamophobia.

31. Regarding the report submitted by Sweden, the Committee welcomed the inclusion of a provision in the Constitution prohibiting discrimination by public institutions on the grounds of, inter alia, colour, national or ethnic origin, linguistic or religious affiliation. The Committee remained concerned, however, about manifestations of intolerance directed towards members of minority groups in school settings.

Ninety-sixth session (13–31 July 2009)

32. At its ninety-sixth session, the Committee, in its concluding observations on the State report submitted by the United Republic of Tanzania, expressed concern that the State party did not recognize the existence of indigenous peoples and minorities on its territory. In its concluding observations on the State report submitted by the Netherlands, the Committee expressed concern at reports of discrimination against minorities in the workplace, including their recruitment and selection.

33. In relation to the State report submitted by Azerbaijan, the Committee expressed concern at the lack of information on minorities and the absence of clarification by the delegation about the steps taken to address other significant concerns, in particular the reduction in legal guarantees relating to the protection of minorities in the State party's law on the State language (2002) and the absence of consultative structures for representatives of minorities in the nation.

Ninety-seventh session (12–30 October 2009)

34. At its ninety-seventh session, the Committee expressed its concern at the sharp rise in apparent anti-Semitic incidents occurring in Switzerland, and at reports that the police in Geneva had not fully investigated the pattern of those incidents. It was also concerned at the generally low rate of minorities in the police force, despite the high percentage of

minorities in the population at large. The Committee called upon Switzerland to increase efforts to ensure that minorities are adequately represented in the police force.

35. In relation to the report submitted by the Republic of Moldova, the Committee expressed its concern at the lack of significant progress in the implementation of many of the Committee's previous recommendations, including one relating to discrimination faced by minorities, such as the Roma. The Committee also recommended that the State party should strengthen its efforts to implement the Committee's recommendations in this area.

36. In its observations on the State party report submitted by the Russian Federation, the Committee expressed its concern at the increasing number of reports of hate crimes and racially motivated attacks against ethnic and religious minorities, as well as persistent manifestations of racism and xenophobia in the State party, including reports of racial profiling and harassment by law enforcement personnel targeting foreigners and members of minority groups. The Committee was also concerned about the failure by the police and judicial authorities to investigate, prosecute and punish hate crimes and racially motivated attacks against ethnic and religious minorities.

2. Committee on Economic, Social and Cultural Rights

Forty-second session (4–22 May 2009)

37. At its forty-second session, the Committee on Economic, Social and Cultural Rights encouraged Cyprus to strengthen its efforts to ensure that education in schools met the needs of a diverse society. The Committee also indicated that Cyprus should revise schools' curricula to include a better understanding of the contribution of communities and minorities to the State party's history.

38. Pertaining to the report submitted by the United Kingdom of Great Britain and Northern Ireland, the Committee continued to be concerned about de facto discrimination experienced by some of the most disadvantaged and marginalized individuals and groups, such as ethnic minorities and people with disabilities. It expressed concern at the discriminatory impact of some counter-terrorism measures on the enjoyment of economic, social and cultural rights of certain groups, in particular ethnic and religious minorities, despite the State party's commitment to adopt policies aimed at promoting integration, equal treatment and diversity.

39. In its concluding observations on the report of Cambodia, the Committee noted that primary education continued to be a problem for various ethnic minorities in the north and east of the country, where there are 20 minority languages spoken by these groups as their mother tongue, while the formal education curriculum has only used Khmer as the language of instruction.

Forty-third session (2–20 November 2009)

40. At its forty-third session, in relation to the report submitted by Poland, the Committee continued to be concerned, in spite of the appointment of a plenipotentiary for equal treatment in April 2008, at the de facto discrimination experienced by some disadvantaged and marginalized individuals and groups, such as ethnic minorities. It remained concerned that Roma communities in the State party continued to face widespread discrimination in areas such as employment, education, land tenure, access to welfare benefits, housing and health care, which thus impairs the enjoyment of their economic, social and cultural rights.

