

**RACISM IN THE 21ST CENTURY: UNDERSTANDING
GLOBAL CHALLENGES AND IMPLEMENTING SO-
LUTIONS**

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PLEMENTING SOLUTIONS**

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RACISM IN THE 21ST CENTURY: UNDERSTANDING GLOBAL CHALLENGES AND IMPLEMENTING SOLUTIONS

July 16, 2008

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 11 a.m. in room B-318 of the Rayburn House Office Building, Washington, DC, Hon. Alcee L. Hastings, Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioner present: Hon. Alcee L. Hastings, Chairman, Commission on Security and Cooperation in Europe.

Witnesses present: Anastasia Crickley, OSCE Chair-in-Office, Personal Representative on Combating Racism; Gay McDougall, U.N. Independent Expert on Minority Issues; and John Payton, President and Director-Counsel, NAACP Legal Defense and Educational Fund.

HON. ALCEE L. HASTINGS, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. HASTINGS. [Inaudible] being on the floor managing on a rule on a rather substantial matter dealing with intelligence authorization, and so I was a bit tardy getting here.

I'd like to welcome you, though, and particularly emphasize the title of this particular hearing, and that is "Racism in the 21st Century: Understanding Global Challenges and Implementing Solutions."

This hearing is one in a series we are holding on efforts to combat intolerance in the OSCE region. An issue near and dear to my own heart was a recent hearing we held on Black Europeans where I was saddened to learn that negative treatment I'd experienced in Europe was also a common experience for others.

Racism is alive and well, not only here in North America, but also in Europe and I daresay in other places of the world. And despite positive initiatives—and there have been many—there are some worrying developments that warrant an increased focus on the issue.

This includes efforts to redefine racism, its consequences, who it affects, and whose responsibility it is to address it.

Currently, there is an attempt to shift the debate on racism and xenophobia to one on migration and integration. While migrants are often the targets of violent and nonviolent forms of discrimina-

tion, a focus solely on migrants negates the reality that many European countries are also diverse, heterogeneous societies with citizens that differ in race, ethnicity, language and in other ways.

Policies geared toward addressing racism and xenophobia must therefore have the ability to address the experience of both citizens and non-citizens.

Second, as I recently noted at the OSCE's May 29th Supplementary Human Dimension Meeting on Minorities and Migrants, increasingly we are receiving reports that minority communities are not being adequately consulted and/or hired as part of the formulation and implementation of anti-racism initiatives, which hurts both credibility and effectiveness.

Third, we must be ever mindful that this is not a new issue. I and our witnesses have been fighting this problem for decades on the domestic and international level.

I introduced legislation on the United States's recent review before the United Nations Committee on the Elimination of Racial Discrimination to highlight some of the international commitments that the United States and other nations have made to combat racism.

But the problem remains that the United States and other OSCE countries are not adequately implementing domestic or international solutions.

A major reason I called this hearing was to discuss solutions to this problem of implementation, as well as discuss new developments such as increased discrimination experienced by migrants.

I was very recently in Italy, and I was amazed at the tone in that country with reference to migrants. The television and the news reports were rife with concerns.

I'd like to thank the persons joining me today, Anastasia Crickley, Ms. Gay McDougall and John Payton. I have the good fortune of having worked with all three of them, two of them—John and Ms. Crickley, especially John and I—more years than we want to remember that we have worked together. But I have had the good fortune of being with them, and I know them to be very insightful on this topic and able to offer advice to us all.

At this point I'd like to enter into the record the two mission reports from Ms. McDougall, and I'd also like to thank my fellow Commissioners, who will likely be joining us. And when they do, I would allow for them to make appropriate interventions as they arrive.

But let's begin with Ms. Crickley, who came the farthest, I believe, this morning, although that's not always the case.

But, Anastasia, it's good to see you, and I welcome you. And your full remarks can be entered into the record, and you can summarize or go forward in any manner you see fit.

**ANASTASIA CRICKLEY, OSCE CHAIR-IN-OFFICE, PERSONAL
REPRESENTATIVE ON COMBATING RACISM**

Ms. CRICKLEY. Thank you, Chair, and thank you for your welcome. It's indeed an honor and a privilege for me to be here this morning and to have this opportunity to share with you and your colleagues and all of the people who are here present with us some

of my concerns and confusion with regard to racism in the 21st century.

And 3½ years ago, I was appointed by the Chair-in-Office of the OSCE as his personal representative on racism and discrimination, including also a focus on discrimination against Christians and members of other religions. It's a long title, and it's an honorary part-time post.

I say that not by way of making excuses for what I have or have not done, but just by way of being clear and explaining. It's been a privilege to be able to serve the OSCE through this post, and it also does provide a number of opportunities throughout what is, as you will know, a very, very diverse region, stretching all the way, as they say in the OSCE, from Vladivostok to Vancouver.

You've already had the opportunity here to discuss with my esteemed friend and colleague, Gert Weisskirchen. His concerns as Personal Representative of the Chair-in-Office on anti-Semitism.

And the third person who forms part of this trio is Ambassador Omur Orhun, who is the Personal Representative of the Chair-in-Office on discrimination against Muslims.

As I said, this is a diverse region. In some parts of the region, there is legislation on these issues, which is implemented or not implemented, as the case may be, and there are diverse voices in civil society who are perfectly able to critique it.

In other parts of the region, there is no legislation or inadequate legislation, and there are no opportunities for civil society voices to critique.

There are also different administrative cultures, which I think are important to acknowledge, as we struggle across such a diverse region to come up with suggestions and proposals that could hold some water in all of it.

First of all, there are the differences between emerging and established democracies. There are the differences between ways of thinking about citizenship—and to take a European context, the difference between the French approach and the British approach.

And then, more recently, there has been the discourse which has developed between understandings of freedom of expression, often expressed by your colleagues and friends on this side of the Atlantic, and the need to address racism as a crime and finding ways and methods to do that.

I'd just like to pick very briefly, though, in this intervention on four dimensions or four trends which, as far as I can see, hold across the whole region. First is to talk about racism; second, to talk about religion; third, to talk about Roma and Travellers, which is a very persistent and difficult issue, and also a group which is persistently discriminated against; and last, to talk about migration in that context.

As regards racism, I'm also conscious from my work in the E.U., where I have the honor to Chair the European Union Fundamental Rights Agency, but from the records we've been able to put together—and it is difficult across this region to have an adequate record of what's happened—racism has become more virulent in this decade in particular.

The records are inadequate, but insofar as one can tell, hate crime and associated incidents are on the increase. Particular groups are singled out.

One part of the region, for example, the Russian Federation's racism may be just on the basis of difference, of coming from a different region or coming from another country in that region. In other parts of the OSCE region, it's on the basis of being perceived to be from a Muslim background.

Single identifiers are used inadequately to both identify victims and also to address some of the questions associated with racism. Speaking as an Irish person, I'm conscious that if I was only identified as a Catholic in the U.S.A., it would not have adequately described me as an immigrant to this country 100 years ago or even 50 years ago, nor would it adequately have described my experiences and the issues associated with it.

To address racism throughout this region, we need data. We need to put a focus on adequate data collection and put resources into it. And we also need laws. But as well as laws, we need the political will to implement them.

In the European Union, for example, there is already quite adequate legislation—relatively adequate legislation, shall we say—to address racism. However, there are big differentials in the extent to which the 27 member states of the European Union have actively implemented that legislation to date.

As regards religion, there is an increasing debate about religion entering where some people feel it should not, and on the other hand, a contrasting concern that secular intolerance across the religion is marginalizing religious believers.

Both sides of that fence are of concern to me with regards to the forms of discrimination that can result in terms of freedom of religion and belief. State-faith dialogue is very important in this instance. But state-faith dialogue can only take place where states are prepared to acknowledge the right of more than one religion or the right of people to freedom of religion and belief.

Inter-faith dialogue is also particularly useful. And I would like to commend to you in this regard the Toledo guiding principles on teaching about religion, which has been produced by the ODIHR, the Office of Democratic Institutions and Human Rights, of the OSCE, and to say to you that these are not in any way concerned to replace the teaching of religion.

They're not concerned in any way to lay down regulations about how religion should be taught, but they're merely what I consider to be a very positive set of suggestions about how young people, in whatever part of the region they are, to be taught about the religions of others, whether they hold any religion themselves or none.

This increased focus on religion has not meant a diminishing of discrimination on the basis of religion. And in parts of the region, there continue to be particular concerns about small Christian denominations in the East, continuing concerns about what happens to Christian denominations in Turkey, for example, and about the position of the established Orthodox Church there, as well as continuing concerns about registration processes in some countries.

Coming myself from Ireland, where indeed for many years we did give a particular position to one religion, I'm very conscious of the

extent to which according particular positions to one faith over another doesn't serve that faith well sometimes, doesn't serve the state in which it's integrated very well. I'm also very conscious that freedom of religion and belief should not demand very stringent registration processes.

Third, as regards Roma and Travellers—and I prefer to think about this family as Roma, Sinti, and Travellers—people from a variety of cultures with great similarities between them, some of whom at one time may have been nomadic, most of whom by this point in time, when they are nomadic, are nomadic because they are forced to move from one place to another, not because they want to continue to move on an ongoing basis.

But I think my good colleague and friend, Doudou Diene, who up until now was the Special Rapporteur on Racism at the United Nations, described very well the situation of Roma, Sinti, and Travellers when we spoke about the democratization of discrimination.

What's experienced by these groups, in my view, and what was very much epitomized and continues to be epitomized by what's happening in Italy at the moment is the democratization of discrimination. Not only are Roma and Sinti and Travellers discriminated against, but the discrimination they experience and the racism they experience is justified as being their own fault.

It's not useful in terms of looking at what's happening in Italy, in my view, to inappropriately use language of the Holocaust to describe what's happening there, but it is perhaps useful to remember that Roma and Sinti also suffered in that Holocaust during the Second World War.

We don't serve any cause well by inappropriately applying terms which need to be respected in their own context and in their own light.

This is a regional issue, though. It's an issue for the Europeans. It's an issue for the Italian state at the moment. It's a broader issue for the European Union in terms of policies with regard to mobility and employment. But it's also an issue for the whole of the OSCE.

I believe very strongly, in terms of addressing you as chairperson, that it comes back to the comment you have made about the need for active participation by the people concerned, active participation by Roma, Sinti, and Traveller groups in the design and implementation of solutions to the experiences that they have.

It also requires active participation that goes well beyond the boundaries of one nation. In effect, I'm saying to you that for the OSCE it could be a major priority. It's one which the OSCE already has a particular interest in and where the OSCE's contact point in Roma and Sinti is doing good work.

And indeed, I hope to be part of a high-level delegation with that contact point next week to Italy in order to develop a perspective on the situation and draw some conclusions with regard to the situation there.

Last, I want to move to migration. And indeed you're right to draw differences between racism and migration overall. But having said that, I'm very sorry to have to say also there are at the moment pretty clear connections between issues associated with migration processes and racism and discrimination.

The way in which migration is regulated throughout the region tends to structurally disadvantage migrants and create a context within which they are deliberately and directly discriminated against. And migration into the OSCE region is probably part of the biggest global movement overall of people at the moment, from South to North America to your country, from Africa to Europe, and from the East to the West.

Participation is denied to migrants, not in the same way in all parts of the region. But the fear that's associated with being in that position is certainly synonymous throughout the region, and the discrimination and racism especially experienced by lower paid and by undocumented and unemployed migrants is of major concern.

Addressing these migration issues is difficult. There's no country in the OSCE region or beyond which is prepared to just open its borders and say everybody can come.

But addressing them also requires political leadership from very senior levels, leadership that creates a welcoming context, acknowledges the economic, social and cultural contribution of migrants, acknowledges that all of our states change—none of them stay the same; even my own has changed very significantly in the last 200 years—and creates a context that's about integration, and not just integration economically, but integration with respect and integration with inclusion, because integration on its own creates a climate for discrimination and racism.

In fact, integration on its own is probably more like an attempt at assimilation and pretending that people don't exist and can be part of an under tap.

In looking at all of these issues, I'm also conscious that one size doesn't fit all, and there are also internal differences between the groups who experience racism, whether it's on the basis of religion, on the basis of being migrants, or on the basis of being Roma, Sinti, or Travellers.

And one of the biggest and most obvious differences is that people who experience racism and discrimination are men and women.

And from that point of view, I would like to point to the necessity, which has become very obvious in the OSCE region, to look to this difficult edge of where discrimination and racism can be experienced by women. And by the difficult edge, I mean the edge that's associated with trafficking and with the exploitation and the discrimination that can be involved in that.

By way of conclusion, acknowledging that you asked me to speak only for 7 minutes, and probably I've already done double that much, let me say that as the OSCE moves forward, nothing will happen unless participating states, including your own, are prepared to acknowledge the struggle to address racism as work in progress, rather than continuing to absolve inadequacies by reflecting on the initiatives that have been taken.

I would like to say that virtually all participating States are taking some initiative, some more than others. Some progress is being made in all, and I would like to commend the officials, including in your own country, who have been involved in creating the conditions for that progress and in moving it along.

But if participating States, including your own, continue to confuse work in progress—and I'm conscious from meeting here with the NGOs; I've had the opportunity to [inaudible] that here as everywhere else; it is work in progress—continue to confuse work in progress with having achieved outcomes, and there is no possibility for actually achieving those outcomes.

The OSCE provides a very useful forum for awareness raising about issues, a forum which, because it happens at a legislative framework and is a consensus-based entity, a forum which I believe can be used to great benefit, a forum which can also create a space for dialogue.

And I would like to commend the support that you have given in the United States to the participation of NGOs fully in the discussions in the OSCE, which is not something that happens in the same way in other regional or global forums.

Finally, I would like to thank you for your support for the role of myself and of my two colleagues. Our contribution is small, but I do believe it has created an opportunity to pinpoint some issues in a way that can be reflected on as we move forward.

Thank you very much.

Mr. HASTINGS. I can say to you I am expecting that there will be votes shortly, and I would recess the hearing and try to spend a minimum time when I go to vote.

I'd also like to take cognizance of the fact that there are a significant number of young people that are visiting with us today. And I am particularly pleased.

And the biographies of these outstanding witnesses, particularly for those of you that are younger, might be encouraging to you as you progress in your lives, not only on this subject, but to show the commitment of individuals that have impacted our lives. Many times we don't know them or see them or hear them. Or even when we see them, we don't know the work that they've done.

I think a point of special privilege to highlight, just one part of Gay McDougall's resume that I think would be of interest to all of you. In 1994 she was appointed the only American member of the 16-member 1994 Electoral Commission of South Africa, which organized the process that resulted in the election of Nelson Mandela.

For 14 years prior to those elections, she worked with the South African lawyers to gain the release of thousands of political prisoners. She also founded the Commission on Independent Elections in Namibia that monitored that country's transition to democracy.

And Ms. Crickley, who just spoke, in addition to official responsibilities in the European Union and in the Organization for Security and Cooperation in Europe as a special representative appointed by the Chair-in-Office, she has also with her late husband founded organizations that have dealt with Travellers, and specifically the Travellers Women's Forum.

So you're looking at people that have really impacted our lives in significant ways. And I point out Gay's curriculum vitae to highlight the fact that just recently, and probably for all of the remainder of this year, we are celebrating 90 years of Nelson Mandela's having been on Earth. And in London very recently they had a tremendous celebration there.

Gay, I've taken up your time, but I'd appreciate it very much if you would go forward at this time.

**GAY J. MCDOUGALL, U.N. INDEPENDENT EXPERT ON
MINORITY ISSUES**

Ms. MCDOUGALL. Thank you very much, Chairperson.

I would say that I've been fortunate to be able to now take forward the work that I did on behalf of South Africa to a global level. And in 2005 I was appointed to serve as the first United Nations Independent Expert on Minority Issues.

My terms of reference include promoting the implementation of the Declaration on the Rights of Persons belonging to national or ethnic religious and linguistic minorities.

Additionally, a central part of my mandate is the enforcement of the right to nondiscrimination based on race as protected by the International Convention on the Elimination of all Forms of Racism, racial discrimination, xenophobia and other forms of intolerance.

My methods of work include diplomatic engagement with governments through country visits to assess general situations in the country and written communications on specific concerns, consultations with civil society non-governmental organizations and victims groups, in-depth studies on thematic issues like the denial of citizenship to targeted minority groups in countries around the world.

I do reports and recommendations to the U.N. Human Rights Council. And I provide technical assistance to facilitate reform efforts in governments around the world.

I work closely with the special rapporteur on racism, and I have also worked with the OSCE high commissioner on national minorities.

One of the lessons that I have learned over the period that I have carried out this mandate is that racism is ubiquitous. It's a global phenomenon. The victims differ in language and culture, but the experiences of exclusion, subordination, violence and discrimination are remarkably similar in every region of the world. This observation is as true in OSCE countries as well.

I have also learned that it is difficult to fully appreciate how racial discrimination manifests in a country without taking that measure from the ground.

So what I've done in my written testimony is to, as requested, give a list, if you will, of general characteristics, manifestations of racial discrimination in the 21st century that I do see in OSCE countries. I won't go over that orally. It's in the written submission.

But what I do want to focus on in my oral testimony is what I found when I went just a few months ago on mission to France, which is a very prominent OSCE country. And so that's what I'll talk about today.

Last September I carried out a country mission to France in pursuance of my mandate. During my visit I traveled to Paris, Marseilles, Strasbourg, and the environs, where I held consultations with civil society groups, religious groups, academics and others working in the field of minority issues and anti-discrimination matters.

I visited communities living in suburbs around Paris and Marseilles that are truly urban ghettos. In France they describe them as sensitive suburbs, including Bobigny and La Courneuve, which were those communities that were affected by the urban riots in 2005 and by the way, also rioted shortly after the end of my mission.

I talked directly to community members about their lives, issues, and concerns, and I was also given broad access to senior government officials.

So while there are other minorities in France that face discrimination, I chose to focus primary attention on the experiences of French citizens and long-term residents of immigrant heritage, particularly those of North African and sub-Saharan African origins, Muslims, and those from overseas departments who live in France. Overseas departments are the Caribbean islands.

Persons belonging to these groups are primarily people of color, and they're referred to as visible minorities in France. And they're the ones that typically experience serious discrimination in such areas as allocation of housing, access to employment, quality education. And they are grossly under represented in state and political institutions.

Racism—and I include Islamophobia—alienation and lack of social mobility for persons belonging in these groups were contributing factors for the riots without a doubt.

My visits to minority communities revealed very high levels of frustration. I found young people from minority groups, who feel that their hopes and dreams are being denied. They see no possibility of upward mobility because of the color of their skin, their religion, their surname, or their address in the ghettos.

People who have worked hard and played by all the rules and truly believe in the principles of the French republic are trapped in socially and geographically isolated urban ghettos, with unemployment over 40 percent in some areas.

They feel discriminated against and rejected by rigid notions of French national identity, with which they do not and cannot ever conform to. In fact, issues of identity are central in the course and mindset about exclusion.

Members of minority communities describe the extreme pressure they feel to alter their cultural and religious identities as a precondition for full inclusion and acceptance in French society.

There is a widespread feeling within the communities of physical minorities, many of whom are second and third generation French—second and third generation French—that to become a citizen of France is not sufficient for full acceptance, that acceptance will be granted only with total assimilation that forces them to reject major factors of their identity.

Only when they find a way to shed the color of their skin, hide the manifestations of their religion or the traditions of their ancestors will they be accepted as truly French.

I found there is a general requirement of suspicion and negativity against those believed to be of immigrant origin, not necessarily immigrants—those who look as if they're immigrants—generated in part by widespread public debates over immigration policy.

When I was there, there was a debate about the quotas. The government announced quotas for deportations for each year. And also there was great debate going on about DNA testing.

The message is that there is a real sense of fear and rejection in France of cultural diversity. I won't comment about the situation for minority women. It is very important to look separately at that.

I will say, however, that France is a country that does have a good law against discrimination, but it has some weaknesses.

But France is also a country that believes that once you become a French citizen, they dispense with their obligations or matters of nondiscrimination and equality. They don't officially recognize people of color as a group within their society that might be facing discrimination or need special measures or robust affirmative action policies to generate equality.

And this has really been a stumbling block. It doesn't allow them to take data on socioeconomic issues that can be just aggregated along ethnic lines. They believe that to do so is a violation of their vision of liberte, egalite and fraternite. And that is absolutely not the case in fact.

But I think that France represents—and I can go into further detail in the question and answer period—but I think that France represents a very interesting picture of the problems for people of color in Europe.

I'll stop there. Thank you very much.

Mr. HASTINGS. [Inaudible] young lady. John and I go way back. And again, just to take a moment of personal liberty, the gentleman that's about to testify, for purposes of the young people, has handled numerous cases in appellate courts, as well as before the U.S. Supreme Court.

And if you have one case that you would want to look at regarding civil rights, you might wish to look at the case of Richmond v. Croson. And this gentleman argued that case before the U.S. Supreme Court, including any other number of instances along those lines, teaching at Harvard and at Georgetown and at Howard University.

And he has been corporate counsel for the District of Columbia, as well as President of the District of Columbia Bar Association. And I'm pleased and privileged to have an opportunity to listen to his testimony, if I would shut up. [Laughter.]

**JOHN PAYTON, PRESIDENT AND DIRECTOR-COUNSEL, NAACP
LEGAL DEFENSE AND EDUCATIONAL FUND**

Mr. PAYTON. Well, thank you very much. This is a great opportunity, and thank you for inviting all of us. I think this is an important hearing that you have called.

I'm the head of the Legal Defense Fund, and I guess I should say a little bit about where we are in this struggle. We were founded in 1940 by Thurgood Marshall, and I believe we are the finest civil rights, human rights law firm in American history.

I think that it is fair to describe us as having been the civil rights division before there was a Civil Rights Division at the U.S. Department of Justice.

In many ways we are counsel for African-Americans on all sorts of issues in this country. Our mission is to see that African-Ameri-

cans become full, equal, and thriving participants in our democracy.

Now, I have submitted, I think, a quite detailed testimony, because it was very hard to do anything less than that, given what you asked me to address. But I'm going to be quite brief in my summary of that here this morning.

When we were founded in 1940, African-Americans and other minorities in this country were oppressed by means of law, a comprehensive set of laws and customs administered by courts and enforced by violence. We've made truly remarkable progress since then.

The legal apparatus of racial segregation is largely dismantled, and in its place we now have a series of laws that many Americans act as though they have always been with us, but they haven't—the 1964 Civil Rights Act, the 1965 Voting Rights Act, the 1968 Fair Housing Act, the rediscovery of civil rights statutes passed right after the Civil War, as well as decisions from courts expanding and announcing new rules.

These changes came about only through pressure and leadership from civil society. And the regime of White supremacy, the regime of segregation, lest we forget, included governmental entities. So the pressure only came from outside.

