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EXAMINING POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING MINORITIES, INCLUDING THE PROMOTION OF MUTUAL UNDERSTANDING BETWEEN AND AMONG MINORITIES AND GOVERNMENTS

Note by the Secretariat

1. The Working Group on Minorities and the Sub-Commission on the Promotion and Protection of Human Rights have recommended the preparation of further pamphlets for inclusion in the United Nations Guide for Minorities.

2. The text of the pamphlet on minorities and the work of the United Nations human rights treaty system in dealing with individual complaints is attached as an annex, for inclusion in future versions of the United Nations Guide for Minorities.

* Pursuant to General Assembly resolution 60/251, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights will be assumed as of 19 June 2006 by the Human Rights Council, which will review them as appropriate.

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Annex

PAMPHLET OF THE UNITED NATIONS GUIDE FOR MINORITIES: "MINORITIES AND THE UNITED NATIONS: HUMAN RIGHTS TREATY BODIES AND INDIVIDUAL COMPLAINT MECHANISMS"

Summary: The United Nations treaty-based human rights system includes individual complaint mechanisms through which members of minorities can seek protection of their rights. These complaint mechanisms are available under four international human rights treaties that deal, respectively, with civil and political rights, racial discrimination, women's rights, and torture. This pamphlet describes the complaint mechanisms that are available to persons belonging to minorities who believe that their rights have been violated. It also provides a brief description of the provisions in each of the four treaties that may be of interest to minorities and the relevant jurisprudence.

The four United Nations human rights treaties

In the United Nations framework, individuals can submit petitions or complaints concerning the violations of the standards enshrined in the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to their respective monitoring bodies. All individual communication procedures are optional. Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990, also provides that States parties may make a declaration accepting the respective Committee's competence to consider individual complaints alleging violations of their rights under the Convention by that State. However, its complaint mechanism has not yet entered into force.

The ICCPR entered into force in 1976. As of April 2006, 105 States parties had recognized the competence of the CCPR Committee (better known as the Human Rights Committee), under the First Optional Protocol (OP1 ICCPR), to receive individual communications. CERD entered into force in 1969. As of April 2006, 47 States parties had recognized the competence of the Committee on the Elimination of Racial Discrimination (CERD Committee) under article 14 of CERD to receive individual communications. CAT entered into force in 1987. As of April 2006, 58 States parties had recognized the competence of the Committee against Torture (CAT Committee) under article 22 of CAT to receive individual communications. CEDAW entered into force in 1981. The First Optional Protocol to the Convention (OP1 CEDAW) provides for an individual communication procedure. The First Optional Protocol entered into force in 2000 and, as of April 2006, 78 States parties had recognized the competence of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to examine individual communications.

In contrast with the procedure under OP1 ICCPR and article 22 of CAT, where only individuals subject to the jurisdiction of a State party may submit a communication before the CCPR Committee or the CAT Committee, article 14 of CERD and article 2 of OP1 CEDAW are broader and provide that groups of individuals may also submit a claim. This is important for

minorities because not only individual members claiming to be victims but also minority communities or organizations can submit a communication alleging violations of the various CERD or CEDAW provisions. In contrast, complaints brought by a group of individuals belonging to a minority under the OP1 ICCPR are declared admissible only after it is established that each separate individual can be identified as a similarly affected victim.

Most of the individual communications submitted by members of minorities or indigenous peoples take place before the CCPR Committee. However, in recent years several communications concerning incidents of racial discrimination against ethnic Roma have been submitted before the CERD Committee.

Composition of the Committees

The CCPR Committee and the CERD Committee are each composed of 18 experts. The CEDAW and CAT Committees are composed, respectively, of 23 and 10 experts. The members of each Committee are persons of high moral standing and acknowledged impartiality. The Committees are autonomous bodies. The experts who serve on them are elected in their personal capacity. The Committees usually meet twice a year (and in the case of the CCPR Committee three times a year) in Geneva and/or New York. Members generally exclude themselves from deliberations concerning their own country.

The rights protected

This section summarizes some of the articles in each of the four treaties that may be of particular interest to minorities when they wish to submit an individual complaint. However, minorities are entitled not only to minority-specific provisions, but to *all* of the rights accorded to those who live within the jurisdiction of the State.

International Covenant on Civil and Political Rights

The ICCPR protects a wide range of essential civil and political rights. It is the only international treaty that includes a minority-specific provision.

Article 27 stipulates that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (see also general comment No. 23/50).

This right is conferred on individuals belonging to minority groups, not to minority groups themselves. However, it has a collective element since it is exercised by individuals belonging to a minority “in community with other members of their group”. Article 27 recognizes the right to identity whether this identity is cultural, religious and/or linguistic. The CCPR Committee also noted that despite its negative formulation (“shall not be denied”), article 27 requires a State party to adopt positive measures that will protect not only against the acts of the State party itself, but also against the acts of third persons within the State party. It also has suggested that positive measures may be necessary to protect the identity of a minority group and will constitute a legitimate differentiation under the Covenant as long as they are based on reasonable and objective criteria.

The CCPR Committee has given a broad interpretation of the personal scope of article 27. Thus beneficiaries "… need not be citizens of the State party or permanent residents". Migrant workers or even visitors are entitled not to be denied the protection of the rights enshrined in this provision. The CCPR Committee also has clarified the scope of the cultural rights guaranteed under this provision. In respect of indigenous peoples, article 27 protects the right to traditional activities such as hunting and fishing and the right to live in reserves protected by law. The CCPR Committee has suggested that the enjoyment of those rights may require the adoption of measures to ensure the "effective participation of members of minority communities in decisions which affect them".

Other general civil and political rights are enshrined in the Covenant and may be of particular relevance to minorities.