3. Committee on the Elimination of Racial Discrimination

Seventy-fourth session (16 February–6 March 2009)

41. At its seventy-fourth session, the Committee on the Elimination of Racial Discrimination, in its concluding observations on the report of Bulgaria, remained concerned at the low levels of representation in public administration, specifically in the army and the police, of persons from certain minority groups, particularly the Roma. The Committee also expressed its concern at the practice of the State party of placing Roma children in schools for children with disabilities, and at the obstacles faced by the Roma in their access to work, housing, health care and education, cases of ill-treatment and the excessive use of force employed by the police against the Roma.

42. In the report submitted by the Congo, the Committee found that the State party had not included a legal definition of racial discrimination in its domestic legislation. The Committee recommended that the State party intensify efforts to establish harmonious inter-ethnic relations among various ethnic and cultural groups, especially those living in the north of the country. Regarding Croatia, the Committee remained concerned at the discrimination faced by the Roma, including in the fields of education, employment, housing, citizenship and political participation. It also observed that the Serb and Bosniak minorities faced similar difficulties to the Roma in gaining access to citizenship procedures.

43. In its concluding observations on the report submitted by Finland, the Committee welcomed the fact that the ombudsman for minorities had been transferred to the Ministry of the Interior as an independent authority. It expressed its concern at de facto segregation in the housing of Roma and immigrants, as well as the limited access of Roma to exercise their rights to education, employment and housing.

44. In assessing the State report of Montenegro, the Committee noted with concern that, despite efforts by the State party, many Roma children were not enrolled in school, nor were they completing higher education. It also found that the Roma faced discrimination in the spheres of education, employment, health care and social welfare.

45. With regard to the report submitted by Pakistan, the Committee observed that the State party had not yet adopted a law prohibiting caste-based discrimination, despite the persistence of de facto segregation and discrimination against Dalits in exercising their economic, civil, political and social rights. Another area of concern expressed by the Committee pertained to acts of violence against minority women, such as Baluchi women. It welcomed the efforts made to ensure adequate political participation of minorities, such as the reservation of seats for minority members in the National Assembly, and the introduction of quotas to admit members of minorities to Government services. Nevertheless, the Committee noted that minorities were considered only to encompass religious minorities, and that there was a lack of a specific policy or legislative framework to ensure the appropriate representation of all ethnic groups.

46. With regard to the report submitted by Turkey, the Committee, in its concluding observations, expressed concern that domestic laws resorted to restrictive criteria to determine the existence of ethnic groups. The use of such criteria to officially recognize certain groups as meeting the requirements to qualify as minorities, while denying the recognition of other groups as such, amounts to a practice that could give rise to differing treatment for various ethnic and other groups. This practice in turn could result in de facto discrimination in the enjoyment of the rights and freedoms as stipulated in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Seventy-fifth session (3–28 August 2009)

47. At its seventy-fifth session, in its concluding observations on Azerbaijan, the Committee expressed regret over the lack of current statistical data on employment with regard to members of ethnic minorities, and recommended that Azerbaijan should include such information in its next periodic report. It also expressed concern about the absence of consultative structures for representatives of minorities to give them a voice in the legislative process. The Committee also noted the lack of information on whether the Government was providing education and instruction in Armenian for ethnic Armenians living in Azerbaijan.

48. In relation to the report submitted by China, the Committee expressed concern about the lack of statistical data available on the socio-economic status of ethnic minorities, and urged the Government of China to include such information in its next report. It also noted that China had not adopted a comprehensive law against racial discrimination, and recommended that such a national law should be adopted to combat discrimination on the grounds of race, colour, descent or national or ethnic origin. The Committee also expressed concern at reports of incentive systems for workers to settle in minority regions, which could substantially alter the demographics of these regions and negatively affect local traditions and cultures. The Committee also noted that the household registration requirement could give rise to de facto discrimination against ethnic minorities.