Today, some would like to declare the era of serious issues of race as being simply behind us. And they point to visible examples of African-Americans in positions of serious authority—like you, Mr. Chairman, like other Members of Congress, like African-American members of the Cabinet, like African-American CEOs, like prominent persons in our media, in our military, throughout our society.

And they especially point to the presumptive Democratic Presidential nominee, Senator Barack Obama, as evidence that we no longer have race as a salient factor in our society. I think we all know better.

Racism is dynamic. It is not static. And you only have to look at the state of our schools in our inner cities to see the enormity of today's remaining challenges that relate to race.

And I'm just going to go over just two or three quick things. About half of the kids in the public schools in our inner city communities drop out. In some cities the dropout rate is far higher than that. In Baltimore the dropout rate—the dropout rate—is 65.4 percent. In Columbus, OH, it is 59.1 percent.

Mr. HASTINGS. John, could I highlight something right there? In Palm Beach County, not only that same dropout—and I highlight Palm Beach County for the reason that it is not one of the poorer counties in this country.

All children—all children—in this statistic that I'm about reflect to or one-half of children that graduate in the Palm Beach County North school system are not reading at their grade level.

It's extraordinary to me. I thought that that would play out for Black and Latino children at higher numbers than it does, but more than 45 percent of White children graduated—1 through 12—are not reading at their grade level. Something astoundingly wrong is going on in this society.

I apologize for interrupting.

Mr. PAYTON. Actually, that is the larger point. Schools are failing all of our kids, but they are really failing our African-American and Latino kids. And it's not that they are being failed alone, but we are being failed in numbers that are unbelievably disproportionate.

So the kids that in fact get out of high school—many of them have difficulty with proficiency.

But I'm saying in Baltimore 65 percent drop out. In Columbus 59 percent drop out. In Cleveland 57 percent drop out. In Miami—in Miami, Dade County—15 percent of the kids drop out. The remainder still have some deficiencies in their education.

But those are simply frightening numbers. They are catastrophic numbers. You only have to look at the 2.2 million people imprisoned in this country, the highest number and the highest percentage incarceration rate in the world, and you see that 40 percent are African-American. One in nine African-American males, 25 to 29, is in jail or prison.

These two are simply catastrophic numbers. And there is a powerful correlation with race with both of these catastrophic numbers.

The overwhelming number of the students who drop out—the overwhelming number of the students who drop out—who are failed by our schools, are African-American and Latino. And 60 percent of those imprisoned are African-American and Latino.

And I think there is little doubt that if we solved the dropout problem, if we solved you described in our schools, Mr. Chairman, if we solved that, I would think there is little doubt that it would have an almost direct effect on dramatically reducing our prison population. We all know that.

In short, we've defaulted in our responsibility to educate our children, and we've instead imprisoned them. The political will seems to be lacking to address this core problem that is directly related to race.

The consequences of these failures are simply profound. Education, as we all know, is the gateway to opportunity in our society. In today's economy the lack of proficiency in reading and writing, not to mention computer skills, is simply devastating.

There are very few jobs in our country, very few jobs, for people who don't have some proficiency in reading and writing. And without a role in our economic life, they are treated as virtual exiles from our society, and they know that they are treated that way. They know they have no future.

This creates not just economic justice issues, along with the continuing educational issues and voting issues, political participation issues, but it also simply unleashes our criminal justice system to assert a disproportionate and I'd say inappropriate role in these distressed communities.

The vortex of the failures of our schools, especially in our inner cities, is spinning out problems across our society—serious catastrophic problems.

In my written testimony I review in some considerable detail just how those problems are presenting themselves across our country. I just want to highlight one I'd say emblematic and well-known instance, and I'll leave the rest to my written testimony, and that's Katrina.

The devastation wrought by Hurricane Katrina was watched by I'd say virtually everybody in this country. It was watched around the world. We saw it in real time.

People initially reacted to the images of residents of New Orleans lower ninth ward and other areas of concentrated poverty, stranded on their rooftops, crowded into inhumane conditions inside the Superdome or the New Orleans Convention Center, and wondered why those resident simply didn't get in their cars and drive to safety.

The reality was harsh. These were, for the most part, very poor people. They didn't have cars that they could jump into and drive away with. Some were forced to stay behind, because there were huge extended families that they were responsible for, and they just couldn't leave them behind.

They didn't make a living wage. Their schools had failed them. Many of them had not graduated from high school. There were inadequate employment opportunities, and the entire community was poorly served by all branches of government.

Every one of these problems—every one of these problems—is correlated with race. I'd say what Hurricane Katrina revealed was dramatic evidence of our failure to address profound issues related to race. The residents of the lower ninth ward were living in a crisis long before Hurricane Katrina.

And it reminds us—and all of us know—there are lower ninth wards all across our country. There's one right here in DC. There's one right across the river. They're all across our country, and they're all plagued by problems related to race.

The progress that we have achieved is real. It's important. It has not enabled those citizens to be full, equal and thriving participants in our democracy, in our economy.

LDF's mission—where I started out, I'm going to end—LDF's mission is to see that African-Americans, and as a result, all Americans, become full, equal and thriving participants in our democracy.

And in order to achieve this goal, we have to ensure that policies at every level of government are designed to directly address these problems, and not simply chalk them up to the misfortune of a minority.

There is a tendency to blame victims for their own plight. That is simply not fair. When your schools fail you and you don't get educated, you are literally doomed to exile in our economy. That is not the fault of the kids who are being failed.

I can link the results of the things I just said very directly to policies that exacerbate and prey on our history of racism in this country. I think that I used Katrina because it is an example that everybody ought to be able to relate to, and it is an example that has aspects all across our country.

If we don't fix the catastrophe in the center of our communities—that is, educate our kids and make them full, thriving participants in our economy and in our democracy—it can undermine our entire democracy.

Mr. Chairman, thank you very much.

Mr. HASTINGS. Thank you all for your poignant and very clear remarks on the subject at hand.

A couple of announcements. The full testimony of our witnesses will be on our Web site, for those of you that are interested.

And I have a battery of questions, but I would ask the witnesses, in light of my time constraints, if I could submit them in writing and ask if they submit in due time their answers, which will also be carried on our Web site.

Additionally, regarding the diaspora of African-Americans particularly living in the OSCE region, we've begun empirical data gathering regarding that and have had a hearing here.

And we intend—and I think Ms. McDougall, after listening to you, Dr. Thompson and I have been debating whether to hold such a hearing. I had initially suggested Hamburg. She thought that we might look at London and Paris. And I think now, listening to you, we will select France, which seems to be deserving of at least bringing some additional attention to this problem.

I want to ask you all—and I know the bell is going to go off, and I'll have to leave you—but I want to ask you all just in a rather general way what you think, as I'm ruminating here, what you think might be some real solutions. We already know the problem.

John, I'm sure you've had this experience in your lifetime of being over-subscribed to a number of organizations.

And, Anastasia, you the same, and Gay, I'm sure.

You become a person that has some expertise and so everybody in the community wants you on their board, and you become the one, one, one, one all the way down the line.

And I used to say, when I got tired of it, that if you want to know what the problems are, then I can mail them in. You don't have to have me come to the meeting. I'm an expert Negro. I know exactly what the issues are.

And it's the inseparable triumvirate of inadequate jobs, inadequate housing and inadequate educational opportunity. Any way you cut it, slice it, dice it, that's what it boils down to. And that would be true here, as well as in the OSCE sphere.

I agonize immensely about what to do about it, but I can give you a classic example, with no offense meant to my predecessors as Chair of this Commission. This Commission came into existence in 1976, and until last year no African-American had been hired to do a damn thing. You understand. That speaks for itself.

And so, when I became the Chair, I made it a very significant point to those of my colleagues that are Commissioners that we would change. And among the things that we did was bring on the lady who both of you have gotten to know, Dr. Mischa Thompson, as well as two other African-Americans.

Now, there are some extraordinary White people and Jewish people that work on this Commission—immensely endowed professionals. But it's not their responsibility to do the hiring. It was the responsibility of the Commission members, who consist of leadership both among Republicans and Democrats, that had not seen fit to hire anybody in the first place.

You heard me say when I came in here that I came from handling the intelligence authorization measure.

I'm very proud of the fact that a part of that measure deals with the subject of diversity that began with former Congressman Lou Stokes, continued under the efforts of departed Congressman Ju-

lian Dixon, and then myself and now Chair Silvestre Reyes, hammering these people to understand there is no way on Earth that we are going to be able to gather intelligence unless we have an intelligence community that looks like America and looks like the world.

You're not going to be able to send a White guy with [inaudible] into an Arab community and expect to gather intelligence. And I also say to them you don't have to have more degrees than a thermometer in order to be a spy.

There are some kids—I could pick up one right in Anacostia right now and send him off to France and sit him up in a bar. Nobody would expect that he was a spy. And I assure you that I could get just as much information as somebody that graduated with all the degrees that seem to go with the accoutrements of that particular office.

So if we want to solve these things, and you all have been in the business of doing something about it, but what I believe what you're experiencing in all of your organizations is a diminution of funds, a diminution of will from the political body to ensure, whether we are talking France or Italy or America or anywhere else, that the moneys are placed there in order to be able to address the problems in a significant way.

I was in Colombia with Secretary Rice, and I'm at a flower place where they grow flowers, and we do. Seventy-five percent of all of the cut flowers that you buy in a grocery store come from Colombia. And we were there at the instance of the Colombia Free Trade Agreement.

Those of you that have traveled in South America know that in virtually all of the Central and South American countries, there are barrios just like in Anacostia. There are areas where people have been gathered over into Black pockets.

And in Colombia the area in the mining, where immense amounts of gold and other minerals come from, that area is a place where a significant number of people are dying and there are people of color that are being killed.

So I'm talking to all of the flower people, the big guys, and I'm saying, "What happens here? Why do the Black people in Colombia, when they are displaced, not seem to receive the same assurances?"

And we are sitting at a sumptuous lunch, and I'm looking at at least 300 employees, and this guy says to me unabashedly—and I don't know whether they're just blind to it—he said, "We don't have a race problem in Colombia."

I said, "What the hell are you talking about?" [Laughter.]

I'm looking at all these young, displaced people that are White that are working, and I go down the street, and I did that, I walked down the street from my hotel, and here the Black ones are on the streets, begging. I mean, cut me some slack. Somewhere along the line we need to change this.

This hearing would be a good striation. We would publicize real prolifically as to the nature of this hearing. To the credit of every one of these young people that are here—and I guess that's where the change will come—they have taken the time to come and at least know that something like this is going on on the Hill.

And it may very well redound to their thinking, changing a little bit in some of their attitudes.

You all are faced this way. I'm looking at them. With the exception of my old self and a handful of other people that maybe 40 or older, all of the people here are younger. You know what that evinces? The people 40 or older on the Hill who saw this—it just went past them.

It doesn't mean that they are racist, but they don't have the basic attitudinal framework. Right here in Congress too many offices do not hire people from a variety of our area.

Some of you youngsters that are interning or working here on the Hill are working in offices where there ain't nothing but White people in the offices. And there's nothing wrong with White people. Let me make that very clear.

But is something wrong with a White Congressman who decides that I don't want to have anything but White people working with me? Something is wrong with that Congressman's attitude when he comes down to talk about policy as it pertains to the significant number of people that are in minority stations in our society.

It's a Congressman that has all men, has women that are doing menial chores, and the men getting all of the salaries. That Congressman has a problem. And if you see any of them, tell them I said so.

You understand. And I'm talking Democratic and Republican, liberal and conservative, rich and poor. They come here, and then they act just like this society looks, and many of them don't even understand that mask that they are wearing is the one that is perpetuating racism in this society and holding this country up from taking the steps forward that we likely could take with the immense amount of resources that we have, those that are that draining, as John Payton pointed out. There's no real excuse for our system to be askew like it is now.

Let me ask you all in addition to me carrying on—and I apologize to you—but we're getting ready to move to a new Durban conference, and since the focus at that conference is going to be on racism, I'll shut up.

And if my bell doesn't ring, Gay, why don't I start with you and the two things. What do you see as impacting solutions? And what do you think of the impending refocus on the Durban Conference?

Ms. MCDUGALL. Well, thank you, Congressman.

Well, I say that I agree with everything you said. I just can't say it that well.

But I think that if I had to say one thing, it's that we need political will. We need to end denial, particularly around government. And we've history here that has presented this picture to us—we couldn't get away from it—of racism and racial discrimination.

But most other countries in the world, as you found in Colombia, are in denial. France is in denial. Hungary is in denial. And being in denial means that there is absolutely no political will to make a change.

I think we all have the tools to make a change. We know. I can give you five things that anti-discrimination law must have in it to be able to transform the society. But the problem is without the political will that law never gets in place.

So I think that it's interesting to watch what the E.U. accession process has been able to generate. They've been able to go into countries and say this is a long list of changes that we want you to make before you can become a member country of the E.U. And that created an incentive for making some changes—not necessarily quite the implementation.

But you can see incentives playing out in Colombia. The United States has a great deal of influence in Colombia, and it's certainly not being used with respect to the issues that you see around. So I would say that there are many other things that I have put in my papers.

On Durban, Congressman, you might know that I played quite a major role in the original Durban Conference. In 2009 there will be a Durban Review. It is simply to determine whether or not and to what extent countries who make commitments in Durban have been faithful to those commitments.

I will say in all candor that I think that the as now, if we look at the planning now, we'll see that it's going to be a very disappointing review conference, mainly because it has been starved of the money, the resources, the political backing that it needs to be successful.

It's critically important. And actually I think if you look at the document that came out of Durban, the program of action, it is the best document on how you end racism in countries and worldwide that I think I've seen.

But because of some objections to the things that happened—perceived to have happened—at Durban, it has been buried as a document. And I think that that is an issue that needs to be taken up by your commission.

We've got to make Durban Review a success.

Mr. HASTINGS. I hear you.

Ms. Crickley?

Ms. CRICKLEY. To start with Durban at this time, I mean I absolutely agree, as someone who was very involved in Durban, on one side Mary Robinson, my countrywoman was the chair of the proceedings.

And the document that came out of Durban, if you look to the language about Roma and Sinti and Travellers, for example, it's extremely helpful if you looked at the language about migration, if you looked at the language about women.

And if you also look to the language about participating states putting in place national action plans to combat racism and discrimination, it's the sort of things that actually lead into the answer to your first question, you know. I think there are very important things there.

And my concern, certainly, and I would echo what Gay has said about the process being starved of resources. But I think it's very important that those markers are not lost and that they are focused into the future.

The countries which have actually implemented national action plans in this area, including the Canadians and ourselves in Ireland and some other countries, have actually made—I wouldn't say monumental progress—but have made a little bit of progress in the process of addressing this.

To go back to your question, and I think you've answered it yourself to a large extent as well, about what's needed, what's needed is certainly, as Gay has already pointed out, political will.

And the capacity, as I said earlier, not to—to acknowledge that what we have at the moment is work in progress, hopefully—to stop the pretense that because some things are in place in some part of the world, that everything is resolved there, or to stop the pretense that allows for political sort of compliance to replace good results.

And what I mean by that to some extent is also about member states of the European Union, where there's a confusion. Even with the French, there's a confusion between compliance with legislation that countries are supposed to comply with.

There's a confusion between compliance with the international law norms of the United Nations, the Council of Europe, the OSCE, that people have agreed to comply with. There's a confusion between that compliance and good practice and actually achieving something.

The last thing I'd say, then, is I think sometimes making focus requires brave stand by brave people and by brave leaders.

And, for example, one of the small things that we did in the north of Ireland a number of years ago was that the administration there put in place a positive duty to take steps to actually do something about equality out of a very difficult situation that I'm sure you're well aware of that we have there, where one section of the population had all of the jobs and right across the board and the other section of the population had very few of these jobs and were very much represented in the unemployed.

But a positive duty to demonstrate what you were doing to bring about equality was put in place for a period of time, and it did have effects. I know there can be concerns about positive discrimination.

I don't believe in something called positive discrimination, but I do believe that action taken to level the playing pitch is essential, if you're going to make a difference.

And I absolutely agree with you. People don't always need bits of paper to do jobs, and there are loads of examples where political will has been able to jump over those bits of papers when the requirement was there and the people who were able to meet the requirements of the job very, very adequately and very well. I believe we need to take some brave steps.

Mr. HASTINGS. I hear you.

John?

Mr. PAYTON. I actually think we have a great opportunity right now. This is sort of a magical year where we see people energized and committed in ways that we haven't seen for a long time. It's very exciting.

We see young people who are willing to try to do things to make this a better society, a truer democracy, and I think that's where we need to use the political will, and it's where leadership really, really matters.

Gay described Europe as in denial about issues of race. That's certainly true. We're capable of the denial of the most fundamental things in this country, though. It's quite unbelievable. We in 1 day can acknowledge things, and then the next day—didn't we fix that?

And if we have learned something about issues of race that we have not fully incorporated, it is this. You can't fix issues of race by simply saying, "Oh, just stop discriminating. We passed a law. It made discrimination unlawful. Didn't we just fix that?"

We have broken communities and destroyed the spirit inside those communities. And you can't just say we passed a law. Aren't you better now? OK? But we in fact look away, hoping that if we just don't look at the lower ninth ward, when we look back, they'll all be better. OK? We know better than that.

You said everybody knows what the diagnosis is. We do know what the diagnosis is. But I think we also know what the prescription is. We just haven't, I'd say, marshaled the resources, harnessed the enthusiasm and commitment with the leadership that we need in order to bring it about.

And I think that's the key thing. The reason I focused on kids is that when you talk about kids, no one's going to say, "Well, you know, they brought it on themselves. If they were really tough, they would have gotten educated in that seventh grade dilapidated school."

No one's going to say that. These are just kids. If you make healthy communities, if you provide a tax base and social infrastructure, good schools and attention, you can turn some of these things around quite dramatically.

But that's what we have to do. It's not a little problem where you say, "Got a new law. We passed it." Whatever this is. "Got a new law; we passed it" is not the fix. It is much deeper, a much larger commitment. But I think we're ready to do it. And these things can be solved.

It's not like these are problems that are incapable of solutions. That's not these problems. Poor schools? We know how to fix poor schools. Healthy communities? We know how to make a healthy community. We know how to do these things. We just need the will to do it.

I think we have enormous enthusiasm today, and we ought to take advantage of it with the right leadership.

Mr. HASTINGS. All right. I thank you all. I'm going to do something totally out of the ordinary, and I'd ask if you would bear with me. Unfortunately, the bell didn't go off, and I have the good fortune of visiting with three of you a little bit later on, so we can continue our discussion.

But we do have young people here. I began a tradition earlier in my Chair of passing out to the audience that came to our hearings a piece of paper and let them put a question on it.

But today, because we've had a particularly patient crowd, and with your forbearance, my fine colleagues and our witnesses, I'd open—and I know that things like this can get out of hand, so I'd just be interested in two or three reflections from some of you who are in the audience.

And if you could more or less come to the microphone that the young man over here has worked on and give us your reflections. That's something that doesn't happen here.

You see, I'm just tired of the staid old way of doing things. So what winds up happening is people come—brilliant ideas out there that we never get a chance to hear from at all, because it's some-

body sitting up here, somebody sitting down there, the hearing is over, everybody leaves, and all the brain leaves.

Now, I've given you the opportunity. Come on, somebody, and say something—whatever is on your mind. In an unusual fashion, you have this opportunity. And you won't see this very much anymore. So rather than look around, just stand up and ask your question.

You—yes—young man right here. OK. Come on over there.

QUESTIONER. How are you doing? I have a question for Mr. Payton.

Well, first I want to say that—

Mr. HASTINGS. Give us your name, please.

QUESTIONER. Sure. Josh Xavier. I'm interning with Congressman Andrews from New Jersey.

Mr. HASTINGS. OK.

QUESTIONER. A quick statement. Believe it or not, you've kind of inspired me to be a lawyer. Now, I didn't know lawyers could actually do great things like this, so [Laughter.]

Mr. HASTINGS. Well, it was worth it, then, wasn't it, John?

Mr. PAYTON. Yes.

Mr. HASTINGS. I'm a lawyer, too.

QUESTIONER. Oh, great. [Laughter.]

I have a question for Mr. Payton, actually. You mentioned that there are some policies in our American structure that actually perpetuate these unhealthy communities, unhealthy schools. What are some of these policies?

Because I feel like there are a lot of people, especially in the African-American community, such as yourselves, leaders, that throw out that word "policy," but it's just so vague. Can you mention some of the specific policies in America that are leading to poor schools and these dropout rates that you mentioned like in Baltimore and Cleveland.

Mr. PAYTON. Let me just give you one real quick example. The way No Child Left Behind works is that schools have to report on how they raise average test scores and their graduation rates.

And the way that is implemented, the policy that applies to implementing that, says that if a student drops out in the ninth grade, right, they actually don't count in your data base when you report on what happened in the 12th grade. OK?

And since someone who is, you think, not likely to test very well, will lower your average test scores, that creates the following perverse incentive. OK? I look at you and I say, "You know, you'd probably be better off if you just repeated the 10th grade." OK? "I really think you—so we're just going to keep you for the 10th grade another year."

Now, here's what I know. There's no Black male who takes me up on that. You drop out tomorrow, OK? You disappear from my data base, OK? There's no longer any responsibility I have for you. That is a perverse incentive to create what I'm going to call a push out. I've pushed you out. You show up as a dropout, OK?

That policy ought to change. We ought to have a policy that says the school is responsible for educating every single kid that comes in, unless you transferred to Houston or somewhere, OK? Every single kid.

The policies right now create incentives to in fact increase your test scores, actually increase your, I'd say, fake graduate rate. If in fact the dropout in the tenth grade doesn't count in your data base, it creates a perverse incentive. That's a policy we ought to change.

QUESTIONER. Thank you.

Mr. HASTINGS. Thank you.

Young lady?

QUESTIONER. Hi. My name is Angela Ibrahim. I'm an intern for Ileana Ros-Lehtinen. I would first like to thank you for coming and speaking. You're very inspiring.

I actually have a thought that racism and classism sort of come from the community as well and how they perceive themselves and the way they speak to each other and the way that they downgrade themselves. If you could give me—any of you would give me your thoughts on that?

Mr. PAYTON. Well, I mean, I think everybody's going to want to say something about this. It is true that communities change their own aspirations for themselves, depending on how they view their own possibilities.

So when you have a completely oppressed community, one of the things you will notice is that people don't aspire to do many things outside of those sets of really limited circumstances, OK?

And if you—you know, actually if you go to what I am calling the lower ninth wards, you will find that a lot of people have never traveled outside of them, OK? They don't think that they have possibilities out there, and so what you'll see on the ground is people saying things exactly like you just described.

You will hear it, and it will sound like, you know, the community is itself responsible for where it is, because it seems to be quite acclimated to it. That's evident of our failure to make those the thriving communities that they ought to be.