Article 1 enshrines the right of "all peoples" to self-determination. The first paragraph goes on to affirm two aspects of this right. Its internal aspect is the right of all peoples to pursue freely their economic, social and cultural development without outside interference. Its external aspect is the right of all peoples to determine freely their political status. The second paragraph of this provision affirms a particular aspect of the right to self-determination, namely the right of peoples freely to dispose of their natural wealth and resources. In general comment No. 23 and its case law, the CCPR Committee distinguished between article 1 of ICCPR and article 27. The former belongs to peoples and is not a right cognizable under OP1 (i.e. a complaint invoking article 1 cannot be examined by the CCPR Committee under OP1). On the other hand, article 27 confers rights on individuals (see also Human Rights Committee general comment No. 12).

Article 2.1 stipulates that the rights protected under the Covenant apply to all individuals, within the territory or under the jurisdiction of a State, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In contrast with CERD and CEDAW, there is no definition of the term "discrimination" in ICCPR. The CCPR Committee held that the term "… should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, …, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms" (see also general comment No. 18).

Article 14 guarantees the right to a fair and public hearing. Persons belonging to minorities have frequently invoked article 14, paragraphs 3 (a) and 3 (f). The first paragraph guarantees the right to be informed of the nature and cause of the charge, while the second guarantees the right to have the free assistance of an interpreter, if necessary. However, persons belonging to minorities are entitled to this second right only if they are not capable of understanding the language of the trial and/or cannot express themselves in that language.

Article 17 protects against interference with a person's privacy, family, home, correspondence or reputation. Persons belonging to minorities or indigenous peoples can invoke their right to privacy in cases concerning interferences with their name, or with their right to change it.

Article 18 protects the freedoms of thought and conscience, to have or adopt a religion or belief of one's choice and to manifest a religion or belief. The first two are protected

unconditionally, while the third is subject to limitations. Minorities may manifest their religion individually or in community with other members of their group, in public or private through worship, observance, practice, and teaching. Minorities may observe and practise their religion by wearing distinctive clothing or using a particular language customarily spoken by the group. The CCPR Committee held that the fact that a religion is recognized as a State religion should not result in any impairment in the enjoyment of any of the rights guaranteed under the Covenant by members of other religious communities, including articles 18 and 27 (see also general comment No. 22).

Article 19 guarantees the right to hold opinions without interference. The second paragraph guarantees the right to freedom of expression, which includes not only freedom to impart information and ideas, but also freedom to seek and receive them. In contrast with the right to hold opinions, the right to freedom of expression is subject to restrictions. These must be provided by law, they may only be imposed for one of the purposes set out in paragraphs 3 (a) and 3 (b), and they must be justified as being "necessary" (see also general comment No. 10).

Article 20 requires Governments to prohibit by law any incitement to discrimination, hostility or violence (see also general comment No. 11).

Article 21 guarantees the right to peaceful assembly. It includes the right to assemble for political demonstrations. The right is subject to restrictions.

Article 22 guarantees freedom of association. It includes the right of persons belonging to minorities to form political parties and educational or cultural associations. It is subject to limitations on grounds such as national security or public order.

Article 25 sets forth the rights of citizens to participate in public life, vote for elections and stand as candidates. These rights are also subject to restrictions (see also general comment No. 25).

Article 26 is a general non-discrimination clause that guarantees equality before the law and equal protection of the law, prohibits discrimination, and requires equal and effective protection against discrimination. This right does not preclude the State party from making reasonable distinctions among categories of people as long as they are based on reasonable and objective criteria (see also general comment No. 18).

A number of the provisions described above, such as articles 18, 19, 21, 22 and 25, expressly permit some form of restriction or limitation. If a State party chooses to place a restriction or a limitation upon one of those rights, this is permissible and does not amount to a violation of the rights in question as long as it is provided by law and is necessary for specific, enumerated purposes, such as the safeguarding of public safety, national security or public order, the rights and freedoms of others and so on. States parties may take measures derogating from their obligations under the ICCPR in times of public emergency that threaten the life of the nation and the existence of which is officially proclaimed (art. 4, para. 1). Such measures should be taken only to the extent strictly required by the exigencies of the situation and should not be discriminatory. States parties are not permitted to derogate from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 (see art. 4, para. 2, and general comment No. 29).

International Convention on the Elimination of All Forms of Racial Discrimination

Many persons belonging to minorities or indigenous groups may have the mistaken perception that the communication procedure under CERD is a remedy only for persons belonging to a racial group that has been subjected to acts of racial discrimination. However, the definition of the concept of "racial discrimination" in article 1, paragraph 1, of CERD is quite broad. Thus, "racial discrimination" is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The CERD Committee stressed that: "… According to the definition given in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples" (see CERD Committee general recommendations Nos. XXIII and XXIV). The Committee has also held that the identification of an individual with a particular race or ethnic group should be based on self-identification (see general recommendation No. VII).

A differentiation of treatment does not necessarily constitute prohibited discrimination contrary to the Convention. Article 1, paragraph 4, stipulates that "special measures" adopted in order to secure adequate advancement to certain racial or ethnic groups or individuals and the equal enjoyment of their human rights shall not be deemed racial discrimination, provided that such measures do not lead to the maintenance of separate rights for different racial groups and shall not be continued after the objectives for which they were taken have been achieved.

Persons belonging to ethnic groups or indigenous peoples who face racial discrimination or persons being discriminated against on the basis of descent by private individuals or organizations can also use the CERD procedure. States parties have undertaken to pursue a policy of eliminating racial discrimination and, inter alia, to prohibit and eradicate racial discrimination by any persons, group or organization (art. 2, paras. 1 and 1 (d)). States parties have also undertaken to punish by law the dissemination of ideas based on racial superiority or hatred and to prohibit organizations which promote and incite racial discrimination (art. 4, paras. (a) and (b)).

Article 5 of the Convention contains the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of a wide range of civil, political, economic, social and cultural rights and freedoms without racial discrimination. These rights include the right to equal treatment before the tribunals; the rights to participate in elections, to vote and to stand for elections; the right to freedom of movement and residence; the right to leave any country and to return to one's country; the right to freedom of thought, conscience and religion; and the right of access to any place or service intended for use by the general public. The last has been invoked in few complaints submitted by members of ethnic minorities (see section on jurisprudence). The list of the rights in article 5 is not exhaustive (see general recommendation No. XX).