49. The Committee expressed concern at the fact that national policies in China on administrative detention and re-education through labour are being applied disproportionately in relation to members of ethnic minorities, and requested further information on this topic. It also recommended that the Government should increase its efforts to favour participation of all minority groups in public service, political life and economic growth, and take into account the relationship between ethnicity and religion, and ensure respect for the right of all ethnic groups to enjoy freedom of religion.

50. In its concluding observations on the report submitted by Greece, the Committee took note of the State's definition of minority as being exclusively applied to the Muslim minority in Thrace. It called upon the Government to conduct research to assess the incidences of racial discrimination affecting all groups based on national or ethnic origin, and to take steps to eliminate such discrimination. In particular, the Committee requested more information about Turkish, Pomak and Romani groups that form the Muslim minority in Thrace, and about the measures the Government had taken to protect the identity and human rights of these groups.

51. The Committee also expressed concern about reports of forced dissolution and the refusal to register associations with words such as "minority", "Turkish" or "Macedonian" in their titles. It was also concerned at the obstacles encountered by Roma and Turkish-speaking persons, particularly in their access to employment, housing, health care and education.

52. The Committee expressed regret over the lack of statistical data on the rights enjoyed by ethnic minorities and indigenous peoples in the Philippines. It recommended that the State should use the 2010 census to include indicators, disaggregated by ethnicity and gender on the basis of voluntary self-identification, and include this information in its next report.

4. Committee on the Elimination of Discrimination against Women

Forty-third session (19 January–6 February 2009)

53. At its forty-third session, the Committee on the Elimination of Discrimination against Women considered the State report submitted by Armenia. In its concluding

observations, the Committee expressed concern at the relatively high dropout rate from school of ethnic minority girls from rural areas, and noted the lack of information and statistics about, inter alia, women belonging to ethnic and religious minorities.

Forty-fourth session (20 July–7 August 2009)

54. At its forty-fourth session, the Committee expressed regret at the lack of information and statistics concerning minority women in Japan, as well as the lack of any proactive measures, such as a policy framework, to promote their rights. It recommended that Japan should take effective measures, including the adoption of a policy framework and temporary special measures, such as appointing minority women representatives to decision-making bodies to combat discrimination against minority women.

55. The Committee also called for a comprehensive study on the situation of minority women in Japan, particularly from the Ainu, Buraku, Zainichi Korean and Okinawa communities.

56. The Committee expressed concern at persistent media stereotyping and negative portrayals of ethnic minority women in Switzerland. It recommended targeted measures for the media and educational system to promote a more positive image of ethnic minority women and women from migrant backgrounds. In relation to the report submitted by Spain, the Committee expressed concern about the lack of positive media portrayals of minority women, including Romani women and women with migrant backgrounds.

5. Committee on the Rights of the Child

Fiftieth session (12–30 January 2009)

57. At its fiftieth session, in its concluding observations to the report submitted by the Republic of Moldova, the Committee on the Rights of the Child found that Romani children faced limited access to education, health care and an adequate standard of living. In its concluding observations on the report submitted by the Netherlands, the Committee urged the State party to ensure full protection against discrimination on the grounds of national and/or ethnic origin and, if necessary, to take affirmative action for the benefit of, inter alia, children belonging to minority groups.

Fifty-first session (25 May–12 June 2009)

58. At its fifty-first session, in its concluding observations on the report submitted by Bangladesh, the Committee recommended that the State party should take the necessary measures to ensure that minority and indigenous children were not discriminated against in the enjoyment of their right to access basic and specialized health services. It also recommended that Bangladesh should consider making multilingual education available in remote areas for minority and indigenous children.