But it's a dynamic we have to break, OK? We have to—you know, we have to break the dynamic so that in fact those kids have aspirations beyond their community.

Ms. CRICKLEY. Yes, I think—I think you're raising a very important point. But marginalized communities, whether they're here in the United States or in my country or in Europe, often get blamed for actually being more racist than any other group.

And it seems to me that it would be almost inevitable that they would be feel marginalized and that they would feel that need to look out from where they are as other people in the way that they do, sometimes in a prejudiced way.

I'm not convinced that they're actually racist, because I think to be racist they'd need to have the power to do something about it, and they don't actually have the power to do something about it.

But you are raising a very important point, and for me it's about a—it's—it's also about a couple of things. I mean, those perceptions don't come off the ground, you know, so there is a need for education and awareness raising processes within communities that create opportunities for people to think outside the narrow confines into which they have been forced at a very early age.

And by that mean pre-school and early childhood education and development, and right through the whole education process so the

people have an opportunity to engage with others and to think about others.

Second, it seems to me that those sorts of perceptions in marginalized communities are also reinforced by images presented for purpose from all of the media. And again, there's a very important sense of responsibility that needs to be in both there.

And third, there's the overall question, which I think John has really answered. It's about putting sufficient resources into communities to create opportunities for people so they can see outside and so they can actually go and develop in a way that doesn't see other people as a threat.

But I'd say I'm not convinced they're able to be racist toward them, because I think they are stuck in a bind where they can be as prejudiced as they like—like people often say about Roma and Travellers being prejudiced against the population. There's not much they can do about it, because they're not actually in Alcee's position, and they're not in anybody else's position.

Mr. HASTINGS. Right.

Ms. CRICKLEY. Thank you very much.

Mr. HASTINGS. Right.

Well, let's get one more question if we can.

QUESTIONER. Thank you so much for coming today. My name's Cassandra, and I'm interning at the State Department.

My question is this past year I recently studied abroad in the U.K. And the university I ended up studying at had a huge proportion of international students from Asia, Africa and the Middle East. And most of these students were studying medicine, science or economics.

And I just—I'm not sure if anyone's been bringing this up, but while studying there, I was a little worried about the state of America, because a lot of our minority students are not having access to a great education.

And I'm wondering how this will affect our economy in the future and our placement in the world, because as we continue to ignore minority students, I'm wondering how, you know, in the future, how would this affect us, because I don't know how much longer we can keep following this pattern without us going down a downward spiral.

Mr. HASTINGS. Before—before you answer, I would prevail upon you to stay. Staff will keep things going and listen to the other two youngsters as well. But I wanted to wade in on—on this particular subject.

When I came to Congress, I was on the Science Committee, and I was astounded that there were people on that committee that were advocating the elimination of the Fulbright Scholarship.

I was just—it—it just blew me away that that would even be a thought. I recently was in Kazakhstan for the Parliamentary Assembly's annual meeting and talking with interlocutors there.

The Kazakh Government is sending students all over the world. And one of the things that they are doing that's interesting, and the students they are sending to the United States, is they're not sending them to New York and to Washington, DC, and to Los Angeles.

They're sending them to Tallahassee and to Orangeburg, SC, and to historically Black colleges and to other universities, religious institutions. I was amazed at their vision about how to go about that.

One other footnote. Five years ago, when I did some empirical gathering on students abroad in the Asian sphere, dealing specifically with China at that time, and I might add it was a year before 9/11, at that time China had 42,000 people studying in the United States. The United States had 1,850 people studying in China. Need I say more?

But continue on, if you all would. And I have to go and vote, and then I'll see you in a little bit. Thank you. I'll leave.

Mr. PAYTON. I—I'm going to pass the question. I—I think your comment was absolutely on the money, and I think you have the answer in your question. You made a comment there, so I—I agree with you. That's—that's—that's my response. I agree with you.

QUESTIONER. Well, I keep on wondering why there's no one else making such a big noise about it, making it a big—a big issue is because you've seen how they're counting on the laws changing and how it's different, but we're not keeping up and lie still.

Ms. MCDUGALL. Well, there are some voices that are—are—are—are speaking to this point in the United States. Clearly, the statistics show that the United States is lagging behind in math and technology and science, it says. So there—there's some voices saying that.

But I—I would say that, you know, if you're looking at the country, the attitude of the country toward education, especially developing countries, is that they're trying to develop a work force to move the whole country forward.

And, you know, the best of the country—developing countries—realize that they've got to use every possible person in their population to move forward.

I think that our country is—a highly developed country—has lost the sense of going forward in that respect, and that's why I think we've, you know, there is a sense that education is not—an education of everyone—is not necessarily a national or Federal concern.

You know, I think that we are in a society right now that may be changing very quickly, considering the issues that we're dealing with in the economy, but I think that for quite a period of time, the national ethos here has been that there are some surplus people here, that we can get along fine without and move into the future without using the human resources that they could bring to the table.

And that's where you get your inner city school to prison pipeline, because they're warehousing people that they don't think are necessary for the country's future.

I think it's very important for developing countries and developed countries to see the education of young people as an issue of critical concern for the advancement of the country as a whole.

Ms. CRICKLEY. I agree with you. I think rejecting the minority populations and the discriminations against populations, specifically at college level and higher education, is absolutely crucial. And—but it's not easy.

And sometimes there's also demand that I talked about earlier, and it's a bit unpopular around here I know—positive action.

For example, in the university I teach in, I happen to have the good fortune to head up a small department, and we had—we—we teach—we run professional programs as well for community workers and youth workers, so I decided that we would take positive action to have Roma and Travellers on those courses and included in them.

Coming in as mature students, and most mature students can go to university without the specific grades as—as—as you—as is the case in most countries. But it met with such you might call considerable opposition, to begin with.

But it's been very successful, you know, and what—what happened as a consequence was that a number of the people who came and did those—did those programs then went on and did other things as well. And one of them has become a barrister. Another has become a solicitor, and things have—have moved along.

But it demands leadership to do it. It demands trusting in people. It demands believing that people can do things. And it also demands going beyond just the confines of the existing process of people going through first level, second level and into third level, in my view, because there is—there are generations of people both here and in Europe who have been left out of the education system.

Second thing I'd have to say to you, though, is you saw a lot of people at whatever university you were at in the U.K. from all over the world. You have to understand that there's also been a commodification of third level education in Europe by now so that people coming from outside of the European Union into the European Union for third level education are part of that commodification, and they pay rather large fees, you know.

QUESTIONER. Yes.

Ms. CRICKLEY. And it's part of a process of getting rather large fees—again, something which a number of us in Europe would be struggling against and making demands that if universities get students in from outside for large fees, they also take a quota of students who can't afford fees at all, representing minority communities from the country in question.

QUESTIONER. Hi. My name is Julie Steinberg, and I'm an intern for the State Department as well. And I'd like to thank the panel of witnesses for coming. It's been really inspiring to hear your testimony.

Ms. McDougall, you touched upon the notion of conditional reform in your testimony, or the idea of having—countries have to change before they can enter into a certain organization. And we've seen that recently with Turkish Accession Talk.

But what do you do with a country like France, where national identities seem to supersede that of historical rights? As you pointed out the Ministry of National Identity and Migration sends a very wrong message.

So I was wondering—this is for all the panelists—to what extent can political will actually alter the circle of consciousness? And can we change a country's national identity and history? I mean, I hope we can. And how do we put those—how do we put those ideas into being when you have countries like stick very rigidly to their his-

torical consciousness, their notion of egalitarian thought, where minority rights don't seem to be an issue?

Ms. MCDUGALL. Well, I would say first of all the deeper political identity that the country has taken on at a specific time in its history and has done so in a way to take a mythology and create a reality—that's the intention.

So that's No. 1. It's not something that was born in individuals in France. It's a political ideology that no longer fits to all the circumstances in the country.

All countries are changing all the time. And I would say that that is increasingly so. You know, I think the UNHCR has a statistic that might be a little bit old now, but 1 in every 5 people in the world are living in a place where they were not born, where they have—a country where they have entered as an asylum seeker, refugee, or an immigrant, even economic migrants.

So there are now, you know—if national—if notions of national identity are to be reflective of reality, they have to be open and always changing. And that is part of the problem in France.

I actually have no objection to the ideals of *liberte*, *egalite*, and *fraternite*. It's just that it's got to now be broadened to deal with the reality.

And they got to take a position now—and this is, I think, what Anastasia Crickley was saying—you know, there is a sense that nondiscrimination is the end of the obligation, that you can just say, OK, we will make sure now, especially we will make sure that government engages in no discriminatory behavior, and then everything is going to be fine.

Well, my first point is that France has not actually achieved that No. 1 goal of, you know, eliminating discriminatory procedures in government hiring or advancement or anything.

But the second thing is that in societies where there has been longstanding discrimination, what they have got to do is focus on creating equality. And that takes another step, and a very affirmative or, as Anastasia says, a positive step. You got to do something to make a right where there's been a wrong.

And I—I—I think that you've got to have a national identity that serves, you know, that purpose as well.

Ms. CRICKLEY [continuing]. That the French are actually. I think what you've got to—what I know doesn't work, because I chaired the Fundamental Rights Agency when we were just—in the European Union where we were attempting to collect data, you know, and to move things.

What I know doesn't work is to tell the culture in one part of Europe, you know, that it's a lesser culture than the culture in another part of Europe, and that it's got it wrong. And so that's—if we start with the reality that that won't work.

But the second thing is that the French by now would acknowledge that, having their—within their understanding of themselves just these principles at the same time that they are a diverse country and that in order to manage that diversity and in order to make sense out of it, that they need to know something about it, that they need to quantify it, which means basically that in—in—in one way or another they have to acknowledge its—its existence.

And to be fair, the French are doing that now. They are doing some just aggregated collection of data—not a lot, but they’re beginning to acknowledge that in order to live in a diverse society, they have to know something about that diversity, and in one way or another that you have to acknowledge.

The other thing that they’re doing, which again is interesting, is under the HALDE, which is their anti-discrimination authority, they’re also proactively informing people about their rights. And to do this, they’re targeting minority communities, who will—will be the ones that would be their victims. [Inaudible] will be the ones who will have discrimination experienced in the workplace and things like that.

So it’s a—there’s an interesting thing going on actually, which I—I—I—I consider to be quite awful, where on one hand there’s a clear perception by the French of the principles that they hold dear, but at the same time they’re acknowledging the need to find other ways to inform those principles. And for me what they’re doing actually is informing by an understanding of the diversity.

Mr. PAYTON. I just—I’m not sure this is going to add more to the general point, but think about what we did as a country—and, you know, clearly imperfectly, and there were a lot of false starts.

But if we were in 1830, you would not be able to recognize the aspirations of that country as being this country, that, you know, the completeness of the national identity, including slavery, is so complete, and we have moved so far away from it, we would not recognize the lack of any claim about equality, liberty for all, our women in this.

You know, when Chief Justice Taney says in Dred Scott that the Negro has no rights that a White man need respect, he was not talking about slaves. And if you don’t believe it, go read it. He was talking about free Negroes had no rights that a White man need respect. It is a culture and a national identity that has dramatically changed even in its imperfection and incompleteness today.

So I hear the challenge, but that’s just the challenge.

QUESTIONER. Thank you.

QUESTIONER. My name is Sean Poyage, and I’m a legal intern at the Robert F. Kennedy Center for Human Rights.

I had a more specific question. What concrete action can participating governments and private NGOs take between now and the Durban Review next summer to help the adoption of the proposals that came out of the last conference?

I—I’m sorry. What concrete action can participating governments and private NGOs take between now and the Durban Review next year to help with the adoption of the proposals that came out of the last conference?

Ms. MCDUGALL. Well, I think there’s a lot that can happen. First of all, you know our government—U.S. Government—has not supported the Durban Review process. That’s a very important thing, and I think that that’s perhaps the most important thing that we could all try to take care of.

We need—this country particularly needs to be in there, supporting the process politically and in terms of resources and making sure that EU countries and Canada, et cetera, also become part of—fully part of the process and supporting it.

That, frankly, is, I think, the most important thing that we can do.

Ms. CRICKLEY. I agree. And to be honest, for a lot of us, working through Durban was one of the hardest things we ever did in terms of participating in a conference in our lives, I would say, to be quite honest about it.

And maybe that has not encouraged people to follow through on those as—as they should. But I think that we would be losing an opportunity. And although you say the United States has an ambivalent position, European Union member states also have ambivalent positions.

And in a way we need to just forget about our own tiredness and get in there and encourage states to look at what was useful out of that process and to begin to articulate it, because most countries will ignore things, if they can, unless there's a certain amount of pressure or lobbying or pushing, especially things that are often perceived to be terribly important that are not getting very positive focus in the media. And I—I do feel there needs to be a push from civil society.

Dr. THOMPSON [Commission Policy Advisor]. Thank you very much. We would actually like to conclude with that. I just wanted to let people know that the unofficial transcript will be available on our Web site in about a day and a half, so 2 days.

And then additionally, there will actually be a—a public discussion with Ms. Crickley this afternoon in the same room at 2:30 for anyone that's interested.

Mr. PAYTON. Thanks a lot.

[Whereupon, at 12:43 p.m., the hearing was adjourned.]

APPENDICES

PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Thank you, Mr. Chairman, for holding today's hearing on Racism in the 21st century. We are witnessing an increase in hate crimes in Ukraine and Russia and efforts to institutionalize racial profiling in Italy by fingerprinting Roma. The European Union cites continuing discrimination in the areas of employment, housing, education, healthcare, and even sports for a number of minority populations. My statement from the Commission hearing on "Black Europe" further details these problems. These ongoing issues dictate the necessity of this hearing and the implementation of solutions.

Some years ago, Chairman Hastings and I, along with our former chairman, Mr. Smith, and other members of this Commission called for an OSCE response to anti-Semitic violence and other forms of intolerance. I am proud to note that in 2004, the OSCE established three Personal Representatives whose sole purpose is to combat racism, anti-Semitism, discrimination against Muslims, and religious intolerance. I am pleased that Ms. Anastasia Crickley, the Personal Representative on Racism, Xenophobia, and religious intolerance is able to be here with us today.

In 2004, the OSCE also established the Tolerance and Non-Discrimination Unit within its Office of Democracy and Human Rights or ODIHR. Since that time, ODIHR has:

- Published 3 annual reports on Hate Crimes in the OSCE region
- held 8 major conferences and meetings on the issue of combating racism and other forms of intolerance
- provided educational, legislative assistance and capacity-building programs to a number of OSCE participating States to combat intolerance
- initiated the Tolerance and Non-Discrimination Information System, which provides information on countries' efforts to combat intolerance and inequality

Despite the efforts of ODIHR and other international organizations, many OSCE countries are failing to meet their international commitments to combat racism and inequality. To date, 15 OSCE countries have failed to provide ODIHR with data on hate crimes and 23 do not have adequate hate crimes laws. 14 countries within the European Union have failed to fully implement the 2000 Racial Equality Directive, which prohibits racial discrimination in employment, education, housing, and other sectors. And there have been numerous shortcomings in our own system.

I hope that today our esteemed witnesses can offer insight on what more we might do to encourage OSCE government compliance with these commitments with the aim of countering inequalities, lessening intergroup tensions, and upholding the principle of

equal rights and self-determination enshrined in the 1975 Helsinki
Final Act.
Thank you.

**PREPARED STATEMENT OF ANASTASIA CRICKLEY, OSCE
CHAIR-IN-OFFICE, PERSONAL REPRESENTATIVE ON COM-
BATING RACISM**

First of all, I would like to thank you for your invitation to participate today. It is an honour to be speaking with you, particularly at this time. The USA has played a central and very significant role in the struggle against racism. The subject of today's hearing points to the continuing commitment and priority given to the issue.

As Personal Representative (PR) of the Chairman-in-Office (CiO) of the Organization for Security and Co-operation in Europe (OSCE) on Combating Racism and Xenophobia and Discrimination, also focussing on Intolerance and Discrimination against Christians and members of other religions, my mandate is to:

- Promote better coordination of OSCE participating States' efforts aimed at the effective implementation of their OSCE commitments and relevant OSCE Ministerial and Permanent Council Decisions in the field of tolerance and non-discrimination.
- Promote, cooperate and coordinate with the other two Personal Representatives of the OSCE CiO in the implementation of their respective mandates, and while maintaining the distinct focus and avoiding duplication, ensure that the activities are complementary.
- Cooperate and coordinate with ODIHR and other OSCE institutions including with the Representative of the Freedom of the Media, the High Commissioner on National Minorities.

In keeping with the topic of today's hearing, I will focus today on my mandate to combat racism and xenophobia. While I have developed a plan of work and named specific actions to be undertaken by the end of this year, I am mindful of the need to remain flexible. It is clear that emerging circumstances in the region may also lead to modifications and the introduction of new areas. I set out to welcome information and support from all partners concerned with combating racism and discrimination.

TERRITORY AND PROGRAMMES

The OSCE with its transatlantic community of participating States presents a unique space within which to address racism and various forms of discrimination, support initiatives and responses, and promote communication and interculturalism. Without the important normative, legislative and geographic boundaries of the Council of Europe or European Union, and in view of significant regional changes over the past two decades, it is important that space can be left for open dialogue and exchange of work and programmes, naming shortcomings and learning from the experience of others. This has been evident at OSCE meetings and seminars dedicated to the discussion of combating intolerance.

The OSCE already has in place a number of decisions, missions and instruments contributing to its work. However, awareness regarding the space and the instruments can be low or patchy, and implementation of some agreed programmes and decisions has been slow. For example, few of the civil society organisations, with the exception of Jewish NGOs, are engaged, and the 2003 Action Plan on Roma and Sinti largely awaits implementation.

Raising awareness and working to ensure engagement of a range of institutions and NGOs with the OSCE can significantly contribute to realising the full potential of current OSCE decisions and instruments. In my role as PR I seek to raise awareness to this end and encourage engagement.

COOPERATION AND COORDINATION

In various parts of the OSCE region, a number of other agencies and organisations share responsibility for responding in various ways to racism and discrimination. These include the European Monitoring Centre on racism and Xenophobia (EUMC), the European Commission on racism and Intolerance (ECRI), the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, the UN Special Rapporteur on racism and the UN Convention on Elimination of Racial Discrimination (CERD) Committee. There is plenty of work for all but awareness of others' remit can help avoid duplication. Developing the cooperation and coordination required to maximise the efforts of all in responding to racism and discrimination needs more than avoiding duplication. Ongoing communication, information-sharing, and high-level joint initiatives where appropriate, are required so as to ensure that value is added, rather than competing to be the agency/organisation which gets named as the best at developing an open intercultural society in the region.

In this work, account needs to be taken not only of different organisational remits and politics but also of the cultures and processes which have developed in each. Policy discourse, responses to and experiences of racism and discrimination have also developed differently and manifest themselves in various ways at different times throughout the region. For example, a link is increasingly being made between statelessness and racism.

There is also a growing challenge for States to ensure that the fight against terrorism does not undermine the struggle against racism particularly in Europe after the Madrid and London bombings.

The various agencies including the EUFRA, which has built direct links with the OSCE, are increasingly committed to working together. Over the past period there have been a number of joint agency meetings that have facilitated such communication and sharing of information. A number of agencies including EUFRA, OSCE/ODIHR, ECRI, UNHCHR and CERD are have developed joint initiatives.

THEMES ACROSS THE REGION AND CROSS-CUTTING ISSUES

Migration and integration and the experiences of migrants are all matters of concern across the region. Even countries like the United Kingdom, which has longstanding policies and legislation in these areas, are facing new challenges with new debates emerging about the limits of multiculturalism. Migrants—sometimes without appropriate documents—contribute to economies from Boston to Moscow. In fact the contribution of migrants overall is little acknowledged as an essential feature in a region of falling birth rates and greying populations. The constant evolution of identities and

societies across the region is forgotten in the face of migrants' perceived threat to collective identities, and discriminations are made between "old" and "new" migrant groups.

In all participating States east of the United States and Canada, the problems faced by Roma, Sinti and Travellers are increasingly visible. The discriminations and racism they experience have been well documented and in a number of instances national strategies and plans and regional commitments including the OSCE Action Plan, have been put in place to address them, but as mentioned earlier implementation remains a challenge.

Equally, the National Action Plans against racism which all members of the United Nations committed to after the Durban World Conference against racism in 2001, remain to be implemented - and in some instances more comprehensively developed. They can provide a practical and integrated way for States to respond to the renewed concerns about racism which have been brought into sharp focus in the aftermath of 9/11 and continue to pose challenges for stability and human rights. It is important that ambivalence in some participating States about the difficult days of Durban does not get in the way of engagement with this helpful tool. A number of useful plans have already been developed in consultation and with the participation of civil society organisations and their implementation needs to be progressed so that exchange of practice and problems is possible.

People experiencing racism do so as women and men, old and young. Policies, plans and actions in response need to respect and integrate these differences.

MY ROLE

My role as Personal Representative involves a number of general support, awareness raising, cooperation and coordinating functions. I have been very excited by the possibilities it holds for furthering work to confront and address racism and discrimination, especially given the open opportunities to engage with OSCE institutions and participating States.

I have also been reinforced in my commitment to add value to the work of all regional organisations and agencies through enhanced coordination and cooperation and in the need to more actively engage in civil society initiatives against racism. I believe there is also a need to raise awareness about the realities for the discriminated of institutional, indirect and often unconscious manifestations of racism, and to contribute to developing discussion and understanding of previously less analysed areas in the discrimination field.

PRIORITIES

The priorities I have set include:

- Raising awareness of contemporary forms and issues regarding individual and institutional racism throughout the OSCE region including, women's experiences of racism.
- Raising awareness regarding the contribution of migrants to economic, social and cultural enhancement and supporting the de-

velopment of initiatives, principles and good practice towards the integration and inclusion of migrants.

- Supporting and giving visibility to the work of OSCE and ODIHR including the excellent work being undertaken by OSCE missions in various settings.
- Promoting programmes to address racism experienced by Roma, Sinti and Travellers, in particular by supporting implementation of the OSCE Action Plan.
- Promoting civil society involvement, as well as cooperation and coordination between the OSCE, EUFRA and other regional bodies active in addressing racism and discrimination.

CONCLUSION

Through my OSCE work it is increasingly evident that the EUFRA has played a key role and carried out significant work in identifying and monitoring racism in Western Europe and that there is a real need for the data collection initiatives and other lessons learned at EUFRA to extend throughout the OSCE region. What is clear is that despite relatively well developed initiatives and legislation, racism and xenophobia continue. They are pervasive phenomena and while some progress has been made we cannot afford to become complacent. Each of us as individuals and in our particular institution has a specific role to play in a necessarily joint struggle towards the assurance of human rights and equality for all. I look forward to continuing to build and develop solidarity to ensure that individual institutions can work to add value in the struggle against racism and discrimination overall.