A provision frequently invoked by persons belonging to minorities is article 6. It requires States parties to provide effective protection against, and remedies for, acts of racial discrimination that violate the rights enshrined in the Convention.

Convention on the Elimination of All Forms of Discrimination Against Women

The adoption and entry into force of OP1 CEDAW provided women belonging to minorities with a further legal avenue through which they can seek redress for the violation of their rights. Women belonging to minority communities are among the most disadvantaged and vulnerable, and face multiple forms of discrimination. The Convention includes provisions on women's civil and political rights, social and economic rights, equality before the law and family rights. States parties are obliged, inter alia, to adopt appropriate legislative and other measures prohibiting discrimination against women, to refrain from engaging in any practice of discrimination against women, to ensure that public authorities shall act in conformity with this obligation, and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

Certain provisions of the Convention may be of particular relevance to minority women. For example:

Article 7 guarantees the right of women to vote, to hold public office and exercise of public functions (see also CEDAW general recommendation No. 23).

Article 10 requires States parties to ensure the same conditions for men and women in respect to career and vocational guidance, access to studies, and access to the achievement of diplomas in educational establishments. It also requires the reduction of female student dropout rates and the elimination of stereotyped concepts of men and women at all levels and in all forms of education.

Article 11 requires the elimination of discrimination against women in the field of employment.

Article 12 requires the elimination of discrimination against women with respect to access to health-care services (see also general recommendation No. 24).

Article 14 requires the elimination of discrimination against women in rural areas. Many of these women are also members of minorities.

Article 16 reiterates that women and men shall be equal in all matters related to marriage and family, including the right to marry freely and only with full and free consent. It also provides that no legal effect may be given to the betrothal or marriage of a child (see also general recommendation No. 21).

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Persons belonging to minorities who have been subjected to torture and other cruel, inhuman or degrading treatment or punishment can submit a communication under article 22 of CAT. Article 1 of CAT provides an extensive definition of the term "torture". States parties undertake to take all the necessary measures in order to prevent, in any territory under their jurisdiction, acts of torture or cruel, inhuman or degrading treatment or punishment (arts. 2 and 16). They are also prohibited from expelling or extraditing a person to another State where there are substantial grounds of believing that he/she would be in danger of being tortured

(art. 3). Article 4 places States parties under the obligation of penalizing all acts of torture. Finally, article 14 of CAT requires States parties to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.

Selected jurisprudence

This section presents cases pertaining to minorities examined by the Human Rights (CCPR) Committee, the Committee for the Elimination of Racial Discrimination and the Committee against Torture. Most of the individual communications pertaining to minorities have been submitted before the Human Rights Committee. In many of the communications invoking article 27 of ICCPR, the authors were persons belonging to indigenous peoples.

CCPR Committee (also known as the Human Rights Committee)

Sandra Lovelace v. Canada (communication No. 24/1977) concerned a Maliseet Indian woman who had lost her rights and status as an Indian in accordance with the Indian Act after she married a non-Indian man. In contrast, Indian men who married non-Indian women retained their status. The author alleged violations of articles 2, paragraph 1; 3; 23, paragraphs 1 and 4; 26; and 27 of ICCPR. The CCPR Committee decided that the provision most applicable to the complaint was article 27 and went on to examine whether the continuing effects of the Indian Act upon the author (i.e. the denial of the legal right to reside on her band's reserve) denied her right to enjoy her own culture and to use her own language in community with other members of her group.

The CCPR Committee concluded that even if the applicant did not qualify as a member of her band under the Canadian legislation, she was "… entitled to be regarded as 'belonging' to this minority and claim the benefits of article 27 of the Covenant". More specifically, it held that "Persons who are born and brought up on a reserve, who have kept ties with their community and wish to maintain these ties, must normally be considered as belonging to that minority within the meaning of the Covenant".

The CCPR Committee held that although the right to live on a reserve was not as such guaranteed by article 27 of ICCPR, there was an interference with the author's right to have access to her native culture and language in community with the other members of her group since there was no place outside the reserve where such community existed. The CCPR Committee took the view that restriction affecting the rights of individual members of a minority must be shown to have an objective and reasonable justification, and be necessary for the continued viability and welfare of the minority as a whole. It considered the case in the light of the fact that her marriage to a non-Indian had broken down and that it would be natural for her to return to the environment in which she had grown up and maintained a cultural attachment. It also held that this provision must be construed in the light of other invoked provisions of ICCPR. It concluded that the denial of the author's right to reside on the reserve could not be considered as reasonable or necessary to preserve the identity of the tribe, and found a violation of article 27 of ICCPR.

Kitok v. Sweden (communication No. 197/1985) also concerned statutory interferences with the right of an individual not to be denied membership in an indigenous group with which he/she wishes to identify himself/herself. The author, an ethnic Sámi, claimed that Swedish

legislation and court decisions prevented him from being granted membership in a Sámi village and thus from exercising his reindeer-breeding rights. The contested legislation stipulated that any Sámi who practised another profession for more than three years was no longer considered a member of the Sámi community. Mr. Kitok alleged a violation of articles 1 and 27 of ICCPR.

The CCPR Committee underlined that an individual could not claim to be a victim of the right to self-determination, since the Optional Protocol provides a resource procedure for individuals, while article 1 deals with the rights conferred upon peoples, and declared this part of the communication inadmissible. It also held that traditional economic activities, which are an essential element in the culture of indigenous peoples, fall within the protective scope of article 27.

The CCPR Committee concluded that the objective of the contested legislation (i.e. to secure the preservation and well-being of the Sámi minority) and the measures taken (i.e. limitations of the right to engage in reindeer-breeding to members of the Sámi village) were reasonable and consistent with article 27. The CCPR Committee took into account the fact that Mr. Kitok always lived on Sámi lands and was permitted to participate in the activities constitutive of his culture such as reindeer-herding, hunting and fishing, and thus found no violation of article 27. However, it also expressed concern at the fact that the contested legislation ignored objective ethnic criteria in determining membership of a minority.

In several communications, the CCPR Committee has been called to assess the effect of measures on activities that constitute an essential element of minority culture and their compatibility with article 27 of ICCPR. Some illustrative case law is presented below.

In *Ilmari Länsman et al. v. Finland* (communication No. 511/1992), the authors were reindeer breeders of Sámi ethnic origin who alleged that the quarrying of stone on the flank of a mountain close to their area, and its transportation through their reindeer-herding territory, would violate their right to enjoy their own culture as guaranteed under article 27. The CCPR Committee noted that reindeer husbandry was an essential aspect of the Sámi culture and reiterated that economic activities that are an essential part of the culture of an ethnic community may come within the ambit of article 27. It went on to state that "… Article 27 does not only protect traditional means of livelihood of national minorities", but also that reindeer-herding is practised with the help of modern technology. The CCPR Committee also underlined that "… Measures that have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a denial of the right under article 27". It took the view that the quarrying in the amount that had already taken place did not constitute a denial of the author's rights under article 27. In reaching its conclusion, the CCPR Committee used two criteria. The first criterion was whether meaningful consultation with the group had taken place. In this case, the authors were consulted during the proceedings leading to the delivery of the quarrying permit. The second criterion was that of the sustainability of the indigenous economy. The CCPR Committee noted that future economic activities should be carried out in such a way that the authors continue to benefit from reindeer husbandry in order to comply with article 27.

In *Jouni Länsman, Eino Länsman and the Muotkatunturi Herdsmen Committee v. Finland* (communication No. 1023/2001), the CCPR Committee recalled that the right of a

minority to enjoy its own culture may be infringed upon by "… the combined effects of a series of actions or measures taken by the State party over a period of time and in more than one area of the State occupied by the minority".

Apirana Mahuika et al. v. New Zealand (communication No. 547/1993) concerned the claim by the 19 authors who belonged to the Maori people that the Treaty of Waitangi (Fisheries Claims) Settlement Act of 1992 violated, inter alia, articles 1 and 27 of ICCPR because it confiscated their fishing resources, interfered with their right to pursue their economic, cultural and social development, and threatened their way of life. The Act was the result of a settlement between Maori representatives and the Government. It provided for the payment of NZ$ 150 million to Maori to enable them to buy 50 per cent of the biggest fishing company in New Zealand and the transfer of 20 per cent of new quota for species. According to the Act, all claims based on rights and interests of Maori in commercial fishing were fully settled, while non-commercial Maori fishing rights and interests would continue to give rise to Treaty obligations on the Crown but would not have any legal effect. The authors argued that they and the majority of the members of their tribes did not agree with the settlement.

While the CCPR Committee reiterated that it had no jurisdiction to examine complaints under article 1 of ICCPR, it also made a step forward by underlining that this provision may be relevant in the interpretation of other rights protected under ICCPR, in particular article 27. It also held that the use and control of fisheries was a significant part of the Maori culture and fell within the ambit of article 27.

In respect of the authors' claim under article 27, the CCPR Committee accepted that the Act affected the possibilities for Maori to engage in commercial and non-commercial fishing, but did not constitute a denial of their rights under this provision. In reaching its decision, it used the criteria of meaningful consultation and economic sustainability. It held that: "In the consultation process, special attention was paid to the cultural and religious significance of fishing for the Maori, inter alia, to securing the possibility of Maori individuals and communities to engage themselves in non-commercial fishing activities. While it is a matter of concern that the settlement and its process have contributed to divisions among the Maori, nevertheless, the Committee concluded that the State party has, by engaging itself in the process of broad consultation before proceeding to legislate, and by paying specific attention to the sustainability of Maori fishing rights, taken the necessary steps to ensure that the Fisheries Settlement and its enactment through legislation, including the Quota Management System, are compatible with article 27."

Diergaardt et al. v. Namibia (communication No. 760/1997) concerned a claim by members of the Rehoboth community following the alleged "nationalization" of their land by the Government at the time that Namibia became an independent State. Prior to the independence of Namibia, the community had enjoyed self-government. The authors claimed a violation of article 27 on the ground that part of the lands traditionally used by members of their community for the grazing of cattle were no longer in their de facto exclusive use.

The CCPR Committee found no violation of article 27 since it was unable to conclude that the authors could rely on this provision to support their claim for exclusive use of the pastoral lands in question. It held that: "Although the link of the Rehoboth community to the

lands in question dates back some 125 years, it is not the result of a relationship that would have given rise to a distinctive culture. Furthermore, although the Rehoboth community bears distinctive properties as to the historical forms of self-government, the authors have failed to demonstrate how these factors would be based on their way of raising cattle."

However, the CCPR Committee found a violation of article 26 of ICCPR on the basis of a government circular that instructed civil servants to refrain from using Afrikaans in their communications with the public. It noted that: "These instructions barring the use of Afrikaans do not relate merely to the issuing of public documents but even to telephone conversations. In the absence of any response from the State party the Committee must give due weight to the allegation of the authors that the circular in question is intentionally targeted against the possibility to use Afrikaans when dealing with public authorities."

The delicate balance between the protection of vulnerable minorities through special measures and other persons' individual rights is illustrated in the following two cases:

Ballantyne, Davidson and McIntyre v. Canada (communications Nos. 359/1989 and 385/1989) concerned a complaint of two English-speaking traders in the Province of Quebec that the legislation requiring that only French could be used in public signs, posters and commercial advertising restricted their right of outdoor advertising in English, and thus violated, inter alia, articles 19 and 27 of ICCPR. The CCPR Committee held that the authors had no claim under article 27 of ICCPR, since English-speaking citizens could not be considered a linguistic minority. It held that the minorities referred to in articles 27 are those within a State and not within a province. In her dissenting opinion, Ms. Evatt, joined by three other members of the Committee, questioned this view. This restricted definition of the term "minorities", for the purposes of article 27, is also in contrast with the approach of bodies such as the United Nations Working Group on Minorities and the Advisory Committee on the Framework Convention on National Minorities.