59. Regarding the report submitted by France, the Committee reiterated its recommendation that the State party review its position with respect to children belonging to minority groups and to consider withdrawing its reservation to article 30 of the Convention, as well as declarations with regard to articles 6 and 40. While welcoming the inclusion in school curricula of activities to counter racism, anti-Semitism and xenophobia, the Committee expressed concern at cases of persistent discrimination hampering social progress, justice and non-discrimination, especially with respect to children residing in the overseas departments and territories, asylum-seeking and refugee children, as well as children belonging to minority groups, such as Roma, travellers (*gens du voyage*) and religious minorities.

60. With regard to the report submitted by Mauritania, the Committee noted the lack of information on children belonging to minority groups. It urged the State party to provide information on the fulfilment of the rights of children belonging to minority groups in its next periodic report.

61. In its concluding observations on the report submitted by Romania, the Committee noted with regret that some of the recommendations contained therein had not been fully implemented, in particular those related to discrimination against children belonging to the Roma minority. It reiterated its recommendation that children belonging to national minorities should receive education in their mother tongue, or that the study of their mother tongue be made available to children belonging to a number of minorities, including the Roma.

62. Regarding the report submitted by Sweden, the Committee reiterated its previous concern that, despite the adoption of legislative guarantees, including the new anti-discrimination act, the principle of non-discrimination was not fully respected in practice. The Committee expressed particular concern about de facto discrimination, xenophobia and racist attitudes towards children of ethnic minorities, refugee and asylum-seeking children and children belonging to migrant families.

Fifty-second session (14 September–2 October 2009)

63. At its fifty-second session, in relation to the report submitted by Pakistan, the Committee expressed concern at the persistence of discriminatory social attitudes and discrimination against children belonging to religious or other minority groups. In relation to the report submitted by the Philippines, the Committee reiterated its concern at the lack of disaggregated data by region, gender and age and at the insufficient data on children belonging to minorities and indigenous groups.

Fifty-third session (11–29 January 2010)

64. At its fifty-third session, the Committee addressed concluding observations and recommendations regarding the rights of minority children in El Salvador and Mongolia.

6. Committee against Torture

Forty-second session (27 April–15 May 2009)

65. At its forty-second session, in its concluding observations on the report submitted by New Zealand, the Committee against Torture recommended that the State party should provide adequate training to the judiciary and law enforcement personnel that takes into account the obligation to protect minorities, and integrate a gender perspective into the discharge of their tasks.

Forty-third session (2–20 November 2009)

66. At its forty-third session, the Committee considered the report submitted by the Republic of Moldova, and observed with concern reports of violence and hatred towards minorities, especially Roma, and other vulnerable groups in that country. In relation to the report submitted by Slovakia, the Committee expressed concern at reports of mistreatment of Roma by police officers during arrest and while in custody. It was also concerned about the high percentage of Roma children in schools for children with mental disabilities.

B. General comments from treaty bodies

67. At its forty-second session, the Committee on Economic, Social and Cultural Rights adopted general comment No. 20, in which it provided guidance on the obligation of States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the International Covenant on Economic, Social and Cultural Rights. In its general comment, the Committee spells out various distinctions existing in the manifestations of discrimination, giving examples to identify formal from substantive discrimination, direct and indirect forms of differential treatment that can amount to discrimination under article 2 (2) of the Covenant, as well as discrimination in the private and public spheres.

68. Article 2 (2) of the Covenant lists race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status as the prohibited grounds of discrimination. In its general comment, the Committee on Economic, Social and Cultural Rights provides that the inclusion of “other status” indicates that the list is not exhaustive and that other grounds may be included, such as membership of a group and multiple discrimination. According to the Committee, “other status” could include, for example, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, or economic and social situation.

69. With regard to the implementation of article 2 (2) of the Covenant, in addition to the obligation to refrain from discriminatory actions, States parties are to take concrete, deliberate and targeted measures to ensure that discrimination in the exercise of Covenant rights is eliminated. States parties are encouraged to, *inter alia*, take temporary special measures to accelerate the achievement of equality; conduct human rights education and training programmes for public officials; and make such training available to judges and candidates for judicial appointments.