In the context of my mandate, it is clear that numerous and far reaching areas of work could be identified. Given the limitations and confines of my part-time role, it has been necessary to identify a number of priorities for action while at the same time acknowledging other areas of concern.

**PREPARED STATEMENT OF GAY J. MCDUGALL, U.N.
INDEPENDENT EXPERT ON MINORITY ISSUES**

In 2005 I was appointed to serve as the first United Nations Independent Expert on Minority Issues. The terms of reference of the mandate are provided in Commission on Human Rights resolution 2005/79, which includes to “promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.” Additionally, a central part of my mandate is the enforcement of the right to non-discrimination based on race as protected by the International Convention on the Elimination of all forms of racism, racial discrimination, xenophobia and other forms of intolerance.

My methods of work include: diplomatic engagement with governments through country visits to assess the general situation in the country and written communications about specific concerns; consultations with civil society, non-governmental organizations and victims groups; in-depth studies on thematic issues like the denial of citizenship to targeted minority groups; reports and recommendations to the U.N. Human Rights Council and the provision of technical assistance to facilitate reform efforts. I work closely with the Special Rapporteur on racism, the Special Rapporteur on religion and the Special Rapporteur on migrants. I have also worked with the OSCE High Commissioner on National Minorities.

One of the lessons that I have learned over the period that I have carried out my mandate is that racism is ubiquitous; it’s a global phenomenon. The victims differ in language and culture, but the experiences of exclusion, subordination, violence and discrimination are remarkably similar in every region of the world. This is an observation that is certainly reflected in the OSCE countries.

I have also learned that it is difficult to fully appreciate how racial discrimination manifests in a country without taking that measurement from the ground. So what I would like to do today is to first identify the most common manifestations of racism that I have found throughout the OSCE countries (of Europe). Then I want to describe what I found a few months ago when I did a mission to France, a prominent OSCE country.

GENERAL INDICATORS OF RACISM IN THE 21ST CENTURY

Below I have listed, with limited commentary, a number of the contemporary characteristics of racism and racial discrimination that can be identified in countries in all regions of the world, including the OSCE countries.

- Denial by government and majority populations that racial discrimination exists in their country, leading to a lack of political will to address the problem.
- A profound level of skin color prejudice that inter-links with fear of an invasion of different cultures that could rob countries of their “national identity.”
- Extreme, and widely uncontested, bigotry toward Roma/Travelers that has been undiminished over many decades.
- Disproportionate levels of poverty in minority communities that have been targets of discrimination and exclusion, marked by great disparities in access to quality education, extremely high lev-

els of unemployment, inadequate health care and the denial of equal access to housing.

- An increasing number of political party platforms based on racism, xenophobia and doctrines of racial superiority that in some countries are permeating mainstream politics.

- Asylum seekers, refugees and immigrants, particularly those who are “visible minorities,” face acute levels of racism with high incidences of physical and verbal violence against them. Increasingly governments are adopting policies and enacting legislation to restrict the rights of persons belonging to these groups.

- Increased intolerance and violence against persons because of their religion, including Islamophobia and Anti-Semitism. This includes an increase in insulting and offensive expressions targeting religious beliefs, which constitute incitement to racial or religious hatred.

- Full enjoyment of citizenship or civil status is being denied to minorities or impaired by restrictive, exclusionary notions of national identity.

- With respect to certain minority groups, women are particularly caught in a net of state policies that confuse issues of culture, religion and fundamental human rights. This confusion is exemplified in the euphemistically termed “head scarf policies” in OSCE countries, but those policies do not represent the most dangerous in the category.

- Increase in racial profiling, particularly in the context of counter terrorism policies and practices.

- An inadequate legal framework that fails to: address institutional racism; extend protections to cover discriminatory activities by private sector actors in addition to public institutions; establish penalties for violations that are effective enough to be a deterrent for future violations; reach de facto in addition to de jure discrimination; fails to empower civil society to initiate mechanisms of recourse and redress; and does not establish a broad legislative platform for affirmative action programs.

MISSION TO FRANCE

In September, 2007, I carried out a country mission in France, in pursuance of my mandate. During my visit I traveled to Paris, Marseilles and Strasbourg and environs, where I held consultations with civil society groups, religious leaders, academics and others working in the field of minority issues, anti-discrimination and gender issues. I visited communities living in suburbs of Paris and Marseilles described as urban “ghettos” or “sensitive” suburbs, including Bobigny and La Courneuve, which were affected by urban upheavals in 2005 and those that took place just weeks after my mission. I talked directly to community members about their lives, issues and concerns. I was also given broad access to senior government officials.

While there are other minorities facing discrimination in France, I chose to focus primary attention on the experiences of French citizens and long-term residents of immigrant heritage, particularly those of North African and Sub-Saharan origin, Muslims, and those from overseas departments (e.g. the Caribbean) and territories who are resident in mainland France. Persons belonging to these

groups—primarily people of color described as “visible minorities”—typically experience serious discrimination and are grossly under-represented in State and political institutions. Racism (including Islamophobia), discrimination, alienation and lack of social mobility for persons belonging to these groups were contributing factors to the violent urban upheavals that occurred in French cities in 2005.

The particular problems faced by people in “sensitive” suburbs are a direct consequence of racial discrimination and consequently require policy initiatives to address the special circumstances they face. Discrimination against minorities manifests itself in such areas as the allocation of housing, access to employment, quality of education, and grossly inadequate levels of political participation. Issues of identity are central in the discourse and mind-sets regarding exclusion. Members of minority communities described the extreme pressure they feel to alter their cultural and religious identities as a precondition for immigration and full inclusion and acceptance in French society.

My visits to minority communities revealed high levels of frustration. I found that young people from minority communities feel their hopes and dreams are being denied; they see no possibility of upward mobility because of their skin color, religion, surname or address (in the ghettos). People who have worked hard, played by all the rules and truly believe in the principles of the French Republic are trapped in socially and geographically isolated urban ghettos, with unemployment over 40 per cent in some areas. They feel discriminated against and rejected by rigid notions of French national identity to which they do not conform.

I found that there is a general climate of suspicion and negativity against those believed to be of immigrant origin, generated in part by public debates over immigration policies, the announcement of quotas for deportations and questions of DNA testing. Much more must be done to establish an acceptance of cultural diversity. There is a widespread feeling within the community of visible minorities—many of whom are second or third generation French—that to become a citizen of France is not sufficient for full acceptance; that acceptance will be granted only with total assimilation that forces them to reject major facets of their identities. Only when they find a way to shed the color of their skin and hide the manifestations of their religion or the traditions of their ancestors will they be accepted as truly French. The message that they take from the name of the new Ministry of Immigration, National Identity, Integration and Co-development seems to be that the presence and increasing numbers of people of immigrant heritage is a threat to the national identity of France; that it is a problem that must be solved.

Minority women voiced specific additional concerns, including the rights and protection of minority women in abusive relationships; concerns over access to social services and protection mechanisms; access to justice; the legal status of women of immigrant origin in cases of divorce, encompassing the right to remain in France after divorce and the execution by French courts of foreign divorce judgments based on gender-biased laws; the rights of minority women relating to inheritance, housing and property; specific issues relating to the education of girls of Muslim faith; security issues and

the high incidence of rape of women in disadvantaged minority communities in suburbs; and the lack of access to political participation of minority women.

There are some recent positive anti-discrimination initiatives, including the 2004 Anti-discrimination Law and the establishment of the Independent High Authority for Equality and Against Discrimination (HALDE), an independent body with powers to mediate or refer discrimination cases for prosecution, conduct studies and promote non-discrimination programs and activities. But, while welcoming the role of HALDE and civil society organizations in prosecuting discrimination on a case-by-case basis, this cannot be a substitute for targeted and more robust approaches that are necessary to achieve a deeper and far-reaching impact on the persistent discrimination experienced by minorities. At the least, penalties for acts of racial discrimination should be sufficiently severe to act as a deterrent to future violations.

Given the level and nature of inequalities in France, focusing solely on the more limited obligation of refraining from discriminatory actions is not sufficient. The State is under a positive obligation to guarantee that minorities enjoy equality in fact. Robust affirmative action policies in the field of employment could help to transform the ranks of the civil service, the police, and other public and private institutions so that they fully reflect the broad diversity within French citizenry. The government must show greater leadership in reforming its own institutional employment structures.

France has historically rejected the recognition of minority groups or collective rights as incompatible with the French Constitution and the principles of the Republic, which prioritize individual rights, equality, unity and universalism. This has been an obstacle to the adoption of policy initiatives that by their nature must acknowledge the reality of discrimination against specific population groups within French society. It has prevented any serious consideration of affirmative action programs or the collection of statistical data concerning the socio-economic status of population groups that can be disaggregated by ethnicity or religion. These kinds of government measures, rather than being considered to violate the Constitution, should be seen as essential to achieving a true vision of "Liberté, Egalité, and Fraternité". The acknowledgement of differences of race, ethnicity, religion or heritage should not be considered to threaten the principles of unity and equality that are the foundation of French society.

I also received information regarding the situation of the Gypsy/ Travellers, the Jewish community and linguistic minorities including the Breton, Basque, Catalan and Occitan communities. Further details related to these communities can be found in my full report.

Thank you.

**PREPARED STATEMENT OF JOHN PAYTON, PRESIDENT AND
DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDU-
CATIONAL FUND**

Good morning. My name is John Payton, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Founded under the direction of the late Thurgood Marshall in 1940, the Legal Defense Fund is the nation’s finest civil and human rights law firm. In our sixty-plus year existence, we have represented African Americans in most of the country’s major racial discrimination cases. In many respects, LDF is legal counsel to all Americans on issues of race.

We are pleased to present this testimony to the Commission on Security and Cooperation in Europe regarding “Racism in the 21st Century”. We thank Chairman Rep. Alcee L. Hastings, Co-chair Sen. Benjamin L. Cardin, other Commission members and staff for inviting us to participate in these proceedings. This convening is particularly timely, as the nation and the world’s attention have been focused as of late on the contemporary forms of racial discrimination and the very issue of race itself. This year LDF contributed to a national shadow report which followed the U.S. government’s submission pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). And more recently, we played a key role in coordinating the visit of the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. In each of these opportunities to engage an international audience, LDF and our colleagues brought a perspective informed by both historical knowledge and a keen understanding of racism in its various contemporary manifestations—from invidious racial epithets and intentional discrimination, to structural racism and policies that yield disparate racial impacts.

When we were founded, African Americans and other minorities were oppressed through a comprehensive system of laws and customs enforced by courts and by violence. We have made remarkable progress since then. The legal apparatus of racial segregation is largely dismantled and in its place is a completely different set of laws—for example, the 1964 Civil Rights Act, the 1965 Voting Rights Act, the 1968 Fair Housing Act, as well as court rulings which expand the concept of equality.

But that progress has not been steady and profound challenges related to race remain. We are aware that some would like to declare that serious issues of race are behind us, and they point to visible examples of African Americans and other minorities occupying positions of power. They point to African-American members of Congress, members of the Cabinet, CEOs of multinational corporations, entertainers, members of the media and so forth. And they especially point to presumptive Democratic Presidential Nominee Senator Barack Obama as evidence that race no longer remains salient in our society. We all know better. Racial justice in America has proved elusive. Indeed, racial inequality still unfairly affects the lives of millions of Americans.

While invidious discrimination is still present, other forms of discrimination sometimes a result of unconscious racism—have become institutionalized and systemic. It is part of the very fabric of

how this nation's most important systems, agencies and institutions function. The manner in which this discrimination operates serves to mask its very existence and skews people's sense of moral clarity; yet, its impact is no less pointed.

LDF's mission is to see that African Americans—and all Americans—become full, equal and thriving participants in our democracy. In order to accomplish this goal, we must address racism as we see it, and as we experience it. That means challenging systems, policies and practices that subjugate people because of their race, whether intentionally or unintentionally. In this regard, LDF's impact on the country has been profound. Yet great challenges remain. In addition to NGOs such as LDF, we also need the cooperation, support and leadership of individuals in government, civil society and the private sector. We all have a collective responsibility to address the manifestations of racism and its sources.

The following examples are illustrative of recent trends in racial justice in the United States, and how LDF and allied organizations have sought to address the problems. As they demonstrate, the challenges to achieving racial justice in the United States are numerous. However, in each of the areas noted below, we are engaged in ongoing efforts to change the status quo.

THE AFTERMATH OF HURRICANES KATRINA AND RITA

Perhaps the best contemporary example demonstrating the complexity of racial injustice is found in New Orleans, Louisiana and the Gulf Coast region—the area devastated by Hurricanes Katrina and Rita in 2005. Even before the natural disasters struck, people of color generally, and African Americans in particular, suffered from the cumulative effects of generations of racism and poverty. Segregated in decaying areas of the city and often relegated to substandard housing, failing schools, limited employment opportunities and dangerous neighborhoods, many African Americans struggled to survive. As a result, when Hurricanes Katrina and Rita struck, many had no place to go and no means to get there, even though they had very little in New Orleans. Thus, it should have come as no surprise that the impact of the storms and their aftermath had a severely disproportionate racial impact.

The scenes that the world witnessed on television, and that some witnessed in person, showed the scores of people left behind during and after Hurricane Katrina. Almost all of them were African Americans and poor people. The unconscionable neglect was horrifying, yet sadly reminiscent of how African Americans have fared in this country for generations. In the immediate aftermath of Hurricane Katrina, many African-American residents were rounded up by police officers and charged with looting, and some were prevented at gunpoint from escaping the confines of a city in chaos. Others were shot, and some killed. Basic necessities such as food and water were not made available for days.

After the storms, people already living in crisis were uprooted, and many have since struggled to return. The dispersal of so many people has, in effect, created what we call the "Katrina Diaspora," a people connected by culture, shared experiences and challenges that have everything to do with race. And this Diaspora, comprised mostly of people of color and the poor, have not been formally rec-

ognized by the United States as Internally Displaced Persons under international standards. They have received precious little assistance from official sources despite an outpouring of sympathy and support from some private citizens and the international community. And even as this private support begins to wane, the stakes become higher in terms of the plight of the displaced and the impact on culture, community and opportunity.

Over the past three years, LDF has devoted a significant amount of resources to address the needs of the Katrina Diaspora. We have seen first-hand the impact that the storms and the failed government response have had on poor African-American communities. And we have also seen how the same forces have destabilized the region's black middle class, which represents the fruit of the Civil Rights Movement. While we have seen distinct racial disparities that reflect both intentional discrimination and structural racism in a number of areas, two areas in particular merit special attention—Voting Rights and Education. These two areas are important because they are the realms in which African Americans have experienced some of the most determined forms of racial discrimination, with increasingly creative efforts designed to frustrate their opportunity and access.

Shortly after the storms, the State of Louisiana sought to conduct elections in a business-as-usual fashion, despite the fact that more than half of New Orleans' pre-Katrina residents were still displaced, most of them African-American. Under state law, thousands of displaced people were not eligible to vote via an absentee ballot. Instead, they would have been forced to find the means to make their way back to New Orleans. Of course, many of these people were living in temporary shelters and packed into hotel rooms with extended family all across the country. So, for most, traveling to New Orleans would have meant financing transportation for entire families, including young children and elderly relatives—all to cast a ballot. In our view, this was the equivalent of a modern-day poll tax, a facially benign imposition that would have disproportionately impacted people of color with little means. To address this situation, LDF joined local lawyers in the *Wallace v. Blanco* case to ensure that displaced African-American voters could have meaningful participation in the election.¹ This case led to the first domestic satellite voting system and an unprecedented court-ordered election monitoring program.

From October 2006 to early February 2007, hundreds of students returning to New Orleans after being displaced were literally turned away at the schoolhouse door. Instead of being enrolled in classes immediately as the law requires, they were placed on a waiting list—sometimes for days, weeks or longer. This policy affected mostly African-American students—those whose families were most likely to struggle to resettle in New Orleans and needed more time to make their way back home. Many of the families returning to New Orleans, including LDF clients, lived in temporary shelters, FEMA trailers or packed into overcrowded apartments or houses with relatives. When education officials failed to respond to a demand for immediate enrollment of all returning students, LDF

¹No. 2:07-CV-1503, 2007 U.S. Dist. LEXIS 43376 (E.D. La. June 13, 2007).

filed a federal civil rights lawsuit to vindicate the rights of those students who were denied educational services and to protect those who would return in the future. This effort resulted in a favorable settlement and adoption of an official policy reform requiring schools to enroll returning students within a specified period of time.

Similar examples of racial injustice abound in other aspects of the post-storm recovery, and parallel LDF's other practice areas. This story is in many ways a microcosm of the experiences of people of color throughout the nation's history. Thus, any serious racial justice agenda must have the aftermath of these storms as a critical component of its efforts.

EDUCATIONAL OPPORTUNITY

Education is recognized by societies across the globe as fundamental to an individual's development and as the foundation of a well functioning society. The same values are nominally shared by Americans. As the U.S. Supreme Court acknowledged in LDF's best-known case, *Brown v. Board of Education*, education is "the very foundation of good citizenship."² A quality education is essential to economic opportunity in the United States. In today's global economy, there are fewer and fewer jobs for Americans without a high school diploma and those that remain leave people mired in poverty or dangerously close.

Nevertheless, despite some progress, Brown's promise has rung hollow for too many people of color in the United States who are far more likely to receive an inferior education than they are a good one. This is particularly true for African-American and Hispanic students, who most often find themselves trapped in racially isolated and failing schools.

For example, recent data from the U.S. Census Bureau indicates that African Americans aged twenty-five or older are more likely to be without a high school diploma than they are to have a college degree. Whites in the same age group are far more likely to have graduated from college than they are to be without a high school diploma.³ This stark racial disparity tells only part of a more disturbing story. A recent study found that the high school graduation rates for black and Hispanic students are a dismal 53.4% and 57.8% respectively, compared to those for whites and Asians, which are still a modest 76.2% and 80.2% respectively.⁴ Poor schools within highly populated metropolitan areas are a main contributor to these low graduation rates. An overwhelming majority of the black population lives within these metropolitan areas and, therefore, is subject to these failing schools. For example, the cities of Detroit, Michigan; Baltimore, Maryland; and Atlanta, Georgia have high school graduation rates of 24.9%, 34.6%, and 46.0%, respec-

² 347 U.S. 483 (1954).

³ U.S. CENSUS BUREAU, Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race, and Hispanic Origin, in CURRENT POPULATION SURVEY 2007, available at <http://www.census.gov/population/www/socdemo/education/cps2007.html>.

⁴ Christopher B. Swanson, *Cities in Crisis: A Special Analytic Report on High School Graduation 1* (2008).

tively,⁵ and black populations of 81.6%, 64.3%, and 61.4%, respectively.⁶

As a gateway to broader opportunity, equitable access to education is a major racial justice issue. The lack of quality public education for students of color should be of paramount importance to anyone who cares about racial justice and equality. Young people are set on certain tracks early in life—tracks of quality education and opportunity, or tracks with poor access to quality education that can lock them into cycles of poverty and often lead many young people into involvement with the juvenile and criminal justice systems. The inter-generational effects of this cycle have devastated entire families, neighborhoods and communities.

At LDF, our nation’s public education system has become the focal point in the current struggle for racial integration and equal opportunity. Yet, while once legally segregated schools emerge from the era of court-ordered desegregation, the Supreme Court has erected significant obstacles for those school districts voluntarily seeking to ensure racial integration in their classrooms. The Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School District No. 1*⁷ held that the Seattle and Louisville school districts’ race-conscious integration policies violated the Equal Protection Clause of the Constitution. In the wake of the decision, school districts across the nation are struggling to devise integration plans that will pass constitutional muster.

At the same time, the current trend toward resegregation in our cities and schools has presented an imperative that we make sure those schools offer high quality education to their students. Many inner city schools attended by minority students offer fewer academic opportunities, possess fewer institutional resources, employ less committed and less effective teachers, experience higher drop-out rates, and provide lower quality job opportunities and career prospects.⁸ This is simply intolerable. Over fifty years after *Brown* and its declaration of education being the key to democracy, we can clearly see that these schools are failing African-American students. Through strategic litigation, advocacy and technical expertise, LDF is leading the fight to ensure that school districts advance the goal of providing the highest quality education to all students.

CRIMINAL AND JUVENILE JUSTICE

The United States incarcerates a greater number and percentage of people than any country in the world. According to a recent report by the Pew Center for the States, over 2.3 million people are in prisons or jails, which means that more than one in 100 Amer-

⁵ *Id.* at 9.

⁶ U.S. CENSUS BUREAU, Profile of General Demographic Characteristics, in U.S. CENSUS 2000, available at <http://censtats.census.gov/pub/Profiles.shtml>.

⁷ 127 S. Ct. 2738 (2007).

⁸ See Brief of 553 Social Scientists as Amici Curiae in Support of Respondents at 3, *Parents Involved v. Seattle Sch. Dist.*, 127 S. Ct. 2738 (2007) (Nos. 05–908, 05–915) (“While there are examples of academically successful schools with high concentrations of nonwhite students, more often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning.”).

ican adults is behind bars.⁹ The next closest countries were China, with 1.5 million people behind bars, and Russia with 890,000 people incarcerated.¹⁰ In a nation seemingly obsessed with criminalizing behavior, the impact is even more severe in communities of color. Racial disparities exist at every level in the criminal justice system, from arrests for the most minor of offenses to executions for the most severe ones. Consequently, American prisons are disproportionately populated with African Americans and Latinos. While 1 out of every 106 white men aged 18 or older is behind bars, for Latino males in that age group the figure is 1 in 36; and for African-American males it is a striking 1 in 15.¹¹ Further, according to the Prison Policy Initiative, in 2001 the United States incarcerated Black males at a higher rate than the apartheid regime in South Africa did in 1993.¹² A visit to virtually any juvenile or criminal court, detention center or prison in this country will demonstrate this distinct racial impact.

Sentencing disparities along racial lines have been a particularly egregious problem, especially when it comes to this country's so-called "War on Drugs". While some racial disparities are the result of prejudice and discrimination by actors within the system, others are actually built into the statutory scheme. For example, the 1986 Anti-Drug Abuse Act introduced a sentencing formula that equates one gram of crack-cocaine to 100 grams of powder cocaine. Statistics show that more whites use crack-cocaine than African Americans, yet the incarceration and conviction rates of African Americans far outweigh those of whites. Given the harsh sanctions for even simple possession of crack, many African Americans convicted of these crimes are sentenced to much longer terms than white counterparts convicted of crimes involving powder cocaine. In this way, the 100:1 ratio and mandatory minimum sentences for simple possession of crack cocaine have become a notorious form of racial discrimination in the criminal justice system. LDF has urged Congress to enact legislation addressing the 100:1 disparity, a necessary counterpart to U.S. Sentencing Commission's recent decision to lower recommended sentences for crack cocaine offenses.

Other problems—such as racial discrimination in jury selection, law enforcement targeting of black neighborhoods for drug interdiction operations and poor quality defense for the indigent—also have a disproportionate impact on African Americans. For example, with respect to indigent defense, a report from the American Bar Association's Section on Criminal Justice noted that "people of color require appointed lawyers disproportionately more often than White people. Therefore, when the quality of representation provided by appointed lawyers is diminished and underfunded, the consequences will be disproportionately felt by people of color."¹³

The collateral effects of these incarceration levels play out in numerous ways, whether it is the difficulty of finding jobs upon leav-

⁹The Pew Center on the States, *One in 100: Behind Bars in America* 5 (2008). The precise figure is 1 in 99.1.

¹⁰*Id.*

¹¹*Id.* at 6.

¹²Prison Policy Initiative, *Crime and Incarceration Around the World*, http://www.prisonpolicy.org/prisonindex/us_southafrica.html (last visited July 11, 2008).

¹³For a recitation of the ABA resolution, see Terence F. MacCarthy, *Unanimous Resolution*, 23 *Champion* 20, 25 (Apr. 1999) (citations omitted).

ing prison, the dilution of voting strength of particular communities because of felon disfranchisement laws or the moral and practical impact on communities with so many of its residents in or on their way to jail.

Young people are not immune from the reach of the criminal justice system. Increasingly, children are being tried as adults in criminal court, with disastrous consequences. LDF recently released a report detailing the phenomenon of state courts sentencing people to life without parole (LWOP) for crimes committed when they were children. The report documents that African Americans are drastically overrepresented among the juvenile LWOP population: nearly 60% of those sentenced to life without parole as juveniles nationwide are African-American. In Mississippi, whose overall population is 36% African-American, a full three-fourths (76%) of the young people sentenced to LWOP are African-American.

Although we know that children are capable of changing their lives for the better, many juvenile justice systems focus on punishment rather than rehabilitation, thereby destroying children's opportunities before they have a real chance. This same retributive mentality has seeped into the public school system. In addition to the obstacles to quality education described above, many youth of color also face policies designed to exclude them from school altogether. Racially disproportionate use of exclusionary practices, such as suspensions, expulsions and even arrests at schools for non-violent conduct, have pushed many young people of color further down what we refer to as the "School to Prison Pipeline," in which young people of color are institutionalized rather than educated.

Persistent inequalities in access to quality education play a significant role in feeding this pipeline, with students of color suffering poor outcomes in terms of high school graduation and dropout rates, as well as limited exposure to advanced courses and alternative education. According to the available data and anecdotal accounts, black students are often subjected to these exclusionary practices at a disproportionate rate. For example, in 2000, African Americans represented only 17% of public school enrollment nationwide, but accounted for 34% of suspensions.¹⁴ And a recent analysis of U.S. Department of Education data by the Chicago Tribune found that black students nationwide are suspended and expelled at nearly three times the rate of white students.¹⁵ Moreover, studies show that African-American students are far more likely than their white peers to be suspended, expelled, or arrested for the same kind of conduct at school.¹⁶ While starting in schools, these trends are mirrored in the juvenile justice system. In 2003, African-American youth made up only 16% of the nation's overall juvenile population, yet they accounted for 45% of juvenile arrests.¹⁷ These trends simply lay the foundation for the even more

¹⁴ ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 18 (2005) (citing U.S. Department of Education, 2000 Office of Civil Rights Elementary and Secondary School Survey (2000)).

¹⁵ Howard Witt, School Discipline Tougher on African Americans, CHI. TRIB., Sept. 25, 2007.

¹⁶ Russell J. Skiba, Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary PRACTICE 11-12 (2000), available at <http://www.indiana.edu/~safeschl/ztze.pdf>.

¹⁷ Howard N. Snyder, Juvenile Arrests 2003, OJJDP JUV. JUST. BULL., Aug. 2005, at 5.

disturbing statistics in the criminal justice system mentioned above.

POLITICAL PARTICIPATION

A central component of LDF's work is ensuring that all Americans, regardless of race, maintain the right to participate equally and fully in our democracy. The right to vote without unnecessary and unjustifiable restrictions is both a core feature of our democratic structure and a principle that has long shaped our litigation and advocacy efforts in the fight against barriers to full participation.

If we wish to be regarded as the world's leading democracy, the role of government must be to encourage greater political participation. The United States, however, has one of the lowest participation rates in the election of government officials.¹⁸ According to U.S. Census Bureau estimates, only 64% of voting age citizens cast ballots in the 2004 presidential election, down from 68% during the 1992 election.¹⁹ During that same period, 72% of all voting-age citizens were registered to vote, down from 75% in 1992.²⁰ This decline is particularly troubling given recent laws passed by Congress, such as the National Voter Registration Act (known as the "Motor Voter" law), which aim to make registration opportunities more widely available.

The current presidential election cycle, however, has energized more citizens to become active in electoral politics than in any recent time. In the last year, there has been a dramatic surge in new registration among African-American voters in a number of states including Alabama, Louisiana, Tennessee and North Carolina, among others.²¹ As some commentators have aptly observed, "Democracy has been the real winner of the process."²²

However, the success story that has emerged during this election cycle will prove to be a hollow victory if those newly registered voters are ultimately unable to cast their ballots on Election Day due to the onerous burdens imposed by discriminatory voting tactics. Indeed, in recent years, we have seen a series of efforts that have the effect of placing undue burdens on citizens' attempts to vote. Increasing the burdens on the exercise of the right to vote clearly has the effect of depressing participation rates among minority voters in this most central aspect of our democratic process.

Two years ago, Congress reauthorized the Voting Rights Act for another twenty-five years, basing its authority on an extensive record of recent racial discrimination in many forms of voting. Congress found that "vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral

¹⁸ See, e.g., G. Bingham Powell, Jr., *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17 (1986) (providing comparative discussion of the low level of voter turnout in the United States); see World Policy Institute, *Voter Turnout Comparisons*, <http://www.worldpolicy.org/projects/globalrights/prindex.html> (last visited July 12, 2008).

¹⁹ U.S. CENSUS BUREAU, *VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004* (March 2006), available at <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

²⁰ *Id.*

²¹ Mike Baker, *More Than 3.4 Million New Voters*, AP Survey Finds, ASSOC. PRESS, May 6, 2008.

²² See Alan Wolfe, *The Race's Real Winner*, WASH. POST, May 11, 2008, at B1.

process.”²³ Too often, however, courts are not prepared to address the very barriers that the Voting Rights Act was designed to prevent.

Last term, in *Crawford v. Marion County Election Board*,²⁴ the Supreme Court upheld the State of Indiana’s mandatory requirement that people display government-issued identification when they go to cast a ballot—widely described as the strictest voter identification law in the nation. Despite the State’s failure to produce any evidence of voter impersonation at any time in Indiana’s history—the claimed basis for the law—and its awareness of the disfranchising effects of this restrictive requirement on minority, elderly and poor voters,²⁵ the Court found that the record was insufficient to strike down the law as facially unconstitutional.²⁶ Given existing patterns of racial isolation and concentrated poverty, mandatory voter identification laws have a particularly stark impact on persons living in poor and vulnerable communities in our country. These measures are unwarranted erosions of our democracy that, just as their predecessors, will not withstand the test of time. Like the infamous poll taxes and grandfather clauses before them, they are predicated on falsehoods and can be permitted to exist only if we are willing to embrace a limited notion of democracy intended to introduce a structural caste into our notion of “We the People.”

It is hard to imagine that laws such as Indiana’s will not impact elections given the number of voters who arrived at polling sites without the statutorily required form of identification and given the number of voters who were likely deterred from voting because of the onerous burdens established by the law. The most recent presidential primary election in Indiana was a close contest, with a mere 14,192 (1.1%) of the 1,278,314 votes cast separating the two candidates.²⁷ A team of LDF attorneys, in partnership with other civil rights groups, conducted an election monitoring program during the primary, and made some worrisome observations. One of our objectives was to determine the extent to which African Americans in Gary and surrounding communities in Lake County encountered difficulty casting ballots as a result of Indiana’s voter identification law. LDF attorneys learned that voters were turned away after arriving at polling sites without qualifying identification. While we were able to help some voters obtain identification from the local Bureau of Motor Vehicles so that they could cast a ballot prior to the closing of the polls, the actual number of voters who appeared at their polling places but were turned away for fail-

²³Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, § 2(b)(2), 120 Stat. 577 (2006). Shortly thereafter, the newly renewed Voting Rights Act came under constitutional attack; LDF is involved in defending its Section 5 preclearance provision. *Northwest Austin Mun. Util. Dist. No. One v. Mukasey*, No. 1:06-CV-01384, 2008 U.S. Dist. LEXIS 42682 (D.D.C. May 30, 2008).

²⁴128 S. Ct. 1610 (2008), decided with the companion case *Indiana Democratic Party, et al. v. Todd Rokita, et al.*

²⁵See Brief of the NAACP Legal Defense and Educational Fund, Inc. as Amicus Curiae in Support of Petitioners at 4–10, *Crawford v. Marion County Elec. Bd.*, 128 S. Ct. 1610 (2008) (Nos. 07–21, 07–25).

²⁶The Court did but leave open the possibility of future challenges that more concretely demonstrate how such laws burden the rights of voters.

²⁷Indiana Secretary of State, Indiana Primary Election, May 6, 2008, Voter Turnout by County and Statewide, http://www.in.gov/apps/sos/primary/sos_primary08?page=office&countyID=1&partyID=1&officeID=36&districtID=1&districtshortviewID=1&candidate= (last visited July 13, 2008).

ing to present statutorily required identification remains unknown. Indiana does not require its poll workers to track how many voters appear at the polls without qualifying identification, a practice which would certainly provide the most accurate measure of the law's impact. Moreover, we may never know how many people were apprised of the law, realized they did not possess valid government-issued identification, and decided to stay home on Election Day as a result.

The presumed availability of provisional ballots as a fail-safe option was critical to the Supreme Court's determination that Indiana's law does not impose excessive burdens on voters.²⁸ However, that presumption was incorrect. LDF attorneys in the field were informed by poll workers that they did not always inform voters who did not possess qualifying identification of their right to cast a provisional ballot. Instead, some of these voters were simply turned away from the polls. Even if poll workers did uniformly offer provisional ballots to voters who lacked valid government-issued identification, the extra step required for the ballots to count—a trip to the county seat within 10 days of the election—is excessively burdensome for poor voters. For example, if a voter without photo identification casts a provisional ballot in Gary, a trip to Crown Point (the county seat) requires traveling over thirty miles round trip.

By removing barriers to the ballot box, we increase the likelihood that newly registered voters will choose to remain engaged and be active participants in our civic life. However, states—without any credible justification—are moving in the opposite direction by considering restrictive laws, such as voter identification requirements, which unnecessarily restrict access and impose barriers and hurdles for citizens now entering the political process. Democracy thrives when it is practiced, not prevented. The challenge we now face is determining how to structure the political process in a way that is more inclusive and provides affirmative opportunities for broad and meaningful participation. To do so effectively, we must remain mindful of those who are marginalized in our society—the poor, the elderly and our nation's racial and ethnic minorities. Voting is a core constitutional right²⁹ and not a privilege to be conferred as a prize after one navigates senseless hurdles. The Congress and the courts must act accordingly.

ECONOMIC JUSTICE

From opportunity for advancement in the workplace to the freedom of choice to live in any community, African Americans have long endured various forms of racial discrimination. The result has been the stunting of black economic opportunity, with the impact felt across generations. Racism in employment can be found in hiring and wages as well as in treatment at the workplace. The 2005 Current Population Survey shows that African-American men earn

²⁸ IND. CODE ANN. § 3-11-8-25.2 (LexisNexis 2008).

²⁹ See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (stating that “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (hailing voting as “a fundamental political right, because preservative of all rights”).

75 cents, and Hispanic men earned 63 cents to every dollar earned by white men.³⁰ Even at high levels of educational achievement this disparity persists. Census data shows that black men with high school diplomas earn roughly 24% less than equally educated white men, black men with bachelor's degrees earn roughly 25% less than their white counterparts, and black men with master's degrees earn 27% less.³¹ Furthermore, this wage gap increases with the age of an employee, even after controlling for organizational tenure, education, and skill.³² The situation is even worse for black and Hispanic women. Black women earn just 63 cents to every dollar earned by white men while Hispanic women earn a mere 52 cents to the dollar.³³ In 2004, the total income for the median black family was just 62% of the income for the median white family.³⁴

In addition, racial harassment continues to exist in the workplace. In 2007, the number of racial harassment cases reached an all-time high of 6,977. The harassment faced by black employees includes racist graffiti, physical threats, subjection to Nazi symbols, and the display of hangman's nooses. Many workers who report this harassment find little managerial response to the misconduct or, even worse, are faced with supervisors that condone and take part in the harassment.³⁵

Recent academic literature has contributed to the abundant evidence of continued racism in employment. In 2004, economists Marianne Bertrand and Sendhil Mullainathan published the results of a study in which they randomly assigned African-American-sounding names (e.g., Lakisha and Jamal) or White-sounding names (e.g., Emily and Greg) to fictitious resumes which they then mailed to job-openings in Chicago and Boston.³⁶ Although the content of the resumes were identical, the resumes that contained White-sounding names received 50% more call-backs than those with African-American-sounding names. This result was consistent across occupation, industry, and employer size. Another study released this year by Jeffrey Grogger at the University of Chicago presents findings that those people identified to have black-sounding speech patterns earned 10% less than comparably skilled, experienced, and educated whites.³⁷ As shocking as these studies are, they reflect the racism that persists in American society.

Another area of longstanding concern to LDF is equal housing. As our nation marks the 40th Anniversary of the Fair Housing Act

³⁰ U.S. Census Bureau, Annual Social and Economic Supplement (2005).

³¹ Curtis Lawrence, Race Pay Gap Persists at All Grad Levels, CHI. SUN-TIMES, Jan. 4, 2004, at 3.

³² Phyllis Barnum, Robert C. Liden & Nancy Ditomaso, Double Jeopardy for Women and Minorities: Pay Differences With Age, 38 ACAD. MGMT. J. 863 (1995).

³³ NATIONAL WOMEN'S LAW CENTER, PAY EQUITY FACT SHEET (May 2008), available at http://www.nwlc.org/fairpay/PayEquityFactSheet_050508.pdf.

³⁴ Jared Bernstein, Economic Snapshot: Weaker Job Market Re-Opens Racial Income Gap, ECONOMIC POLICY INSTITUTE, July 5, 2006, http://www.epi.org/content.cfm/webfeatures_snapshots_20060705.

³⁵ Eve Tahmincioglu, Racial Harassment Still Infecting the Workplace, MSN CAREERS, Jan. 13, 2008, <http://www.msnbc.msn.com/id/22575581/>.

³⁶ Marianne Bertrand & Sendhil Mullainathan, Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination, 94 AM. ECON. REV. 991 (2004).

³⁷ Jeffrey Grogger, Speech Patterns and Racial Wage Inequality (Harris School Working Paper Series 08.13, 2008), available at http://harrisschool.uchicago.edu/About/publications/working-papers/pdf/wp_08_13.pdf.

this year, we must acknowledge that many jurisdictions within our country are as racially segregated today as they were when the Act was passed in the wake of Dr. Martin Luther King, Jr.'s assassination in 1968. Although the Fair Housing Act of 1968 has been law for 40 years, racial discrimination and neighborhood segregation persist in American communities.

A study by Douglass S. Massey and Garvey Lundy of the University of Pennsylvania provides some insight into the persistence of racism in the housing market.³⁸ The authors conducted a study where black and white students inquired about apartments by phone. The study found that those students who "sounded black" were less likely to get through and speak to a rental agent, less likely to be informed of a unit's availability, more likely to pay an application fee, and more likely to be told that credit-worthiness may be a problem in qualifying for a lease. Thus, although these callers were identical in all ways except for their perceived race, the black-sounding students had a more difficult time finding housing than the white-sounding students.

Recently, the ongoing mortgage foreclosure crisis, largely fueled by the drastic increase in the issuance of sub-prime loans, has revealed another area of housing infected by racism. Sub-prime loans, such as Adjustable Rate Mortgages (ARMs), exploding ARMs, and no-document loans were among those that caused the most damage to the housing market. These high-cost mortgage products were often issued by lenders who did not account for the borrower's long-term ability to pay the loan. Many of these lenders could make a commission by merely issuing such loans and leaving the borrower to bear the risks and consequences that the loans entailed. ACORN (a leading organization in fair housing) reports that in 2006, African-American home purchasers were 2.7 times more likely to be issued a sub-prime loan than white borrowers and Latino home purchasers were 2.3 times more likely to receive such loans than white borrowers.³⁹ A similar disparity existed in the mortgage refinancing market, where African Americans were 1.8 times more likely to be issued a sub-prime loan than whites and Latinos were 1.4 times more likely. The disparity was even greater among upper-income home purchasers. Upper-income African Americans were 3.3 times more likely to be issued a sub-prime loan than white borrowers and upper-income Latinos were 3 times more likely. Many of these borrowers qualified for lower-cost fixed-rate mortgages but were never offered that option. Thus, when housing prices declined and these sub-prime borrowers were unable to refinance their high-cost mortgages at lower rates, the minority community was disproportionately harmed and many African-American and Latino homeowners were forced into foreclosure.

Furthermore, violations of the Fair Housing Act, and the right to the equal provision of public services that make housing viable, continue to be widespread. Last week, a federal court awarded \$10.8 million to black residents who were denied public water for

³⁸ Douglass S. Massey & Garvey Lundy, *Use of Black English and Racial Discrimination in Urban Housing Markets: New Methods and Findings*, 36 URB. AFF. REV. 452 (2001).

³⁹ ACORN, *Foreclosure Exposure: A Study of Racial and Income Disparities in Home Mortgage Lending in 172 American Cities 1-3* (2007), available at <http://www.acorn.org/fileadmin/HMDA/2007/HMDAreport2007.pdf>.

fifty years because of discrimination by government officials. White residents who lived nearby were served by water lines, but blacks were not. In another example, with LDF's support, an African-American family in rural Tennessee is suing government officials and several private companies for polluting the family's groundwater with cancer-causing chemicals. The family claims that government officials intentionally discriminated against them. The officials knew as early as 1988 that the family's well water was contaminated with cancer-causing toxins that had leaked from an adjacent landfill into the water supply, at levels approaching thirty times the standard set by the U.S. Environmental Protection Agency. However, rather than take steps to warn and protect the family, government officials did just the opposite—they informed the family that the water was safe for consumption. Meanwhile, officials notified white families in the area that they should not drink the groundwater and even ensured that those families were connected to the municipal water supply. Several members of the black family have contracted various form of cancer since then, and one has died.

This problem is not isolated. Minority neighborhoods are frequently host sites for dangerous facilities such as landfills, electrical power stations, incinerators, and waste treatment plants. According to a recently released study, "Toxic Wastes and Race at Twenty, 1987–2007," people of color are more concentrated near hazardous waste facilities than twenty years ago. Among the study's findings, 40 of 44 states with hazardous waste facilities have disproportionately high percentages of minorities living in host communities.⁴⁰ Today, African Americans and other minorities represent 56% of those living in neighborhoods within two miles of commercial hazardous waste facilities. Not surprisingly, the study concluded that "race continues to be a significant independent predictor of commercial hazardous waste facility locations when socioeconomic and other non-racial factors are taken into account."

LDF is currently involved in a case seeking a precedent-setting remedy for Fair Housing Act violations by the Department of Housing and Urban Development in unlawfully concentrating African-American public housing residents in the most impoverished, segregated areas of Baltimore City.⁴¹ The remedy proposed by LDF is designed to promote housing for public housing residents in the entire metropolitan region and ensure access to communities of opportunity.

Given LDF's institutional knowledge about school integration, we also recognize the deep structural role that residential segregation plays in perpetuating inequality in our nation's schools.⁴² The rela-

⁴⁰United Church of Christ & Witness Ministries, *Toxic Wastes and Race at Twenty 1987–2007* (2007), available at <http://www.ucc.org/justice/pdfs/toxic20.pdf>.

⁴¹*Thompson v. HUD*, 348 F. Supp. 2d 398 (D. Md. 2005).

⁴²There is a two-way link. Residential segregation often leads to educational segregation ("In communities where we find racially segregated housing patterns, however, assigning students based solely on geographic proximity to schools can result in significant racial isolation."). NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *STILL LOOKING TO THE FUTURE: VOLUNTARY K–12 SCHOOL INTEGRATION* 21 (2008). Efforts to promote educational integration can lead to residential integration ("A comprehensive school integration plan can actually counter residential segregation. In fact, after decades of court-ordered school integration, residential segregation actually declined across the South in the 1990s."). *Id.* at 47. Since the Supreme Court has forcefully pushed back against school district voluntary integration plans, renewed attention on housing strategies may be an effective strategy.

tionship between housing and education is clear. According to the Caucus for Structural Equality, “[t]he racial makeup of residential neighborhoods is the most important determinant of the racial composition of the schools within them. . . . As residential neighborhoods in the United States are substantially segregated by race, so too are schools to the extent that they employ localized attendance policies.”⁴³ LDF has recognized that, “[b]ecause school districts generally rely on proximity when assigning students to schools, [a]bsent some substantial decline in racial residential segregation, race-neutral assignment policies are unlikely to produce significant racial school desegregation.”⁴⁴

Just yesterday, LDF and three other national civil rights organizations launched a National Commission on Fair Housing and Equal Opportunity. Using the occasion of the Fair Housing Act’s Anniversary, the Commission will address the vestiges of our nation’s segregated housing policies and the acts of private industry which perpetuate the residential segregation we all experience today. The Commission is chaired by former Secretaries of the Department of Housing and Urban Development Henry Cisneros and Jack Kemp. The Commission will conduct hearings around the country to collect testimony, research, data and information on fair housing enforcement and the persistence of residential segregation forty years after the passage of the Fair Housing Act. The hearings will culminate in a report (to be released at the end of the year) outlining recommendations on how we can move forward together to meet the goals of the Fair Housing Act.

Affirmative residential housing policies can provide an additional tool in our nation’s efforts to promote integrated schools in the wake of the Supreme Court’s recent decisions on voluntary integration. Combating residential segregation has the potential to break apart concentrated areas of poverty and reform the makeup of minority schools. A wide range of housing strategies are available, including inclusionary zoning to require the availability of affordable housing in large housing developments; incentives for Low Income Housing Tax Credit developments in areas with income diversity, population growth, and job opportunity; and opportunity mapping⁴⁵ to identify high-opportunity areas⁴⁶ and connect racial minorities with those geographic regions.

⁴³ Brief of the Caucus for Structural Equity as Amicus Curiae Supporting Respondents at 17, *Parents Involved v. Seattle Sch. Dist.*, 127 S. Ct. 2738 (2007) (Nos. 05–908, 05–915) (emphasis added). The brief also notes that, “[s]egregated housing patterns fuel segregated classrooms and disparate educational outcomes. In turn, low quality public schools reinforce segregated housing patterns due to the strong correlation between housing prices and public school quality . . . In short, school segregation is both an important outcome and a crucial source of residential segregation.” *Id.* at 26.

⁴⁴ NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., FACT SHEET—IMPACT OF RACE-NEUTRAL ALTERNATIVES 1 (internal citations omitted), available at <http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/RaceNeutral%20Alternatives%20Fact%20Sheet.pdf>.

⁴⁵ This concept is defined in KIRWAN INSTITUTE, COMMUNITIES OF OPPORTUNITY: A FRAMEWORK FOR A MORE EQUITABLE AND SUSTAINABLE FUTURE FOR ALL (2007), available at http://www.sustainablepittsburgh.org/REDS/2006/Comm_of_Opportunity_Jan_2007.pdf. The framework is spatial; recognizes that inequality has a geographic footprint; utilizes GIS data to analyze the distribution of opportunities;

⁴⁶ High opportunity areas include the availability of sustainable employment, high-performing schools, a safe environment, access to high-quality health care, adequate transportation, quality child care, and safe neighborhoods.

FEDERAL ENFORCEMENT OF CIVIL RIGHTS LAWS

LDF has been enforcing constitutional and civil rights laws for more than six decades. We know perhaps better than anyone that the federal government must be a crucial partner in our nation's collective battle against racism and discrimination. Last year, we commemorated the 50th Anniversary of the U.S. Department of Justice Civil Rights Division. Created in the wake of the Supreme Court's landmark decision in *Brown v. Board of Education*, the Division has played a crucial role in making the promise of equal protection under law meaningful. At its inception, the Division was dedicated exclusively to ridding society of the racial segregation and racial discrimination that permeated virtually every societal structure. Sadly, while racial and other forms of discrimination continue to affect our country, today the Division has sharply deviated from its original mission, and the impact can be seen across many areas.

As LDF has noted in testimony before Congress, the Civil Rights Division has been embroiled in controversy in recent years, with devastating effects on federal civil rights enforcement. Congressional oversight hearings and news reports have recounted the severe problems plaguing the Division, including the politicization of litigation decisions; improper hiring practices; the firings and transfers of valued career lawyers and section chiefs; a decrease in the racial diversity of Division staff; the shifting of enforcement priorities; and a substantial decline in cases filed on behalf of racial minorities which have comprised the core of the Division's docket for most of its existence.⁴⁷ Just last month, the Justice Department's Office of Inspector General and Office of Professional Responsibility issued a report finding that political appointees within the Department violated internal policy and the Civil Service Reform Act by using ideological litmus tests for hiring attorneys into the prestigious Honors Program as well as summer interns.⁴⁸ The problems of the Civil Rights Division are so severe that it is the subject of a separate investigation by the same entities into both substantive legal decisions made by the Division as well as its personnel practices.⁴⁹

In civil rights cases, the Justice Department has taken positions which have not only abandoned its traditional role, but which have turned it in the opposite direction. Nowhere has this been more ap-

⁴⁷ Civil Rights Division Oversight Hearing Before the S. Comm. on the Judiciary, 110th Cong. (2007); Oversight of the Civil Rights Division: Hearing Before the S. Comm. on the Judiciary, 109th Cong. (2006); Oversight Hearing on the Voting Section of the Civil Rights Division, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Oversight Hearing on the Employment Section of the Civil Rights Division, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Carol D. Leonnig, Political Hiring in Justice Division Probed, WASH. POST, June 21, 2007, at A1; Charlie Savage, Civil Rights Hiring Shifted in Bush Era, BOSTON GLOBE, July 23, 2006, at A1.

⁴⁸ U.S. Department of Justice, Office of Inspector General & Office of Professional Responsibility, An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program (2008), available at <http://www.usdoj.gov/oig/special/s0806/final.pdf>; see also Carrie Johnson, Ideology-Based hiring at Justice Broke Laws, Investigation Finds, Wash. Post, June 25, 2008, at A1.

⁴⁹ Leonnig, *supra* note 47, at A1; Jason McLure, DOJ Probe Turns to Civil Rights Division, LEGAL TIMES, June 4, 2007.

parent than in the Supreme Court's consideration of the voluntary school integration cases out of Louisville, Kentucky and Seattle, Washington. Since *Brown v. Board of Education*, in which the Justice Department argued in support of those challenging school segregation laws, the federal government has played a central role in school desegregation cases. Either the Department, LDF, or both, has been involved in a majority of the school desegregation cases litigated since *Brown*. However, in *Meredith v. Jefferson County Board of Education and Parents Involved in Community Schools v. Seattle School District No. 1*, the Department took the position that any voluntary, race-conscious action taken by school districts to promote integration in public schools violates the Equal Protection Clause.⁵⁰ This position constituted a reversal of historic proportions by the Department, which throughout its fifty-year existence has forcefully advocated for equal educational opportunity. Ultimately, five members of the Supreme Court disagreed with the position advocated by the Division and recognized that limited race-conscious measures can be used in pursuit of the compelling interests in promoting diversity and avoiding racial isolation in schools.⁵¹ The Division's position in these cases continued a disturbing trend of taking adverse positions in educational opportunity cases in the Supreme Court. In the seminal affirmative action case, *Grutter v. Bollinger*, the Division argued in 2003 that the race-based admissions policy was unconstitutional,⁵² a position with which the Supreme Court ultimately did not agree.⁵³

We have witnessed a significant deterioration in traditional civil rights enforcement by the Division. The past seven years have seen a persistent downturn in "pattern and practice" cases, which represent the most efficient and effective manner to redress widespread discrimination. At the same time, while discrimination that adversely impacts a particular protected class is actionable under the law, the Division under the Bush Administration has filed very few such cases,⁵⁴ and has prohibited them altogether in the Housing Section.⁵⁵

We remain very concerned with the fact that the Division has filed only a few cases on behalf of African Americans and other racial minorities under various civil rights statutes, including voting

⁵⁰ Brief for the United States As Amicus Curiae Supporting Petitioner, *Meredith v. Jefferson Co. Bd. of Educ.*, No. 05-915.

⁵¹ *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S. Ct. 2738, 2792 (2007) (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 2811 (Breyer, J., dissenting).

⁵² Brief for the United States As Amicus Curiae Supporting Petitioner, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241).

⁵³ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁵⁴ Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, available at <http://www.usdoj.gov/crt/emp/papers.html>.

⁵⁵ *Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice*, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. 145 (2007) (testimony of Wade Henderson, President and CEO, Leadership Conference on Civil Rights).

rights⁵⁶ and fair employment laws.⁵⁷ It is troubling that, while these cases are in decline, the Division has increased its filings of claims alleging discrimination against white persons. For example, two of the last three race cases filed by the Employment Section have alleged discrimination against white employees.⁵⁸ In the area of voting rights, we are also concerned that the Division continues to blur the line between its traditional role of observing and monitoring election day activities and the criminal enforcement responsibilities historically undertaken by the Criminal Division, which can cause an intimidating effect on minority voters. Essentially, the Division's enforcement priorities ignore the historical and continuing subjugation of minority citizens.

Moving forward, it is critical that the Civil Rights Division adhere to its original mission. Priorities can be augmented without abdicating core responsibilities. Civil rights enforcement is not and cannot be a zero sum game in our complex and increasingly diverse society. Protecting African Americans is not inconsistent with protecting Latinos; protecting disabled persons is not inconsistent with protecting women; and protecting citizens who are being discriminated against because of their religious beliefs need not be in tension with doing the same for those whose national origin has subjected them to discrimination. Priorities can and will change from administration to administration, but the Division's role as a protector of marginalized citizens and minorities is its core charge. Taking account of new priorities and of new or intensified discrimination faced by various groups is appropriate, but need not be achieved through the wholesale abandonment of longstanding priorities aimed at addressing inequities and injustice.

The Civil Rights Division is second to none in terms of the time, resources and capacity it has to bring systemic litigation. While the private bar and the civil rights NGOs such as LDF can have a profound effect on civil rights law, defining its cutting edge, there is no substitute for the Civil Rights Division's role. Very often cases brought by the Division have industry-wide impact in terms of deterrence and reform. The broad-based injunctive relief that the Division can pursue cannot be matched through the efforts of private lawsuits alone because the pecuniary interests of plaintiffs often lead to much more narrow relief and no institutional reform.

We also recognize that civil society and the private sector play an important, dual role. As the example of the post-Hurricane Katrina relief effort demonstrated, it is simply not enough for NGOs and civil society to engage in thoughtful acts of charity and service. We need all stakeholders to be advocates for racial justice. That means individuals and institutions declaring themselves to be anti-racist and also demanding the same of others. In addition to their direct work on these issues, they can also support this cause

⁵⁶In seven years under the Bush Administration, the Division has approved and filed only one case alleging voting discrimination against African Americans under Section 2 of the Voting Rights Act. *Litigation Brought by the Voting Section, U.S. Department of Justice, Civil Rights Division, Voting Section Home Page*, available at <http://www.usdoj.gov/crt/voting/litigation/caselist.html>.

⁵⁷It was not until 2006 that the Division under the Bush Administration filed its first case alleging that employment practices had a discriminatory impact on African Americans. *Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section*, available at <http://www.usdoj.gov/crt/emp/papers.html>.

⁵⁸*Id.*

indirectly by demanding accountability from all levels of government.

CONCLUSION

Discrimination in our nation has proven difficult to overcome, and it persists in the arenas of education, voting, housing and employment, and criminal justice, among others. As U.N. Special Rapporteur Dr. Doudou Diene recently recognized in preliminary observations after his recent fact-finding mission to the United States, racism is on the rise both around the globe and here in this country. Dr. Diene noted “[t]he map of social and economic marginalization is tightly coinciding with the ethnic map. The communities most marginalized socially, economically and politically are the historically discriminated minorities.” Often unconscious, this racism and discrimination continue to infect nearly every facet of public and private life. The matter is one that impacts the security of our nation and the global community.

Increasingly, discrimination persists due to strained interpretations of policies and laws that were once designed to provide opportunity to the historical victims of invidious discrimination. In far too many circumstances, the executive and judicial and legislative branches of government have either failed to aggressively pursue racial justice, and in some cases have acted in ways turn back the clock. In addition to the failings of the executive branch detailed above, the U.S. Congress is too often mired in partisan politics to effectively advance a racial justice agenda. And, as alluded to earlier, many decisions of the U.S. Supreme Court and lower courts have proved damaging. In one of the most striking examples, the Supreme Court held in *Alexander v. Sandoval*⁵⁹ that private individuals must allege and prove intentional discrimination and cannot use racially disparate impacts to prove their case under Title VI of the Civil Rights Act of 1964.

The United States, its agencies and political subdivisions must vigorously enforce existing civil rights laws. And we must ensure that these same entities expand their understanding of how contemporary racism operates. Along with the U.S. Constitution and federal statutes, international treaty instruments, such as the CERD (which the U.S. has ratified with three reservations, understandings and declarations qualifying the extent to which it would adhere), constitute the supreme law of the land. As you know, the CERD prohibits racial discrimination in a broad sense, including any policy that has the purpose or effect of impairing human rights and fundamental freedoms on the basis of race.

Having a department of the federal government that is focused and motivated to discharge its anti-discrimination mission is critical to enforcement of the civil rights laws, and also has tremendous practical and symbolic significance. And strict compliance with the CERD, strengthening civil rights laws, and overruling or adopting legislative fixes to damaging Supreme Court decisions are all necessary strategies to move this country closer to racial justice. These measures would not only increase the country’s safeguards

⁵⁹ 532 U.S. 275 (2001).

against the effects of racism; but they would also enhance the country's accountability in the international community.

LDF strongly supports the work of this Commission and we appreciate the opportunity to work in partnership to address these important issues. We urge you to continue your leadership on these issues and continue reaching out to NGOs like the Legal Defense Fund.

UNITED NATIONS General Assembly

A/HRC/4/9/ADD.2 4 JANUARY 2007

Human Rights Council

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION
60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS
COUNCIL"**

REPORT OF THE INDEPENDENT EXPERT ON MINORITY ISSUES

MISSION TO HUNGARY (26 JUNE–3 JULY 2006)

SUMMARY

The Independent Expert on minority issues, Ms. Gay McDougall, in pursuance of her mandate, visited Hungary from 25 June to 4 July 2006. During the course of her visit, the Independent Expert held numerous consultations in Budapest, and undertook visits to Roma communities in the Pecs region and to other groups to see first hand the situation of minorities and to consult directly with community members.

The Independent Expert highlights that the Hungarian Government has demonstrated significant political will and dedicated considerable resources and attention to address the needs of, and problems faced by minorities in general. She considers the unique Hungarian system of minority self-governments to be a valuable contribution to efforts to enable cultural autonomy for many officially recognized minority groups in Hungary. However, at the local level, due to higher priority needs of Roma communities facing severe discrimination, exclusion and poverty, the system has largely been diverted from its intended function to preserve Roma culture, identity and language.

The Roma have been the most affected by Hungary's difficult transition period from socialism to a market-based economy. Economic decline and privatization of State industries caused a disproportionately high percentage of employed Roma to lose their jobs. Nationwide Roma unemployment rates continue to greatly exceed those of other minorities and the majority population, exacerbated by exclusion from labour markets due to widespread discrimination and anti-Roma prejudice.

Statistics reveal a life expectancy for Roma of over 10 years less than that of the general population. Education of Roma is characterized by widespread segregation on racial grounds and poor educational opportunities, particularly for Roma girls. Thousands of Roma live without running water, electricity and other basic services. The Roma population face serious discrimination, exclusion and unusually high levels of poverty. These problems place particular burdens on Roma women who play the primary role in fashioning coping mechanisms for their families and who must also negotiate the unique limitations placed on them in the larger society due to their status as women.

Roma issues require urgent and focused attention over a considerable period. The Independent Expert expressed immediate concerns that current moves by the newly re-elected Government to re-

structure its previous institutional focus on Roma issues, in favour of a broad-based policy to address “disadvantaged groups”, will lead to an erosion of progress on Roma issues. She highlighted concern over the situation of Roma in the fields of education, employment, health, housing, and criminal justice, as well as the need to comprehensively address societal discrimination and anti-Roma prejudice.

The Independent Expert notes that the Government must take effective legislative and administrative steps to monitor and enforce compliance with national standards and the fulfilment of the rights of Roma at the municipal level. Essential early measures are needed to provide full and effective political participation of minorities including the Roma, at all levels, including within Parliament, as a key means to fulfil their rights. Data disaggregated by ethnicity and gender is urgently required to measure, monitor and remedy ethnic discrimination.

INTRODUCTION

1. The Independent Expert on minority issues, in pursuance of her mandate, visited Hungary from 25 June to 4 July 2006. During the course of her visit, she conducted extensive consultations with government representatives, civil society organizations, and academic and media institutions and visited the Budapest and Pecs regions. She conducted interviews, including with senior government officials, in order to assess the situation of minorities in Hungary, and gained the views of non-governmental organizations (NGOs) and others working in the field of minority issues through consultations and open discussion forums.

2. The Independent Expert undertook visits to minority communities, including a Roma community in the Pecs region and a German minority community in the Budapest region, to consult directly with community members, local minority self-government representatives and others in order to gain their views and opinions. She undertook visits to kindergartens, schools and community centres, local cultural institutions, and to a Roma housing rehabilitation scheme. She met specifically with women from minority communities, notably the Roma, in order to gain their perspectives on issues related to her mandate and held a dedicated forum for Roma women.

3. In view of the particularly serious situation faced by the Roma minority relative to other minorities in Hungary, the Independent Expert considered that the Roma warranted a particular focus during her visit. A particular emphasis was placed upon Roma issues in consultations, discussion forums and visits, and is reflected in the present report. While focusing on Roma in Hungary, the Independent Expert acknowledges the serious situation faced by Roma Europe-wide. Her focus on Roma in no way reflects a negative judgement as to the relative situation of Roma in comparison with their situation in other European countries. Analysis indicates that Hungary has demonstrated innovation and leadership in its efforts aimed at confronting anti-Roma discrimination.

4. The Independent Expert’s evaluation of the situation of minorities in Hungary is based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic

Minorities (hereafter “the 1992 Declaration on Minorities”) and other relevant international standards, which identify four broad areas of concern relating to minorities globally. These are: (a) protecting a minority’s existence, including through protection of their physical integrity and the prevention of genocide; (b) protecting and promoting cultural and social identity, and the right of national, ethnic, religious or linguistic groups to affirm and protect their collective identity and to reject forced assimilation; (c) ensuring effective non-discrimination and equality, including ending structural or systemic discrimination; and (d) ensuring effective participation of members of minorities in public life, especially with regard to decisions that affect them.

5. The Independent Expert was provided with excellent assistance and cooperation from the Hungarian authorities throughout the planning and conduct of her visit. She also thanks numerous NGOs and academic institutions for their vital assistance, support, information and documentation, which has greatly informed her visit and subsequent report and recommendations. She also benefited from the work of the Council of Europe Secretariat to the Advisory Committee on the Framework Convention on the Protection of National Minorities, and the office of the Organization for Security and Cooperation in Europe High Commissioner on National Minorities.

6. The Independent Expert regrets the fact that widespread reforms to the institutional structures of the Hungarian Government, including those specifically relating to minorities, were under way during the course of her visit to Hungary. Some institutional changes may therefore not be fully reflected within the present report.

I. MINORITIES IN HUNGARY—RECOGNITION AND DEMOGRAPHICS

7. Hungary officially recognizes 13 national and ethnic minorities, which are: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian. According to the census of 2001, a total of 314,000 people declared to belong to one of these minority groups (out of a total Hungarian population of circa 10.55 million), although actual numbers are much higher. The Roma are the largest minority group with a Government-estimated population of approximately 600,000 people. Minorities live in about 1,500 settlements throughout the country, and generally constitute a minority even within the settlements they inhabit. The Government records that the 13 recognized minorities speak 14 different languages, due to the Roma using 2 different languages (Romani and Beash).

8. The right of conscience and freedom of religion are safeguarded in Hungary. Individuals, belonging to different national, ethnic, religious communities may freely practise, or refrain from, their conscientious conviction. According to the census of 2001, there are 250 religious groups in Hungary. Until 2006, 146 denominations were registered as a church at the registration court. To establish a church or a religious community as a legal entity requires a representative and 100 individuals declaring the acceptance of the rules of operation.

9. To be considered by the Hungarian Parliament for recognition as a national or ethnic minority, claims must be based on the group having existed in Hungary for 100 years, and 1,000 signatures of minority individuals legally resident in Hungary must be submitted. Claims by the Macedonian minority and the Russian minority for recognition were rejected by Parliament due to failure to meet these criteria. The Government rejected requests by the Chinese Government to recognize a Chinese minority in Hungary. In June 2006 the deadline for submission of signatures by members of Hungary's Jewish community passed without the required signatures, despite estimates that the Jewish population numbers some 100,000 persons.

II. LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK FOR MINORITY RIGHTS IN HUNGARY

A. KEY LEGISLATION AND MONITORING BODIES

10. Since 1990 the Governmental Office for National and Ethnic Minorities (ONEM), a key element of the institutional framework to address minority issues, has been in charge of elaborating and coordinating the Government's minority policy. The Hungarian Parliament adopted the comprehensive Act LXXVII on the Rights of National and Ethnic Minorities in 1993. The Act declares the right to national and ethnic identity as a universal human right and the special individual and collective rights of national and ethnic minorities as fundamental freedoms to be respected and enforced.

11. The 1993 Act includes the collective right to establish minority self-governments for officially recognized minority groups, with the aim of ensuring a suitable framework for the cultural autonomy of minorities. Since 1994, the election of members of national and local minority self-governments has taken place every four years. The number of minority self-governments operating at the local level on 1 November 2004 was 1,827, with a total number of 7,772 elected representatives.

12. The "national minority self-government" is the body which represents the minority at the national level. Legislative and State administrative bodies are required to consult the national minority self-government on issues that affect the minority, and they have the right of veto in legislation concerning traditional historic minority settlements and monuments and core teaching materials used in minority public education.

13. The office of the Parliamentary Commissioner for National and Ethnic Minorities Rights (Minority Ombudsman) was established in conformity with the provisions of the Constitution and Act No. 59 of 1993. This independent institution is empowered to investigate complaints regarding abuses of minority rights and to initiate general and individual measures to achieve remedy. The Minority Ombudsman seeks to work in cooperation with the newly established Equal Treatment Authority (see paragraph 14 below) and plays a critical role in enforcing the ban on discrimination, despite important limitations to his powers. The private sphere and the judiciary do not fall within the Minority Ombudsman's jurisdiction,

limiting possibilities to consider complaints related to private sector employment and the criminal justice system.

14. Act No. CXXV on Equal Treatment and the Promotion of Equal Opportunities was adopted by Parliament on 22 December 2003 (entering into force at the end of January 2004), inspired by Hungary's obligations for European Union accession in May 2004, and has assisted in filling a gap in Hungary's legislative framework. The Act lists 19 factors that would constitute discrimination either of a direct or indirect nature and is applicable to both public and private institutions and organizations. Comprehensive anti-discrimination legislation was also a primary recommendation of the Committee on the Elimination of Racial Discrimination (CERD), in its consideration of the report submitted by Hungary at its sixty-first session in 2002.

15. The 2003 Act requires all government institutions and other entities with over 50 per cent State ownership and over 50 employees to adopt an Equal Chances Plan, although this requirement does not extend to totally private enterprises and foreign-owned companies. Reports have suggested lack of progress by government institutions in this regard, while local authorities "can" adopt such programmes. These programmes seek to analyse the situation of disadvantaged groups and establish steps to be taken to have a positive impact and to create equal opportunities. The Act makes clear expectations that affirmative action programmes should be implemented at all levels and explicitly changes the operative norm from "the banning of negative discrimination" to "the requirement of equal opportunities".

16. The government body responsible for monitoring enforcement of this Act, the Equal Treatment Authority (ETA), has functioned since early 2005 and had considered circa 900 cases as at June 2006, some 30 per cent relating to Roma. Following a complaint this body is required to complete its procedures within 75 days (45 if minors are affected), significantly reducing the time taken to reach a finding in discrimination cases. Findings of violation of the Act can result in a requirement to cease discriminatory treatment and/or the imposition of a financial penalty (paid to the State), and findings of violations can be made public. The ETA does not have authority, for example, to require a violating employer to hire a person who has been discriminated against, or to impose punitive damages. It is the stated desire of the ETA to achieve friendly settlements between parties.

B. INTERNATIONAL STANDARDS

17. In 1995 Hungary ratified two key documents of the Council of Europe regarding minority protection: the Framework Convention on the Protection of National Minorities, and the European Charter for Regional or Minority Languages. Hungary has ratified the 1961 European Social Charter and several of its protocols, but it has not yet agreed to be bound by the Revised European Social Charter of 1996 and has also not ratified the additional protocol making possible collective complaints under the Charter mechanism. This is of particular concern, given the serious problems faced by the Roma minority in a number of Charter areas.

18. Of particular relevance to minorities, Hungary has ratified the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of Discrimination against Women. Hungary is obligated to report on a regular basis to the relevant monitoring bodies, and has a good record of reporting.

III. THE GENERAL SITUATION OF MINORITIES AND FUNCTIONING OF THE SYSTEM OF MINORITY SELF-GOVERNMENT

19. According to data of the Hungarian Central Statistical Office, the social indicators of 12 out of the 13 officially recognized minority communities (Armenian, Bulgarian, Croatian, German, Greek, Polish, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian) are similar to those of the majority population. The Government considers therefore that, from a socio-economic viewpoint, the effective integration of these 12 minorities in Hungary is complete.

20. With regard to the preservation and promotion of cultural and language identity, the system of minority self-government provides minorities with finance to achieve a high degree of cultural autonomy in some cases. Meetings between the Independent Expert and Presidents of the Slovak and Croatian minority self-governments, together with a visit to a German minority community, demonstrated that the system offers significant benefits for some minorities in the development of cultural institutions and services, and the teaching and preservation of minority languages.

21. Funding based on a tender system has provided essential grants to assist in establishing such facilities as libraries, museums and heritage centres, theatres, research and educational institutions, and media and publishing outlets, and to engage in activities of a cultural nature, for example youth camps and exhibitions. Problems have been encountered due to the high level of financial and administrative dependence of local self-governments upon the national "parent" bodies, and an inadequate basis for allocation of funds, leaving some unable to function effectively. However, recent amendments to the funding system should allow a budget allocation for all local minority self-governments based on a number of established criteria.

22. State funding is often insufficient to fulfil the full cultural and educational requirements of minority communities. However, some well-integrated minorities operate income-generating activities including publishing enterprises and training facilities, and have supplemented the overall funding available. Such activities have also created employment opportunities for some communities.

23. A visit to the German minority community and school in Solymar in the Budapest region revealed a generally high level of satisfaction with the system of minority self-government, and a harmonious and enabling relationship with municipal authorities. Community representatives noted that following significant historical difficulties for the German minority—deportation of many families in the post-war period and restrictions on language use—the

present system has assisted in maintaining key elements of minority culture and identity and proved extremely valuable to the community.

24. In education, the system of minority self-governments has enabled funding for the teaching of and in minority languages at primary and secondary levels. According to the regulations, both local and national minority self-governments are entitled to take over a local minority school if they conclude an agreement with the local municipal council. Competition for limited funds was however noted as a problem that has created tensions and resulted in schools achieving only limited progress in minority language education, in terms of the hours of teaching available and the subjects taught. Concerns were expressed that plans to consolidate schools would have further detrimental effect on minority language teaching.

25. In recognition of difficulties encountered by small minority communities and municipal authorities in regard to the provision of minority language education, Act LXXIX of 1993 on Public Education as modified by Act LXVIII of 1999 offers a system of “complementary minority education”, which makes participation in minority education possible for minorities that do not have a minority school due to low numbers of children. Students attending normal school education are entitled to special additional courses to study their minority language and culture. This instruction is recognized and the certificate achieved entitles students to credits to assist them to enter higher education. Extra-school courses called “Sunday schools” also constitute a special form of minority language education organized by national minority self-governments, with financing from the Ministry of Education.

26. Abuses of the system of minority self-government have been recorded, including cases where non-minority individuals have acquired positions within, or actually established, minority self-governments for financial and political gain, in what has been termed “ethno-business”. Amendments to the 1993 Act on National and Ethnic Minorities, requiring registration of persons belonging to minorities in order to vote and stand for election to minority self-governments, aim to address such problems, although complaints continue to be raised by minorities. Amendments also allow minority self-governments to take over certain institutions, including schools, with a view to enhancing their ability to fulfil minority language teaching requirements.

27. Anti-Semitism is considered by some observers to have been a consistent feature of Hungarian public life in recent years, and part of political discourses of the Hungarian right, sometimes in coded, although sometimes in explicit form. However, by comparison with the Roma, for example, accusations of widespread hostility against Jews have not been seen to result in systemic exclusion or discrimination in sectors such as employment. Sporadic incidents and the activities of the far right, including neo-Nazi marches and vandalism of cemeteries, have created tensions and anxiety amongst the Jewish community.

IV. THE SITUATION OF THE ROMA IN HUNGARY

A. EXISTENCE AND IDENTITY

28. The general situation of discrimination, exclusion and anti-Roma prejudice remains cause for serious concern in Hungary. Based on social and economic indicators and statistical surveys, and in common with their situation across Europe, Roma remain the most deprived group with respect to education, employment, health and housing and suffer disproportionately high levels of extreme poverty. In response to this situation the Government has implemented a number of policy measures, often of an innovative nature.

29. Three major Roma groups exist in Hungary, the “Magyar Cigany” or Hungarian Gypsies, the Vlachs and the Beash. The Magyar Cigany are considered the most integrated of Hungary’s Roma communities and constitute probably around 80 per cent or more of Hungary’s total Roma population, many living in and around the Budapest region. The Vlachs, originally from Romania, number around 100,000 and are considered culturally very different, often maintaining traditional, patriarchal communities headed by a single male community leader. The Beash are the smallest Roma community, estimated to number around 40–50,000. There are completely or predominantly Beash communities in the south-west region of the country. Government estimates put the Roma population at up to 600,000, although some NGOs working on Roma issues believe the actual figure to be considerably higher.

30. Aspects of Roma identity and culture, including traditional Roma languages, have suffered serious decline to the point of vanishing in some communities. The Government considers that approximately 80–85 per cent of the Roma population have lost the full use of Roma languages, partly a result of “assimilationist” policies pursued under communism and a lack of opportunities within the formal education system to learn or be taught in Roma languages, culture and traditions.

31. In 2002, the Socialist-led Government introduced a positive policy to recruit Roma professionals to senior positions and departments dedicated to Roma-related issues in relevant ministries, reflecting a mainstreamed, yet targeted approach to Roma issues, identified by the Independent Expert as a valuable example of “good practice”. However, following re-election in 2006, the same Government has favoured the incorporation of Roma issues, without differentiation, into a broader institutional and policy framework to address the problems of “disadvantaged groups”. This restructuring is widely perceived by Roma representatives as damaging to prospects for informed and appropriate policy to address the unique problems faced by the Roma, which clearly distinguish them from other socially or economically disadvantaged groups.

32. Hungary’s desire to join the Euro-Zone by 2010 is considered to be fuelling widespread budgetary cuts and institutional downsizing, with the aim of reducing Hungary’s budget deficit and meeting criteria for Euro-Zone entry. While recognizing the potential long-term positive effects and opportunities created by economic growth resulting from accession to the European Union and future Euro-Zone entry, due to persistent discrimination in the

labour markets, the Roma will likely be the last to benefit from new employment opportunities. The urgent situation of the Roma warrants continued dedicated attention and funding by Government institutions, sufficient to ensure effective and sustainable solutions.

33. The Independent Expert held a forum for Roma women and interviewed women regarding their experiences and opinions. Women are central to Roma families, bearing much of the burden of childcare and maintaining traditional Roma culture and identity, while also often fashioning coping mechanisms for their families when facing hardship. As such they are deeply affected by the consequences of discrimination and the impact of poverty, and their experiences and voices are vital to understanding the full extent of the problems. Roma women commonly face multiple or “intersectional” forms of discrimination due to their status as both Roma and women.

34. Roma women described concerns related to fundamental issues of hunger, low income, housing, unemployment and their children’s schooling. Other issues such as domestic violence and trafficking were considered important but many expressed their inability to deal adequately with such problems because of the all-consuming demands of day-to-day survival for themselves and their families. When Roma women are victims of domestic violence, discrimination against them as Roma makes unviable the recourse that non-Roma women might have to law enforcement, judicial sanctions or shelters. Access to, and knowledge of services for women remains an important obstacle for Roma women, and blockages in regard to the implementation of national policy at the municipal level exacerbates this. Issues related to child marriage in some sectors of the Romani community, are also lacking adequate policy measures.

35. Roma women are likely to face exclusion from employment opportunities equal to that experienced by Roma men and are further disadvantaged by patriarchal attitudes within the larger society. Women are generally paid less, and for Roma women “the doors are often closed and we are not even able to demonstrate our skills”. During the forum, Roma women highlighted that Roma women with nursing or teaching qualifications, for example, have been unable to find jobs largely due to widespread discrimination.

36. The Independent Expert welcomed the report of Hungary to the Committee on the Elimination of Discrimination against Women (CEDAW) in 2006. This report highlights the generally disadvantaged situation of Roma women, although regrettably it fails to provide disaggregated data to fully reveal the extent of the problems faced, or to fully elaborate policies and programmes to address the specific needs of Roma women.

37. Within Hungary’s universalist approach to tackling discrimination (avoiding the targeting of special groups), Roma women’s issues fall within broader initiatives in the field of gender. Roma women expressed their view that due to the particular circumstances of discrimination, and multiple-discrimination, such general measures are inadequate to meet their needs. The Independent Expert welcomed new gender initiatives in relation to employment, education, housing, domestic violence and rape, however,

she agreed that without a targeted approach these would fail to meet the needs of Roma women.

B. ROMA POLITICAL PARTICIPATION

38. Roma are very poorly represented within the national Government and only three Roma Members of Parliament (representing the main opposition party) were elected in 2006 to the 386-member Parliament. The governing coalition has no Roma MPs and there is considered to be a general lack of political will to field Roma representatives as political candidates amongst all political parties, despite competition for Roma votes. Proposals to reduce Parliament by 2010 to between 200–289 members, may further reduce the possibilities for Roma representation according to Roma commentators.

39. Under the provisions of the Constitution and the 1993 Act LXXVII on the Rights of National and Ethnic Minorities, there is a requirement to ensure the representation of minorities within Parliament. However no mechanism for the representation of minorities has been established since the transition period and a solution is long overdue. The Independent Expert supports the opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, that the Government should draw inspiration from systems used in other countries and in this regard recalls articles 6 and 7 of the 1992 Declaration on Minorities relating to inter-State cooperation.

40. Current Roma MPs were elected as mainstream party representatives. Although a Roma political party, Roma Összefogás Párt (Party for Roma Cooperation) did field candidates in recent elections, it achieved a poor percentage of the votes cast. Uniquely amongst European Union countries, Hungary has two Roma women Members of the European Parliament. Domestically, at all but the lowest levels of minority self-government, Roma women are underrepresented. A higher percentage of Roma women play leadership roles in the minority self-government at the local settlement level where there are few if any resources, but nevertheless, an expectation that they will address the community's social problems.

41. The system of minority self-governments established 999 local Roma self-governments in 2002 increasing to 1,118 following 2006 elections. Support given to the National Roma Self-Government in 2006 was 820,000 euros with an additional 254,000 euros for the functioning of institutions under their management. However, at the local level, due to higher priority needs of communities facing severe discrimination, exclusion and poverty, the system has largely been diverted from its intended function to preserve Roma culture, identity and language.

42. The failure and neglect of municipal authorities to fulfil their social and economic responsibilities for which they are State funded, have left Roma self-governments to address pressing issues beyond their originally designated function. Many face pressure to act as social service providers, which is in actuality the responsibility of municipal authorities. Roma self-governments lack the resources or capacity to provide the solutions required by Roma communities, and conflicts, including inter-community conflict, can result. The

Independent Expert stressed that the system was not intended as a vehicle for confronting urgent social and economic problems.

43. There is a need to clarify the competencies and jurisdictions of minority self-governments. Efforts to amend legislation at the national level to increase the authority of local minority self-governments have reportedly been blocked or weakened by mayors who also serve as members of Parliament. A welcome initiative to start in November 2006 requires that Presidents of minority self-governments be ex officio members at meetings of municipal authorities, allowing them to raise issues directly with the competent authorities.

44. The minority self-government system does provide a useful structure, with electoral legitimacy, which can be a voice for Roma community concerns. Roma can progress within the system of minority self-government from the local to potentially the county and national levels. It also offers a training ground for political participation and an incentive and motivation towards wider Roma political activity into mainstream political structures. In 2006, at the national level, the highest number of candidates for minority self-governments were fielded by two Roma minority organizations. Government amendments to the 1993 Act on National and Ethnic Minorities seek to eliminate an anomaly in the original legislation that allowed non-minorities to stand for elected positions and to exercise a franchise in elections for minority self-governments. However, a registration process in order to vote and to stand for election has been criticized on the grounds that Roma are reluctant to identify themselves as such for official purposes because of memories of historical persecution, including genocide in Europe. Additionally, many Roma consider themselves poorly served by current political mechanisms and see little advantage in cooperation. By the 15 July 2006 registration deadline, 106,341 Roma voters had registered as such.

C. DISCRIMINATION

45. The Independent Expert considers that widespread discrimination and anti-Roma prejudice exist within Hungarian society, resulting in exclusion in all walks of life and significant political, social and economic marginalization. She expressed particular concern regarding the effects of discrimination in the fields of education, employment and housing, addressed separately in the present report.

46. Despite increasing growth and opportunity generally in Hungary, the situation of the Roma is not improving, and may be worsening due to a widening gap between mainstream society and the Roma. In the period of transition from communist rule, Roma suffered disproportionately from the effects of reform. Discrimination and prejudice significantly increased as Roma faced long-term unemployment, poor service provision and access to education, and consequent negative stereotyping by wider society. The long-term consequences of discrimination and exclusion have resulted in a belief expressed by many Roma, that their situation is unlikely to improve.

47. Allegations of widespread discrimination within the health-care system and social services are cause for concern. Discrimina-

tory practices, including reports of segregated maternity wards for Roma women in some hospitals, and a high incidence of discriminatory treatment by medical staff have been cited as influencing Roma not to seek medical assistance in hospitals. Roma women also expressed serious concern at the disproportionate removal of Roma children into institutions on arbitrary grounds or on the basis of poverty. Municipal authorities can take a child without a court decision, and Roma women stated that the only way to gain redress or appeal the decision with the local authority was via judicial remedy about which many Roma are uninformed.

48. A 2002–2003 study by the Hungarian Helsinki Committee considered issues of racial discrimination against Roma in the criminal justice system and confirmed practices of racial profiling by the police. Research considered 1,147 court files and found discriminatory practices, notably in police stop and search policies. These findings suggest that the disproportionate numbers of Roma prison inmates may partly be attributed to discriminatory practices. Roma are only 5–6 per cent of the population, however, they are estimated at between 30 and 40 per cent of inmates.

49. Efforts by civil society groups to conduct anti-discrimination training for the judiciary are welcome. The activities of the Minority Ombudsman and the Hungarian Helsinki Committee to investigate possible discrimination in criminal justice have, however, been hampered due to the judiciary falling beyond the jurisdiction of the Minority Ombudsman, and public prosecutors commonly refusing to allow access to files.

D. POVERTY

50. The Roma in Hungary are disproportionately affected by severe poverty. A 2003 World Bank report states that 40.3 per cent of Romani households in Hungary live in absolute poverty compared to only 6.9 per cent of general Hungarian households, while Hungary's 2004 Millennium Development Goals (MDG) report, Reducing Poverty and Social Exclusion, states that by the end of the 1990s, 62 per cent of Roma families lived on less than half the median income (p. 20). According to a United Nations Development Programme (UNDP) and International Labour Organization (ILO) survey in 2002, more than half of Roma children live in households which regularly go hungry.

51. The Independent Expert has established within her initial report (E/CN.4/2006/74, para. 64) that minority groups that face widespread discrimination or exclusion are much more likely than other groups to be impoverished. The poorest communities in almost any region tend to be minority communities that have been targets of longstanding discrimination, violence or exclusion. Mainstreamed and targeted efforts to reduce poverty are essential to efforts to promote the full range of civil, political, social and economic rights for minority communities.

52. Poverty as faced by the Roma in Hungary is both a cause and a manifestation of the diminished rights and opportunities available to the members of that community. Poverty in this context involves more than just a lack of income or a daily struggle for basic sustenance. Roma are generally less able to participate effectively in political decision-making or to access mechanisms of justice

when their rights are violated. They suffer from unequal access to education, health care and employment.

53. Life expectancy rates are 60 years for Roma, compared to a national average of 72.3, while infant mortality rates are high. These are disparities which the Independent Expert considers to be a direct consequence of poverty. Furthermore a serious shortage of some 126 general medical practitioners in Roma areas, suggests that many may have little or no essential primary medical care services. Excluding Budapest, 18.6 per cent of Hungary's Roma live in a settlement without a local doctor.

54. Social welfare benefits are available upon application and are important in alleviating poverty. However, it is likely that due to lack of information and inadequate coverage of an effective social worker system in disadvantaged areas and isolated settlements, a relatively high percentage of Roma are failing to apply for full benefits to which they are entitled.

55. Hungary's 2004 MDG report usefully highlights the Roma's disproportionate experience of poverty. However, a major obstacle to measuring the magnitude of poverty, discriminatory treatment and social exclusion affecting Roma is Hungary's failure to date to generate and make available disaggregated data in fields such as education, health care, housing, and social services. Such data is essential to formulating adequate policies to confront both specific problems, and the wider situation of poverty affecting Roma.

56. According to the Government, the Hungarian Central Statistical Office is responsible for regularly collecting and publishing data on the situation of the different population groups in Hungary with respect to their income, education levels, poverty levels and other social and economic data. Reportedly under the Government's interpretation of Hungary's data protection law, gathering data according to ethnicity is illegal in Hungary. It is clear that if disaggregated data has been gathered by the Government it has been done on an inconsistent basis.

57. The European Union has affirmed that data protection rules apply to personal data, not to aggregate data about groups, nor data disaggregated by ethnicity or other criteria. The European Union's social inclusion process imposes a range of requirements on Governments to produce accurate data on the situation of marginalized groups.

E. EDUCATION

58. Urgent attention is required to fully address the education needs of Roma children, including ensuring access to quality education, curriculum and language issues, and the specific situation of Roma girls regarding education. Significant efforts by the Government to address segregation and discrimination are commended by the Independent Expert, however, they have to date achieved only limited impact despite high levels of funding and prioritization of this issue.

59. Hungary's third periodic report to the Committee on Economic, Social and Cultural Rights (EC/12/HUN/3, para. 598) states that almost all Roma children now complete eight classes of primary school, a significant improvement over the rates of only 26 per cent and 75 per cent at the beginning of the 1970s and 1990s

respectively. However, very few progress to achieve a secondary school leaving certificate. Roma are 50 times less likely to receive a college or university diploma than non-Roma and less than 1 per cent hold higher education certificates.

60. Post-communist Constitutional provisions entrenched local government authority in a number of important areas including education, creating a stumbling block for national efforts to address disparities in education between Roma and non-Roma children. To date, no Government has been able to achieve amendments to the Act on education that would wrest even limited powers from local authorities. While the national Government faces some limitations in its influence on local authorities, it is considered not to have been robust enough in its efforts to enforce its national education integration policy. Furthermore, there is no effective independent monitoring and evaluation system within Hungary and schools are under no obligation to accept or invite independent inspectors even if recommended by the national Government.

Segregation in education

61. One Roma woman commented that: "Roma children are being robbed of their future by segregation in education." The vast majority of children attend primary schools that are segregated with respect to Roma and non-Roma students. Eliminating segregated schooling at the primary level has become the priority objective for creating access to quality education for Roma. This important imperative adopted by the national Government has been the focus of resistance by many parents and local "majority" governments.

62. Resistance has taken a number of forms including: "white flight" to communities without Roma populations within the school districts, labelling Roma children as mentally disabled and diverting them to separate schools or separate tracks within majority schools, designating Roma as "private students" who need not attend classes, and even co-opting the Roma minority self-government structure in order to neutralize its ability to block local efforts to evade desegregation initiatives of the national Government.

63. The system of "free choice" established by the Constitution has been used as a mechanism for segregation in the school system. Parents can decide not to send their children to certain schools, and schools in other districts were free to make decisions as to which students to accept from outside their catchment area. Amendments to the Education Act in 2005 offer useful potential to assist in combating "free choice" as a vehicle for school segregation, since schools will be required to accept "disadvantaged students" first and to guarantee that a certain balance is maintained in the student body. This would avoid the "tipping point" phenomenon whereby increases over a certain percentage of Roma students would drive the best teachers to abandon the school and non-Roma parents to withdraw their children.

64. Another vehicle to achieve segregation is that Roma children are disproportionately placed in separate schools or classes for the mentally or learning disabled, regardless of their actual intellectual abilities. The Commissioner for the Integration of Disadvantaged and Roma Children of the Ministry of Education has stated that while 2 per cent of non-Roma children are in special needs schools

for children classified as “slightly mentally disabled”, this figure is 20 per cent amongst Roma children. Children are tested prior to entrance to the primary school system, at which stage Roma children are more likely to be filtered into such special schools. While attendance of kindergarten is important to early educational progress, estimates suggest that a high percentage of Roma, usually those living in smaller or isolated settlements, lack kindergarten places. Moreover 10–11 per cent of Roma children never attend kindergarten although, according to the Act on Public Education, one year is compulsory for every child before they start school. On a positive note, new policies have been conceived to make it harder to fail children in the first three years of schooling, assisting disadvantaged children to catch up.

65. Financial motivations at the municipal level may work to perpetuate segregation and Roma exclusion from mainstream education. The State gives to municipalities higher grants on a per capita basis for children labelled slightly mentally disabled. However, without effective independent monitoring, there is often no evidence that extra funds are spent on the special needs schools, which are widely regarded as substandard with poor facilities and low teaching standards. Research groups suggest that the numerical intake of children into special needs schools remains constant year-on-year, suggesting a system based on quotas and institutional maintenance, rather than on the specific education needs of disabled children.

66. As part of its Action Plan for the Decade of Roma Inclusion 2005–2015, focusing on education, employment, health and housing, the Hungarian Government has provided financial incentives to local governments to assist in desegregation of schools. However the take-up has been poor and serious abuses of the system have been reported. For those authorities that fail to put in place desegregation measures, according to the Equal Treatment Act and recent judicial decisions, no penalties have been imposed and their core State funding remains intact.

67. A widely cited recent judicial decision on school segregation found the Miskolc Municipality, in its role as Education Authority for Hungary’s second largest city, to be maintaining segregation of Roma children in primary schools where they are taught in separate buildings and receive lower quality education. A legal action brought in June 2005 focused on seven schools which were “administratively and financially” merged but in practice maintained physical segregation. In June 2006, the Debrecen Appeals Court overturned a first instance judgement, in finding that Miskolc maintained the segregation of Roma children, violating their right to equal treatment. Importantly the Court agreed that not only active, but passive conduct could lead to a violation of the Equal Treatment Act.