The CCPR Committee went on to examine whether the rights of the francophone minority in Canada, and more specifically the right to use its own language as this is protected by article 27 of ICCPR, could restrict the right of outdoor commercial advertising in English. It concluded that there had been a violation of the authors' right to freedom of expression under article 19. It noted that: "… It is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those engaged in such fields as trade".

In *Waldman v. Canada* (communication No. 694/1996), the author (a father of two children enrolled in a private Jewish school) claimed that the legislation entitling solely the Roman Catholic minority in the Province of Ontario with the right to receive public funding for its religious education, was in breach of articles 2, 18, 26 and 27 of ICCPR.

The CCPR Committee held that the Covenant does not create any obligation upon the States parties to fund schools established on a religious basis. On the other hand, it noted that when a State party chooses to publicly fund religious schools, it should make the funding available without discrimination. According to the Committee, any discrimination should be

justified on the basis of reasonable and objective criteria. The Committee held that the criteria presented by the Government to justify the preferential treatment of the Roman Catholic minority, such as the historical basis of such preferential measures and their constitutional legislative basis, could not be considered as reasonable and objective. As a result, Canada was found in breach of Mr. Waldman's right to be afforded equal and effective protection against discrimination (art. 26, ICCPR).

Ignatane v. Latvia (communication No. 884/1999) concerned a Latvian citizen of Russian ethnic origin who was standing as a candidate in the local elections and was struck off her party's list by a decision of the Riga Election Commission on the grounds that she did not have the required proficiency of the official language. The author argued that this decision violated articles 2 and 25 of ICCPR. She had been previously awarded a language-aptitude certificate stating that she had the highest level of proficiency in Latvian. In reaching its views, the CCPR Committee took into account the existence of the previous language certificate, which had been issued by a board of Latvian language specialists, and the fact that the Elections Commission had decided to strike Ms. Ignatane off the list on the decision of a single inspector. It stressed that: "The annulment of the author's candidacy pursuant to a review that was not based on objective criteria and which the State party has not demonstrated to be procedurally correct is not compatible with the State party's obligations under article 25 of the Covenant." It also found that the author suffered "a specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language". It thus concluded that Ms. Ignatane was a victim of a violation of article 25 in conjunction with article 2 of the Covenant. Nevertheless, the CCPR Committee did not pronounce on whether the preconditions of the electoral law itself were discriminatory. It rather looked at the particular circumstances of the case and the way that the law was implemented.

The CCPR Committee has also been called to address the question of whether racist speech could enjoy the protection of article 19 of ICCPR. *Ross v. Canada* (communication No. 736/1997) concerned the compatibility of disciplinary measures taken against a teacher, who published anti-Semitic writings outside the classroom, with his right to freedom of expression. It held that the restrictions did not violate article 19 because they had the purpose of protecting the rights and reputations of persons of Jewish faith (see also *Faurisson v. France*, communication No. 550/1993).

Hopu and Bessert v. France (communication No. 549/1993) concerned the construction of a hotel complex on an indigenous ancestral burial ground and raised questions of an interference with the right to privacy and family of the descendants of the indigenous inhabitants of the area. The authors were ethnic Polynesians and inhabitants of Tahiti who were descendants of the owners of a land tract on the island of Tahiti. Ownership had been transferred in 1961 to a company owned by the Government. In 1992, the Government leased the land to a hotel company, which began constructing a luxury hotel complex on the site.

The authors alleged, inter alia, that the construction of the complex on the contested site would destroy their ancestral burial grounds, which represented an important place in their history, culture and life, and would constitute an arbitrary interference with their privacy and their family lives, in violation of articles 17 and 23. They also claimed that members of their family were buried on the site.

The CCPR Committee provided a broad understanding of the term "family" and held that it should be interpreted as including all those comprising the family as understood in the society in question and that cultural traditions should be taken into account when defining the term in a specific situation. The Committee underlined that the State party did not challenge the authors' claims that their relationship with their ancestors was an essential element of their identity and played an important role in their family life, and that the contested burial grounds played an important role in their history, culture and life. It stated that the authors' failure to establish a direct kinship link could not be held against them. It held that the construction of the hotel complex on the authors' ancestral burial grounds constituted an interference with the right to family and privacy. It concluded that the State party had not shown that the interference was reasonable in the circumstances and had not taken into account the importance of the burial grounds for the authors when leasing the site. Consequently, it found a violation of articles 17, paragraph 1, and 23, paragraph 1, of ICCPR.

Finally, *Coeriel and Aurik v. the Netherlands* (communication No. 453/1991) concerned State refusal of a request to change names. Despite the fact that this communication was not submitted by members of a minority, it is of relevance to members of minorities who have been forced to change their names to those of the majority as well as to those who no longer have the names of their minority ancestors but wish to change their names to ones that reflect their minority identity. In this case, the HRC took the view that the refusal of the authors' request to change their surnames into Hindu names violated their right to privacy as it is enshrined in article 17 of ICCPR. The HRC noted that: "… The request to have one's change of name recognized can only be refused on grounds that are reasonable in the specific circumstances of the case". Furthermore, it held that if a State compelled all foreigners to change their surnames that would constitute an impermissible interference in contravention of article 17 of ICCPR.

Committee on the Elimination of Racial Discrimination

In recent years, the CERD Committee has examined communications concerning claims of racial discrimination against persons of Roma ethnicity in areas such as housing, freedom of movement and residence, and access to public places.

Koptova v. Slovakia (communication No. 13/1998) concerned two resolutions issued by the Municipal Council of Rokytovce and the Municipality of Nagov in June and July 1997, which forbade Roma citizens who used to live there from entering the villages or settling there. The author of the communication was also a Roma and the director of the Legal Defense Bureau for Ethnic Minorities of the Good Romany Fairy Kesaj Foundation in Kosice. She challenged one of the resolutions before the Constitutional Court. The author did not enter the villages while the resolutions were in force because she was scared that as a person of Roma ethnicity she would be threatened with violence. The resolutions were revoked in April 1999. The author argued that by maintaining the resolutions in force, the State party violated articles 2, paragraphs (a) and (c); 3; 4, paragraph (c); 5, paragraphs (d) and (i); and 6 of CERD.