70. In its general comment No. 21, on the right of everyone to take part in cultural life (article 15, paragraph 1 (a), of the Covenant), the Committee stated that that right entails an obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of States. Consequently, minorities have the right to manifest their cultural identity and membership (E/C.12/GC/21, para. 32).

71. At its seventy-fifth session, the Committee on the Elimination of Racial Discrimination adopted general recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination. This general recommendation is based essentially on the Committee’s extensive practice of referring to special measures under the Convention and earlier general recommendations, in particular general recommendation No. 8 on article 1, paragraphs 1 and 4, of the Convention, general recommendation No. 27 on discrimination against Roma, and general recommendation No. 29 on article 1, paragraph 1, of the Convention. The Committee declared that general recommendation No. 32 was intended to provide practical guidance on the meaning of special measures under the Convention, to assist States parties in fulfilling their obligations under the Convention, including reporting obligations.

72. In general recommendation No. 32, the Committee discusses formal and *de facto* discrimination, direct, indirect and multiple discrimination, and provides further guidance on the scope of the principle of non-discrimination under article 1.1 of the Convention and, more importantly, on the meaning to be attached to special measures. According to the Committee, the list of human rights to which the principle applies under the Convention is not closed, and extends to any field of human rights regulated by the public authorities in the State party to address racial discrimination by any persons, group or organization.

73. With regard to special measures with an objective of advancing equality, the Committee asserted that the term “special measures” includes measures that, in some countries, may be described as “affirmative measures”, “affirmative action” or “positive action”, whereas the term “positive discrimination” in the context of international human rights standards is a *contradictio in terminis* and should be avoided.

74. Under general recommendation No. 32, special measures include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments. The obligation to take special measures is distinct from the general positive obligation of States parties to the Convention to secure human rights and fundamental freedoms on a non-discriminatory basis for persons and groups subject to their jurisdiction; this is a general obligation flowing from the provisions of the Convention as a whole, and integral to all parts of it. Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, should respect the principles of fairness and proportionality, and be temporary.

IV. Special procedures

75. In discharging their tasks of monitoring, advising and reporting on human rights violations, mandate holders often address the promotion and protection of the rights of minorities, since they tend to be the most vulnerable and therefore most likely to fall victim to human rights violations. Although the mechanisms established for the special procedures by the Human Rights Council address either specific country situations or thematic issues in all parts of the world, the rights of minorities tend to be addressed more often by thematic mandate holders.

A. Independent expert on minority issues

76. In fulfilling her mandate in 2009, the independent expert on minority issues conducted two official country missions, to Kazakhstan and Canada, to consult on minority issues and consider national legislation, policy and practice relating to national or ethnic, religious and linguistic minorities. In her guiding role in the work of the Forum on Minority Issues, she made a substantive contribution to the preparation of the second session of the Forum, which focused on the theme “Minorities and effective political participation”, submitting also a background document on minorities and effective political participation (A/HRC/FMI/2009/3). In the document, the independent expert discussed the right to effective participation as a fundamental human right affirmed in several key international legal instruments, and which underpins the realization of all human rights of women and men belonging to ethnic or national, religious and linguistic minorities.

B. Special Rapporteur on freedom of religion or belief

77. In her report submitted to the General Assembly (A/64/159), the Special Rapporteur on freedom of religion or belief analysed the vulnerable situation of persons belonging to national or ethnic, religious and linguistic minorities with regard to their freedom of religion or belief. The Special Rapporteur emphasized that many religious minorities face various forms of discrimination, for example with regard to official registration procedures or undue limitations when disseminating materials and displaying religious symbols. Moreover, some religious minorities were adversely affected by manifestations of

intolerance and threats or acts of violence perpetrated by non-State actors, which were often tolerated or encouraged by the authorities.

C. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

78. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance discussed the issue of poverty and racism in his report submitted to the Council (A/HRC/11/36). In this context, he recalled that the socio-economic vulnerability of minorities was frequently the result of historical legacies, such as slavery across the American continent, systems of inherited status in other continents and also of systems of formalized and State-sponsored discrimination against minorities that had long been in place in many parts of the world. The Special Rapporteur argued that, because of the inaction of Governments, imbalances that had been historically created continued to affect minority groups profoundly, long after formalized discrimination had been dismantled. The Special Rapporteur also recommended that Member States should take special measures to foster the integration of racial or ethnic minorities in the areas of education, health, housing, the workplace and others.

D. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

79. In his report submitted to the Council (A/HRC/11/4), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression analysed the issue of the right of access to information in situations of extreme poverty. He noted that the poor, the unemployed and people belonging to ethnic minorities and other vulnerable groups remained excluded from full participation in the society in which they lived, and emphasized the need for access to information to be guaranteed as a means to secure participation and accountability. In order to address the exclusion of minorities and other vulnerable communities from the media, the Special Rapporteur urged Governments to deregulate the communications and media environment to allow free and fair information to flow more effectively.

E. Special Rapporteur on contemporary forms of slavery, including its causes and consequences

80. In her report submitted to the Council (A/HRC/12/21), the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, asserted that bonded labourers mostly came from socially excluded groups, including indigenous peoples, minorities and migrants, who also suffered from discrimination and political disenfranchisement. She reported that indigenous and minority populations were more vulnerable to bonded labour because, in many countries, they had limited access to land for their traditional income-generating activities, such as cultivation or hunting, and that the issue of land ownership was closely linked to the phenomenon of bonded labour. ILO research had in fact shown a clear link in Asian countries between forced labour and long-standing patterns of discrimination. In India, the overwhelming majority of bonded labour victims in agriculture, brickmaking, mining and other sectors were from scheduled castes and scheduled tribes.

V. Conclusions

81. In 2009 and the first part of 2010, the main activities undertaken by OHCHR relating to the promotion and protection of the rights of persons belonging to minorities were focused on improving access to decision-making and facilitating effective participation. With regard to effective participation, emphasis was placed on law enforcement structures, such as the police. Several activities were undertaken to increase the use of United Nations and regional human rights bodies and mechanisms through capacity-building among minority representatives. The country engagement of OHCHR increasingly included activities to advance the rights of persons belonging to minorities and to promote the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The treaty bodies and special procedures have also paid close attention to the situation and rights of persons belonging to minorities. A number of special procedures mandate holders made important statements on the situation of minorities with regard to their enjoyment of various human rights.

82. The independent expert on minority issues gathered information from various sources, in particular during her two official country missions, and she continued to play a guiding role in the preparation of the work of the Forum.

83. The second session of the Forum on Minority Issues emphasized the importance of the right to effective participation for minorities, as specified in the Declaration, and that the realization of the rights of minorities depended on their participation in government, the administration of justice, parliament, public bodies and public companies.

84. As we approach the twentieth anniversary of the adoption of the Declaration, it is important to begin a process of reflection on how common efforts can be consolidated to strengthen the protection of minorities all over the world, in particular through the use of the Declaration. As a key international document, it reaffirms the rights of persons belonging to minorities to enjoy all human rights and fundamental freedoms in accordance with the principles of non-discrimination and equality before the law. The Declaration also provides explicit guidance for the implementation of minority rights as it contains central guarantees to ensure that cultures, languages and other elements of the identity of persons belonging to minorities are protected and promoted, including through the implementation of the right to effective participation.

85. In 2010, it is expected the work of OHCHR and that of the treaty bodies and special procedures will further advance the implementation of the Declaration. Through its collection of effective practices in policing and minority communities, its minorities fellowship programme in addition to other activities at headquarters and in the field, OHCHR will continue to increase its activities contributing to the realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities.