Minorities and Indigenous Peoples’ Protection: Practice of UN Treaty Bodies in 2003

I. Introduction

At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in September 2001, the heads of states and governments present pledged to accord a high political priority to the fight against discrimination suffered by persons belonging to national, ethnic, religious and linguistics minorities as well as discrimination suffered by indigenous peoples. A number of states have adopted or are in the midst of preparing national plans of action to follow up on the programme of action adopted in Durban. It is hoped that these plans will reflect adequately the importance attached in the Durban Programme of Action to minorities and indigenous peoples.

States parties to the major international human rights instruments are already bound to promote and protect the rights of members of these groups, although only two of these instruments – the International Covenant on Civil and Political Rights (CCPR) and the Convention on the Rights of the Child (CRC) – make explicit reference to minorities and indigenous peoples. The broad range of human groups men-

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* Secretary of the Committee on the Elimination of Racial Discrimination. The opinions expressed in this paper are the author’s and do not reflect those of the United Nations. The author is grateful to Ms. Femke Wegman and Ms. Nassima Talbi for their research assistance.
2 The Committee on the Elimination of Racial Discrimination (CERD/C) decided at its 60th session to include a standard paragraph in all its concluding observations "recommend([ing) that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level."
3 See Article 27 CCPR and Article 30 CRC, to be read in conjunction with Article 17 on the mass media and the child and Article 29 on purposes of education.

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tioned in Article 1 of the International Convention on the Elimination of Racial Discrimination (CERD), however, clearly includes minorities and indigenous peoples. This Convention constitutes, therefore, an instrument of major importance and relevance for the protection of these groups and of their members against discrimination. This paper illustrates through significant examples the extent to which, irrespective of the presence or absence of any provisions on minorities and indigenous groups in the relevant instruments, all treaty bodies devote specific attention to the protection of members of these groups. Some of the major concerns and recommendations regarding the situation of minorities and indigenous peoples expressed in 2003 by these bodies in the course of the reporting procedure or when reviewing complaints submitted by individuals or groups of individuals are highlighted, with particular emphasis on the Committee on the Elimination of Racial Discrimination (CERD/C).

Following the consideration of states parties' initial or periodic reports, treaty bodies adopt concluding observations which, although not legally binding, provide states with a useful tool for evaluating progress and acknowledging factors and difficulties affecting the realization of the rights provided in the relevant instrument. The analysis of these concluding observations also contributes to elucidating the content of rights and corresponding obligations provided in the various human rights treaties. Part II of this review focuses on the concluding observations adopted by CERD/C and other treaty bodies in 2003 and highlights issues of particular relevance for members of minorities and indigenous peoples regarding their right to identity, citizenship, protection against violence, culture, language and education, participation in public life, as well as their economic, social and land rights.

The individual communications procedure is also used by members of minorities and indigenous peoples to bring complaints to the HRC, CAT/C and CERD/C. As no significant cases concerning minorities and indigenous peoples were examined in 2003 by the HRC and CAT/C, part III of this review focuses exclusively on CERD/C decisions and opinions.

4 Article I provides that "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin."

5 Reference will be made in this review to the activities of CERD/C, the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW/C), the Committee on the Rights of the Child (CRC/C), the Committee on Economic, Social and Cultural Rights (CESCR/C) and the Committee against Torture (CAT/C).

6 Reference will be made distinctly throughout this review to members of minorities and to members of indigenous peoples so as to reflect the specificities characterizing the situation of indigenous peoples as well as their entitlement to particular rights. See, on this issue, the working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples written by Ms. Erika Daes and Mr. Asbjørn Eide for the 52nd session of the Sub-Commission on the Promotion and Protection of Human Rights in 2000, E/CN.4/Sub.2/2000/10.


8 Each treaty body has examined the following number of reports in 2003: HRC (24); CERD/C (24), CEDAW/C (16), CAT/C (14), CRC/C (28) and CESCR (11). Only two concluding observations adopted by CAT/C in 2003 made brief reference to members of ethnic minorities (Slovenia, CAT/C/CRC/30/4 and Moldova CAT/C/CRC/30/7).