The Committee held that Ms. Koptova belonged to a group of the population directly targeted by the resolutions in questions and rejected the State party's argument that the author could not be considered a "victim" within the meaning of article 14, paragraph 1, of CERD. On the merits of the communication, the Committee held that while the wording of the resolutions

referred explicitly to Romas previously domiciled in the concerned municipalities, the context of their adoption indicated that other Romas would have been equally prohibited from settling there, and thus found a violation of article 5, paragraphs (d) and (i) of CERD (right to freedom of movement and residence). Furthermore, while the Committee noted that the contested resolutions were rescinded in April 1999, it recommended that Slovakia should take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction were fully and promptly eliminated.

Ms. L.R. et al. v. Slovakia (communication No. 31/2003) concerned a complaint of housing discrimination against Roma in the municipality of Dobsina. In 2002, following a petition by the Dobsina Chairman of the Real Slovak Party, the municipal council cancelled an earlier decision to construct low-cost housing for the Roma inhabitants of the town. The District Prosecutor and the Slovak Constitutional Court refused to examine the application of the Roma inhabitants requesting an investigation of the council's actions. The Committee reiterated that the definition of racial discrimination in article 1 expressly extends to measures that are discriminatory in face and effect (i.e. indirect discrimination). The Committee found the State party in violation of its obligations under article 2, paragraph 1 (a) of CERD, which obliges States parties to engage in no act of racial discrimination and to ensure that all public authorities act in conformity with this obligation. The Committee also found that Slovakia failed in its obligation to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing (art. 5, para. (e) (iii)). Finally, it held that the failure of the Slovak courts to provide an effective remedy disclosed a violation of article 6 of CERD.

In *Durmic v. Serbia and Montenegro* (communication No. 29/2003), the author, a man of Roma ethnicity, was refused entry to a club because of his ethnicity. His attempt to enter the club was part of a test conducted by the Humanitarian Law Centre following many complaints about the denial of entry to persons of Roma ethnicity to clubs, restaurants and other public places. The author claimed, inter alia, that the authorities' failure to prosecute the owners of the club for its discriminatory practice, as well as to ensure that it did not recur, amounted to a violation of articles 5, paragraph (f), in conjunction with article 2, paragraph 1 (d), of CERD. He also alleged a violation of article 6 of CERD because the State party had not provided him with a remedy for the discrimination he suffered and had not taken any measures to punish the perpetrators and to prevent such discrimination from happening again.

While the Committee held that the State party "… had failed to establish whether the petitioner had been refused access to a public place, on grounds of his national or ethnic origin, in violation of article 5, paragraph (f), of the Convention", it did not go on to find a violation of this provision. However, it found a violation of article 6 on the grounds that the State party failed to investigate the author's arguable claim of racial discrimination promptly, thoroughly and effectively. The Committee also clarified the scope of article 6 by underlining that it provides protection to alleged victims of racial discrimination if their claims are arguable under the Convention. The Committee called the State party to take measures that will ensure that the police, the prosecuting authorities and the courts properly investigate complaints related to acts of racial discrimination (see also *Lacko v. Slovakia*, communication No. 11/1998).

The CERD Committee has also dealt with cases in which the authorities of States parties have failed to prosecute and punish racist speech and propaganda.

The Jewish Community of Oslo et al. v. Norway (communication No. 30/2003) concerned a commemoration march organized by a group of Nazi sympathizers and a speech at the time by one of their members, accepting the mass extermination of Jews. While the speaker was prosecuted and convicted under section 135a of the Norwegian Penal Code, his conviction was overturned by the Supreme Court. The decision stated that the statements in question did not amount to approval of the persecution and mass extermination of Jews. The majority also provided a narrow interpretation of article 4 of CERD by holding that it did not entail an obligation to prohibit the dissemination of ideas of racial superiority.

The authors (two Jewish organizations, one anti-racist organization and an individual) alleged that, as a result of the Supreme Court's judgement, they were not afforded protection against the dissemination of ideas of racial discrimination and hatred, as well as incitement to such acts, during the march of 19 August 2000, and that they were not afforded a remedy against this conduct. They invoked articles 4 and 6 of CERD.

In its decision on admissibility, the CERD Committee accepted the authors' submission that they were "victims" because of their membership of a particular group of potential victims.

The Committee also underlined that to interpret article 14 "in the way suggested by the State party, namely to require that each individual within the group be an individual victim of an alleged violation, would be to render meaningless the reference to 'groups of individuals'". The term "group of individuals" should be interpreted as including organizations. The Committee concluded that, bearing in mind the nature of the organizations' activities and the classes of person they represented, they too satisfied the "victim" requirement in article 14.

On the merits of the communication, the Committee held that the statements in question incited racial discrimination, if not violence, and thus fell within any of the categories of impugned speech set out in article 4. Furthermore, it held those statements were not protected by the due regard clause of article 4. The Committee held that the acquittal by the Court violated articles 4 and 6 of the Convention (see also *L.K. v. the Netherlands*, communication No. 4/1991).

Committee against Torture

Several communications concerning the ill-treatment of members of ethnic minorities, such as the Roma, while in police custody have been examined by the CAT Committee (see, inter alia, *Dimitrov v. Serbia and Montenegro,* communication No. 171/200, *Dimitrijevic v. Serbia and Montenegro*, communication No. 172/2000, *Guridi v. Spain*, communication No. 212/2002). Persons belonging to minorities who face refusal of their refugee claim, expulsion to their country of origin and the risk of death, torture or ill-treatment upon return, have also filed complaints under the Convention invoking article 3 of CAT.

The CAT Committee has also examined communications concerning attacks against persons of Roma ethnic origin and their property. For example, *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (communication No. 161/2000) concerned attacks against the residents and the houses of a Roma settlement in the Danilovgrad village, and the subsequent demolition and destruction of the houses by a mob of non-Roma residents. While police authorities were present, they failed to act and did nothing to protect the Roma residents or their property. The

Committee found that the burning and destruction of the Roma houses constituted acts of cruel, inhuman or degrading treatment or punishment. It also underlined that the nature of those acts was further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed and the fact that those acts were committed with a significant level of racial motivation. It held that the acts referred to by the complainants were committed with the acquiescence of public officials and constituted a violation of article 16, paragraph 1, of the Convention. It was also held that the investigation conducted by the authorities failed to satisfy the requirements of article 12 because, despite the participation of several hundred of non-Roma residents in the events and the presence of the police forces during the events, no person nor any member of the police forces had been tried by the domestic courts. The Committee held that the investigation conducted by the authorities did not satisfy the requirements of article 12. It also found that the absence of an investigation and the authorities' failure to inform the complainants of the results of the investigation constituted a violation of article 13. Finally, it held that the failure of the State party to enable the complainants to obtain redress and to provide them with a fair and adequate compensation violated article 16.

The full text of these cases can be found on the Office of the United Nations High Commissioner for Human Rights website (www.ohchr.org) in the treaty bodies database, jurisprudence section.

Making complaints ("communications") about human rights violations

Before filing your communication, it is important to make sure that the State concerned is a party to the treaty and has accepted the competence of the committee to examine individual communications. Communications cannot be dealt with by these procedures if this requirement is not fulfilled (such communications may be dealt with by the so-called "1503" Procedure or those of the special procedures system). You can find whether your country has recognized the competence of the treaty bodies to receive individual communications on the website cited above, at: http://www.ohchr.org/english/bodies.

A communication also will not be received if it is not submitted in writing. It can be sent by letter or fax. A communication should not be anonymous.

Although there is no requirement for the submission of an individual communication in a particular form, it is preferable, in order to make the streamlining of a communication faster, to use the model communications available on the following web page: http://www.ohchr.org/english/bodies/petitions/individual.htm.

The minimum information that should be provided is:

1. The name of the treaty body to which the communication is addressed;

2. The date of the communication;

3. The name, nationality, date and place of birth, profession, and present address and correspondence address of the author;

4. if the author of the communication is different from the victim of the violation, he/she should explain his/her relationship with the victim and the reasons why the victim/victims are unable to submit the communication himself/herself. He/she should also provide a copy of the written authorization to act, or if such authorization does not exist, he/she should justify its absence;

5. The name of the State party against which the communication is directed;

6. The provisions allegedly violated;

7. The steps taken to exhaust domestic remedies, including dates, and the results achieved. Copies and not originals of relevant judicial or administrative decisions should be enclosed. Furthermore, if domestic remedies have not been exhausted the author should explain the reasons (e.g. ineffective domestic remedies);

8. Information on whether the same matter has been submitted for examination under another procedure of international nature and copies of relevant complaints and decisions;

9. A detailed description of the facts of the alleged violation(s), including relevant dates. Copies of documentation and other corroborating evidence that substantiates the description of the facts and the argument that they amount to a violation of the invoked provision(s).

You should also examine whether the concerned State party has attached a reservation to one of the provisions you intend to invoke, as this might affect your complaint. Individual complaint procedures can only be used to enforce rights that the States parties have bound themselves to under each of the respective treaties. However, while States are not prohibited from making reservations provided that they are not incompatible with the object and purpose of each of the respective treaties, the CCPR Committee has held that reservations on the right to self-determination (art. 1 of ICCPR) or on the obligation to respect and ensure the rights guaranteed under the Covenant on a non-discriminatory basis (art. 2, para. 1, of ICCPR) are not acceptable. It falls to each Committee to determine whether a reservation is compatible with the object and purpose of the respective treaties.

The communication and the accompanied documentation must be submitted in one of the working languages of the Committee's secretariat.

Usually, each Committee decides on the question of admissibility and merits jointly, but there is a possibility that it may decide to examine these issues separately.

In the admissibility stage, the Committee examines whether certain formal requirements have been fulfilled. The first is that the author must show that he is the victim of a human rights violation. A complaint that challenges a law or practice in general (*actio popularis*), but does not provide evidence of how the author is personally and directly affected by this in the enjoyment of his rights enshrined in one of the respective treaties, will be declared inadmissible.

You should only invoke a right that is guaranteed in one of the respective treaties, otherwise your complaint will be declared inadmissible *ratione materiae*. You can only

complain about events that have taken place after the respective treaty has entered into force in the State party concerned. However, the CCPR Committee has decided to examine complaints related to events that have taken place prior to the entry into force of the Covenant if they have a continuing effect that in itself constitutes a violation of the Covenant (e.g. enforced disappearances). Also, if the event took place before the treaty entered into force, but the domestic remedies were exhausted after, the communication would usually be admissible.

One of the most important requirements that needs to be fulfilled is that of the exhaustion of domestic remedies. This rule shall not apply if the application of these remedies has been unreasonably prolonged or the remedies have been unavailable or ineffective. Following the exhaustion of all available domestic remedies, there is no formal time limit regarding the submission of an individual communication to the CCPR Committee, the CAT Committee or the CEDAW Committee. However, it is preferable to submit your communication as soon as possible after you have exhausted all domestic remedies. In cases in which the States parties to CERD have established or indicated a national body competent to receive petitions from individuals or groups claiming to be victims of racial discrimination, petitioners to CERD may bring the matter to the Committee's attention only if they failed to obtain satisfaction from this national body. They have the right to do so within six months after their failure to obtain satisfaction from this body. If such body does not exist, the authors also have only six months after the exhaustion of domestic remedies.

The Committee will also declare a communication inadmissible if it considers it to be an abuse of the right to petition. Finally, the Committee will declare a communication inadmissible if the complaint is also being examined under another procedure of international investigation or settlement (the CAT and CEDAW Committees will also declare a complaint inadmissible if it has been the subject of a decision in the past by such a procedure).

Individual communications are always examined in closed meetings. There are no oral pleadings by the parties, only written submissions.

The Committee will bring a communication confidentially to the attention of the State concerned, but will not reveal the identity of the authors unless they have given their consent. The submissions of the State party and the authors, and also the deliberations of the Committee, are confidential.

If the Committee declares that your complaint is inadmissible, the process is complete once the decision has been transmitted to you and the State party. If it declares the complaint admissible, it will request the State party to make submissions on the merits within a specific time frame, and as an author you will be given a period to comment on these submissions.

The Committee may find a violation of all the provisions under consideration, a violation of some of them or no violation at all. Once it finds a violation, this finding can be followed by suggestions and recommendations to the State party concerned, such as calls to provide the appropriate remedy to the victim and the adoption of measures designed to prevent similar violations in the future. The views of inadmissibility, discontinuance or merits are made public and are included in each Committee's annual report.

Despite the moral and political authority of each Committee and the judicial structure of their decisions, their views/decisions are not legally binding and cannot be enforced. However, a follow-up system has been established under which the State party concerned is required to report within a time frame to the Committee's findings and recommendations.

Strategic litigation on issues affecting minorities and indigenous peoples has led to the development of principles by the Committees (especially the CCPR Committee) that have and will provide guidance in future cases. Relevant jurisprudence may provide guidance to States parties with regards to the interpretation of their obligations under each treaty. Finally, the finding of a violation may lead to changes in the concerned State's law and practice, and consequently change the situation of persons belonging to minorities who are in a similar situation to the author of the communication. National courts may also use, and have used, the Committee's jurisprudence as a guide on similar cases.

Urgent cases

If you feel before your case is examined that you may suffer irreparable harm in the enjoyment of your rights, in particular where your life or physical integrity is under threat, you can ask the respective Committee to take urgent action. You should state this request explicitly and identify as comprehensively as possible the reasons why you consider such action to be necessary. Following this, the Committee may decide to issue a request to the State party to take interim measures with a view to averting the irreparable harm before your complaint is considered. Requests for interim measures are usually issued to prevent irreparable actions such as the execution of a death sentence or the deportation of an individual who faces the risk of torture in his home country. Interim measures have also been granted to prevent the State party from destroying part of a minority's environment until the Committee considers the case, for example the logging of trees in *Länsman v. Finland* 67/1995.

The Inquiry Procedure

Article 20 CAT and articles 8 to 10 of OP1 CEDAW establish ex-officio inquiry procedures that may be initiated by the relevant Committees if they receive reliable information indicating the existence of serious or systematic violations of the conventions in a State party. The procedures are confidential. However, States parties may opt out at ratification. The CAT Committee may initiate the procedure if it receives reliable information indicating that torture is being systematically practiced in the territory of a State party. The CEDAW Committee may initiate the procedure if it receives information of gross and systematic violations of women's rights. The procedures cannot be initiated with respect to violations in the territories of States parties that have opted out. The information is usually provided by non-governmental organizations (NGOs), and the procedures enable them to enhance their cooperation with the respective Committee.

The respective Committee usually invites the State party to submit observations. On the basis of these observations and other relevant information, the Committee may decide to designate one of its members to make a confidential inquiry and to report urgently. The findings of the members are examined by the Committee and transmitted to the State party together with recommendations. Following consultation with the State party, the Committee may decide to

publish the results of the proceedings in its annual reports. Requests for an inquiry do not preclude the submission of an individual communication related to the same set of facts. The CEDAW Committee completed its first inquiry procedure in 2004. The CAT Committee has completed seven cases and has published five reports.

Further information and contacts

For communications to the CCPR Committee, the CAT Committee and the CERD Committee, you should direct your correspondence and inquiries to:

Mail	Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10, Switzerland
Fax	+41 22 9179022 (particularly for urgent matters)
E-mail	tb-petitions@ohchr.org

For communications to the CEDAW Committee, you should direct correspondence and inquiries to:

Mail	Committee on the Elimination of Discrimination Against Women c/o Divisions for the Advancement of Women, Department of Economic and Social Affairs United Nations Secretariat 2 United Nations Plaza DC-2/12th Floor New York, NY 10017 United States of America
Fax	+1 212 963 3463

A number of guides describing the work of treaty bodies are available, including Fact Sheets published by the OHCHR office such as Fact Sheet No. 7 Rev.1, *Complaint Procedures* and Fact Sheet No. 30, *The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies* and the United Nations Guide for Minorities, Pamphlet No. 4, *Minorities and the United Nations: Human Rights Treaty Bodies and Complaint Mechanisms.* Other works describing, inter alia, how minorities and NGOs can use the complaints mechanisms of the four treaties are Gudmundur Alfredsson and Erika Ferrer, as updated and revised by Kathryn Ramsay, *Minority Rights: A Guide to United Nations Procedures and Institutions* (Raoul Wallenburg Institute of Human Rights and Humanitarian Law and Minority Rights Group International 2004); and Alexander H.E. Morawa, "The United Nations Treaty Monitoring Bodies and Minority Rights, with Particular Emphasis on the Human Rights Committee" in *Minority Issues Handbook: Mechanisms for the Implementation of Minority Rights* (European Centre for Minority Issues and Council of Europe Publishing, 2004), pp. 29-54.

Other useful guides on the work of particular treaty bodies are: the CCPR Committee contribution to the preparatory process of the Durban World Conference against Racism (document A/CONF.189/PC.2/14); Atsuko Tanaka with Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs* (International Movement Against All Forms of Discrimination and Racism and Minority Rights Group International, 2001); Michael Banton, *Combating Racial Discrimination: the United Nations and its Member States* (Minority Rights Group International, 2000); and A. Byrnes, "An Effective Complaints Procedure in the Context of International Human Rights Law" in Anne Bayefsky (ed.), *The United Nations Human Rights Treaty System in the Twenty-first Century* (Kluwer, 2000), pp. 139-162.