68. In Jászladány in 2002 the municipal government actively segregated Roma and non-Roma children through the creation of a private foundation school (occupying half of the existing school building) excluding Roma children. This was partially achieved by manipulation of the system of minority self-government in order to neutralize its powers of veto. In the Roma minority self-government elections, the mayor’s wife, considered by community members to

be non-Roma, stood as a candidate and was elected president. Until reforms instituted in July of this year, non-minorities could participate as candidates and the electorate in contests for minority self-governments. In this capacity, she supported the foundation school, thus allowing it to be registered.

69. The Equal Treatment Act bans segregation in schools and the Equal Treatment Authority has the power to bring legal cases against local authorities in cases of segregation. However, a finding of violation, even by the Constitutional Court, is not matched by sufficient penalty to prevent continuation of the offence or to act as a deterrent. In the Miskolc case, the Appeals Court concluded that, beyond a finding of violation and an order to publicize its finding via the media, it could not require Miskolc to actively engage in implementing a desegregation plan.

Education of Roma girls and women

70. Hungary's 2006 report to the Committee on the Elimination of Discrimination against Women (CEDAW) demonstrates that some 35–40 per cent of Roma women have not completed primary school education. The Independent Expert expressed her concern in particular over the educational situation of Roma girls, both in regard to the discriminatory educational environment and attitudes within Roma communities that further restrict the participation of girls in education.

71. Policy measures must take into account the different obstacles faced by girls, and the specific concerns of parents, for example in relation to situations where children must travel to schools in neighbouring localities. The persistence of rigidly defined traditional gender roles within Roma communities was highlighted as a factor seriously restricting access of Roma girls to full education possibilities. The high proportion of Roma girls leaving education at an early age requires focused attention. A system of “second chance schools” offers an opportunity for those who have become mothers at an early age, to continue education by accommodating childcare needs. The Independent Expert commends such initiatives as examples of “promising practice”. Government statistics also reveal a predominance of female students benefiting from a scholarship programme for Roma students.

Roma scholarship programme

72. The Government's Roma scholarship programme¹ is highlighted by the Independent Expert as offering Roma students increased opportunities to progress within the education system by reducing the financial burden upon disadvantaged families. In the academic year 2005/06, 1,562 Roma received a scholarship. Moves in 2005 towards “post-financing” scholarships, requiring students to be reimbursed tuition fees at a later date, may restrict opportunities for many potential Roma students. Additionally examples were given of students excluded from their studies by administrative difficulties. With adequate safeguards and monitoring to pro-

¹The Public Foundation for Hungarian Gypsies gives scholarships for Roma pupils, based on ethnic criteria, and a separate programme of the Ministry of Education called Útravaló provides support to socially disadvantaged children and their mentors based on social criteria.

tect against abuse by non-Roma, the scholarship system is considered an example of “good practice”.

F. EMPLOYMENT

73. The Roma minority face widespread discrimination in employment contributing to disproportionately high unemployment rates. According to the Public Foundation for European Comparative Minority Research, in 2006 only 29 per cent of the male Roma population between 17 and 75 are employed. The European Roma Rights Centre (ERRC) highlights that 64 per cent of Roma interviewed stated that they had suffered direct racial discrimination in hiring procedures, and that Roma were eight times more likely to be unemployed than non-Roma. In some areas, near total exclusion of Roma from the labour market is partially attributable to a dramatic consequence of racial discrimination. Many Roma are compelled to find work in the grey economy, offering low wages, and no job security or related benefits in sectors including construction and forestry. Hungary’s recent economic growth has had no significant impact on Roma unemployment, due to widespread discrimination.

74. According to civil society analysis, while nearly all were employed during the communist era, from the late 1980s through the early 1990s, approximately 40 per cent of employed Roma lost their jobs, compared to approximately 10 per cent of the majority population. Post-communist reform resulted in privatization or decline of nationalized industries and subsequent job loss, most affecting low or unskilled workers and those facing discrimination.

75. Analysis of the employment situation amongst Roma women has been frustrated by the general lack of gender perspective within labour market studies, and national policy on Roma issues has lacked a specific gender perspective. It is estimated that an additional 25 per cent of Roma women stay at home to care for the household or children. High levels of unemployment amongst Roma women are also driven by poor levels of education and multiple or intersectional forms of discrimination.

76. A dangerous legacy of long-term and widespread unemployment amongst Roma communities is a lack of working role models for Roma children and poor levels of motivation amongst Roma families to expend scarce resources on education when they perceive a future of unemployment. Hungary’s MDG report indicates that 50 per cent of Roma children live in households without any active earners.

77. Numerous cases of anti-Roma discrimination in employment have been catalogued and legal cases have been brought recently under the 2004 Equal Treatment Act and via the Equal Treatment Authority and the Minority Ombudsman. However, findings of discriminatory practice by employers have not resulted in penalties adequate to act as a deterrent against future discrimination. To date anti-discrimination legislation has largely failed to impact significantly on discrimination against Roma in the labour market.

78. In response to this serious situation, the Hungarian Government has funded a number of employment initiatives and targeted labour market programmes over recent years with varying degrees of success. Such schemes include training and skills development

initiatives, projects to assist Roma through employment agencies, expansion of public works programmes, and a Social Land Programme. In addition, in 2003 the Hungarian Ministry of Economy and Transportation launched a programme to aid micro, small- and medium-sized Roma business ventures, encourage entrepreneurship and facilitate Roma employment. Between 2003–2005 approximately 2 billion forint (7 million euros) were invested into Roma businesses and 400 new jobs created. According to the Government, in 2006 the amount allocated to the same purpose has been increased by 25 per cent.

G. HOUSING

79. Housing has been described by one observer as the biggest emergency in Hungary in the post-communist era. Roma are disproportionately housed in substandard accommodation, in some cases detrimental to health. The Independent Expert witnessed first hand families in such circumstances. UNDP states that 46 per cent of Roma households are without basic amenities. Homelessness, affecting an estimated 30,000 people in Hungary according to NGO statistics, also disproportionately affects Roma and should be addressed as a matter of urgency.

80. Forced evictions of Roma in Hungary are a problem requiring government attention and improved legislation and policy. About 10,000 people are currently threatened with eviction in Budapest, many of them Roma. In the post-communist reform era, autonomous but poorly financed local authorities raised funds by selling public housing resulting in one of the lowest public housing stocks in the region. Rental accommodation is often beyond the means of Roma families surviving on benefits, who often default on rental payments and are subsequently vulnerable to eviction.

81. Targeted forced evictions of Roma in the context of neighbourhood gentrification plans and authorities deliberately paying benefits late so that Roma families default on rent payment, have been reported. Instances have been documented and legal cases brought regarding activities to restrict Roma from purchasing or moving into houses in non-Roma localities. In one instance, with the alleged sanction of a local mayor, community members acted to seriously damage a house that a Roma family was due to occupy. Other tactics to exclude Roma include local authorities purchasing houses from public funds rather than allowing Roma families to purchase, or offering higher amounts to sellers than prices agreed with Roma families.

82. The Independent Expert welcomes initiatives to address the housing needs of some disadvantaged Roma settlements through rehabilitation schemes. The Government recently funded nine Roma settlements to upgrade housing, one of which (Kisvaszari) was visited by the Independent Expert. This project resulted in the building of new housing for the most in need and the refurbishment of existing houses for others, dramatically improving living conditions for some families. Funding restrictions have resulted in rehabilitation programmes being limited in number and scope and failing to include proposals for complementary measures in the areas of local employment and education. Inter-community conflicts

have arisen due to limitations in resources resulting in a selection process of those families to benefit from the schemes.

83. Under a government benefits policy Roma families with two children currently receive a grant of 2,400,000 forint (US\$ 11,000) towards adequate housing, doubling to 4,800,000 for families with four children. However, it is also widely considered by NGOs that there is a housing crisis for Roma families, and the Independent Expert witnessed large families who had been rehoused only as part of a separate and limited programme of settlement rehabilitation. Analysis is required to ensure that housing subsidies to which Roma are entitled are being claimed and delivered in a timely manner, and are sufficient to provide adequate housing.

84. It is evident that the Government's efforts to provide adequate legal protection to individuals have not been sufficient with regard to housing. The Government has not yet ratified key provisions of international law, most notably the Revised European Social Charter. In addition, the Government has removed a number of previously existing protections against forced evictions. It is clear that Roma would benefit significantly from improvements to general law in the field of housing rights.

V. CONCLUSIONS AND RECOMMENDATIONS

85. Having widely consulted, assessed documentary information, and collected and analysed the views of various parties and stakeholders, the Independent Expert concludes that the Hungarian Government has demonstrated a high degree of attention and significant political will to addressing the unique needs of and problems faced by minorities.

86. The Independent Expert is required by her mandate to identify best practices by States and in this respect highlights a number of legislative and policy initiatives undertaken by the Government. The Independent Expert believes that the 1993 Act on the Rights of National and Ethnic Minorities provides an innovative and dedicated approach to minority issues. Hungary's system of minority self-governments, based on this Act, is a "promising practice" and a valuable contribution to cultural autonomy. It should however be monitored closely to ensure that it functions effectively and in accordance with its stated purpose. She notes in particular Act No. CXXXV on Equal Treatment and the Promotion of Equal Opportunities, which provides a comprehensive and valuable legislative framework on anti-discrimination.

87. The body charged with monitoring implementation of the Act, the Equal Treatment Authority, is considered to represent a "promising practice", that offers the potential, through rigorous application and enforcement of the Act, to significantly impact upon the incidence of discrimination in Hungary and encourage the development of affirmative action programmes throughout the public sector and in those areas of the private sector covered by the Act.

88. Equally, the Independent Expert considers the establishment of the Parliamentary Commissioner for the National and Ethnic Minorities Rights (Minority Ombudsman) as "good practice" and congratulates the Parliamentary Commissioner for work undertaken in this capacity. She encourages collaboration and coordination between these institutions. Furthermore, government initia-

tives in the field of micro-financing of Roma business ventures represent “positive practices” and such programmes should be continued.

89. The Independent Expert makes the following conclusions and recommendations:

(a) The Independent Expert considers the system of minority self-governments to be a valuable contribution to efforts to enable cultural autonomy for 13 minority groups in Hungary. Care should be taken, however, to make clear that the minority self-governments’ system is not seen as a substitute for full and effective participation in the “majority” political apparatus or as a mechanism through which municipal governments may evade responsibility to guarantee fundamental economic and social rights;

(b) The Government of Hungary should seek to adopt, without further delay, measures to ensure the effective political participation of underrepresented minorities including the Roma in Parliament as provided for in Hungary’s Constitution. Full and effective participation in national and regional political structures, as well as Roma representation within key government ministries, is considered essential to future efforts to protect and promote the rights of Roma and other marginalized groups;

(c) The Government of Hungary should ensure consultation with and the full and effective participation of minorities including the Roma in all decisions that affect them, and in the planning, design, implementation and evaluation of policies and programmes in respect of minority issues;

(d) The Government should take steps to clarify the relationship between local minority self-governments and municipal “majority” governments to emphasize the primary responsibility that rests with municipal majority governments for meeting the social welfare needs of minority communities, including health care, education, housing and social benefits;

(e) In recognition of the extreme poverty faced by a disproportionate number of the Roma population, a governmental institution should be established with responsibility for coordinating the work of different ministries and institutions to ensure coherent and coordinated approaches to poverty reduction, particularly with targeted efforts with respect to the Roma minority.

90. The Independent Expert considers that activities of the newly re-elected Government to restructure its previous institutional focus on Roma issues, including dedicated departments in a network of the most relevant ministries, in favour of a broad-based policy to address disadvantaged groups, alongside widespread budgetary cuts and downsizing, will lead to an erosion of the progress made to date on Roma issues. The problems faced by Roma require urgent and focused attention, including affirmative action policies, for a considerable period.

The Government of Hungary should review and reverse its policy of institutional reform and restructuring of government departments which is diminishing the focus of attention on Roma issues in key ministries. Roma-targeted policies should

be continued and strengthened along with the recruitment of Roma professionals into key government posts relating to Roma issues and policy. This is highlighted as a previous best practice by the Independent Expert.

91. A comprehensive anti-discrimination law and a newly established Equal Treatment Authority to handle complaints were welcomed by the Independent Expert as valuable new additions to Hungary's legal standards and enforcement mechanisms. However, limitations in the powers of the Parliamentary Commissioner for the National and Ethnic Minorities Rights (Minority Ombudsman) and the Authority have circumscribed the impact that these mechanisms have had to date. Further, in the absence of positive legislation placing specific responsibility for implementation of law and policy on identified government bodies, judicial interventions with regard to discrimination will go no further than a finding of violation. Without such positive law, the courts have been reluctant to issue orders for compliance.

(a) Amendments to existing legal provisions or new provisions should clarify the responsibility of specifically identified government agencies to implement law and policies relating to non-discrimination and equality. Such positive legislation would give licence to the judiciary to elaborate directives (corrective remedies) for rectifying situations found to be in violation of statutes or the Constitution.

(b) The Equal Treatment Authority should be empowered to impose specific corrective actions upon entities found in violation of the Equal Treatment Act, to impose punitive damages and to vigorously champion the undertaking of affirmative action programmes in all of the public and private sectors. Resources available to the Authority should be increased to match the dimensions of the problems experienced in Hungary.

(c) The Equal Treatment Authority should be fully independent from the Government, and the role and powers of the Parliamentary Commissioner for the National and Ethnic Minorities Rights (Minority Ombudsman) should be strengthened.

92. Hungary's post-communist constitutional arrangements entrenched significant autonomy for municipal authorities in areas such as education. This has thwarted the national Government's efforts to gain broad-based compliance with national policies on issues such as school desegregation. The Independent Expert noted that the Government must take effective steps to monitor and enforce compliance with national standards and fulfilment of rights of Roma at the municipal level.

93. The situation of multiple discrimination faced by Roma women presents specific challenges, including in the fields of education, employment, health care and housing, which require targeted attention and dedicated resources within the relevant ministries and local and regional authorities. Attention to Roma issues only within the context of a wider policy framework on gender and women's rights issues will fail to meet the needs of Roma women or protect and promote their rights, freedoms and opportunities.

The full and effective participation of Roma women is an essential component of Government and civil society efforts to address their issues. The early establishment of an advisory

body on Roma women's issues to the Ministry of Social and Labour Affairs should be considered as a means of gaining the views and experience of Roma women and assisting in the planning, design, implementation and evaluation of policy with regard to Roma women.

94. The Independent Expert highlighted particular concern over the situation of Roma in the fields of education and employment, as well as the need to comprehensively address the widespread societal discrimination and anti-Roma prejudice manifest in other sectors relating to social and economic rights. With respect to these sectors, the Independent Expert makes the following recommendations.

Education

95. While the government policy with respect to desegregation must be commended, it is clear that the current approach based on financial incentives is grossly inadequate to match the non-Roma citizen resistance at the municipal level.

(a) The State must devise effective measures to fulfil its obligation to guarantee compliance with its national anti-discrimination and equal treatment legislation, its Constitution and its international legal obligations to eliminate discrimination. It must put in place effective dissuasive sanctions that attach to relevant identified authorities if compliance is not realized. Consideration should be given to the withdrawal of funding from schools that fail to integrate according to their legal requirements;

(b) The free-choice system for parents and the ability of schools to freely select or exclude students has been an engine to generate segregation in Hungary's public schools. The Independent Expert welcomes recent initiatives to limit "free choice" in ways that would create and sustain a healthy balance of ethnic diversity in public schools and equal access to the highest possible quality education for all students. Such measures should be maintained and vigorously enforced;

(c) The Government must also initiate a system of compulsory independent monitoring of schools to ensure that national policies with respect to desegregation are fully implemented at the municipal level.

96. The current practice of labelling young Roma children as mentally disabled without justification based on the child's intellectual capabilities is an unfortunate ruse to create segregated schools and classrooms. The practice is a serious violation of the rights of the child, discriminatory against Roma and has massive negative impact on the lives and future life chances of the targeted children.

(a) This system should be abolished and legal sanction brought against those authorities continuing this practice;

(b) Culturally and linguistically appropriate assessments of learning abilities should be developed by nationally recognized professionals in consultation with professionals from minority communities to replace the current testing process that has resulted in the disproportionate targeting of Roma students for schools and classrooms for the mentally disabled. Students who have already been tested should be reassessed immediately. A

national plan, implemented at the local level with full involvement of parents, should be established and independently monitored to ensure that the legitimate special needs of identified students, including Roma, are met in the most appropriate manner;

(c) The Independent Expert greatly welcomes government initiatives such as the “Sure Start” programme, to support Roma and other disadvantaged students from the earliest age. However, urgent attention is required to address the current shortfall in kindergarten places for Roma children particularly in isolated rural settlements;

(d) Initiatives aimed at assisting disadvantaged students, including afternoon schooling and extra-curricula activities are welcome. Such measures should be extended and adequately funded to take into account the serious extent of discrimination faced by the Roma at all levels of the education system, and to assist Roma children to complete secondary education;

(e) An affirmative action policy in regard to access to higher education, including via the Roma scholarship scheme, should be maintained and expanded to encourage Roma to complete higher education courses. Revisions to the financing and administration of the scholarship programmes, including the introduction of “post-financing” have created financial and administrative barriers for some students and should be reviewed;

(f) Roma communities should be encouraged, including through a targeted public awareness campaign and through the social worker system, to realize their full obligations to the education of both boys and girls and to encourage school attendance;

(g) All currently certified teachers and all currently in institutions of teacher training should receive training on pedagogical approaches for ethnically diverse student bodies. Included should be specific training:

- (i) In working with children from disadvantaged backgrounds;
- (ii) On how to help non-minority children overcome their racial prejudice and resentment;
- (iii) On how to deal with hate speech in the classroom.

Employment

97. In order to fashion appropriate policy initiatives, the Government must more proactively confront the important factor of racial discrimination that operates against Roma in the labour market.

(a) The Government should robustly enforce and monitor the provisions of the Equal Treatment and Promotion of Equality Act which requires public organizations, including government offices, of more than 50 employees to establish and implement an equal opportunities plan and to recruit Roma workers. This legislation should be extended to all private and foreign owned organizations.

(b) The equal opportunities plans should include specific goals and timetables for corrective measures and implementation should be proactively monitored and evaluated on an an-

nual basis by the Equal Treatment Authority. Their implementation should be evaluated based on a results framework, that is, to what extent there has been a change in the profile of the workforce. Achieving an ethnically balanced workforce should be the responsibility of the employer.

(c) The Equal Treatment Authority should use a “carrot and stick” approach to motivate employers to comply; using its authority to investigate and impose penalties where they find non-compliance and finding ways to offer technical and financial assistance where that would be an incentive.

(d) Sophisticated employment training programmes that target disadvantaged communities are welcome and should be expanded by government and private employers. Training should be for skilled work as well as unskilled, and should be paired with job placement services that include placement for people with vocational or secondary school education.

(e) The Government should put a particular focus on outreach to the more than 30 per cent of jobless Roma women for employment training and job placement. Housing

98. Regarding housing, the Independent Expert makes the following recommendations:

(a) A government-funded rehabilitation programme for Roma housing should be continued and expanded to address the urgent housing needs of many communities. This scheme should include wider community rehabilitation initiatives, including the provision of contracts to Roma businesses, and the training and employment of community members;

(b) The Government should remedy gaps in current legislation leading to housing rights violations against minorities. The Government should: (i) without delay, ratify relevant international standards including the Revised European Social Charter; (ii) provide domestic law recognition of the right to adequate housing; and (iii) improve domestic law protections to tenants, in particular protections against forced eviction.

99. The Independent Expert also made recommendations regarding other social services:

(a) An independent investigation into the functioning of child protection services should be undertaken to enforce national guidelines and criteria, and effective mechanisms to regulate and monitor child protection services at the local level;

(b) Urgent steps are required to ensure adequate coverage by general medical practitioners, and to address the current serious shortfall in the number of general practitioners, particularly working in disadvantaged and rural Roma settlements and with Roma communities;

(c) Adequate provision of a network of qualified social workers, including via recruitment and training of Roma and those experienced in Roma issues should be undertaken urgently as an essential measure to ensure full knowledge of, and access to, key social and health services and benefits for Roma communities;

(d) A government-sponsored publicity campaign using appropriate media should be conducted as required to assist in the

process of raising public awareness of services and benefits particularly to disadvantaged Roma communities.

Collection and use of disaggregated data

100. In terms of collection and use of disaggregated data, the Independent Expert makes the following recommendations:

(a) The collection of data disaggregated by ethnic group as well as along gender lines is recommended as an essential means of revealing the full extent of social and economic problems experienced by different ethnic groups, and to assisting in the development of appropriate and effective policy and practice;

(b) The Government should undertake confidence-building and awareness-raising measures amongst the Roma, and other minority groups, to promote participation in voluntary data collection, including census registration, and allay fears that data collection will be used as a further means of continuing discrimination.

UNITED NATIONS General Assembly

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Human Rights Council

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

REPORT OF THE INDEPENDENT EXPERT ON MINORITY ISSUES

MISSION TO FRANCE (19–28 SEPTEMBER 2007)

SUMMARY

The independent expert on minority issues, Ms. Gay McDougall, in pursuance of her mandate, visited France between 19 and 28 September 2007. During her visit she travelled to Paris, Marseilles and Strasbourg and environs, where she held consultations with ministers and other senior government representatives, NGOs, civil society groups, religious leaders, academics and others working in the field of minority issues, anti-discrimination and gender issues. The independent expert visited communities living in suburbs of Paris and Marseilles described as urban “ghettos” or “sensitive” suburbs, including Bobigny and La Courneuve, which were affected by urban upheavals in 2005. She talked directly to community members about their lives, issues and concerns in relation to her mandate and held forums specifically for minority women, enabling them to reflect specific issues facing them.

The independent expert found that serious discrimination is experienced by members of minority communities in France, clearly targeted at those “visible” minorities of immigrant heritage, many of whom are French citizens. She concluded that the particular problems faced by people in “sensitive” suburbs are a direct consequence of discrimination and consequently require policy initiatives to address the special circumstances they face. Discrimination against minorities manifests itself in such areas as the allocation of housing, access to employment, quality of education, and grossly inadequate levels of political participation. Issues of identity are central in discourse and mind-sets regarding exclusion. Members of minority communities described an extreme pressure on them to alter their cultural and religious identities as a precondition for immigration and full inclusion and acceptance in French society.

Visits to minority communities revealed high levels of frustration. She found that young people from minority communities feel their hopes and dreams are being denied; they see no possibility of upward mobility because of their skin colour, religion, surname or address (in the sensitive suburbs). People who have worked hard, played by all the rules and truly believe in the principles of the French Republic are trapped in socially and geographically isolated urban ghettos, with unemployment over 40 per cent in some areas. They feel discriminated against and rejected by rigid notions of French national identity to which they do not conform.

The independent expert found that there is a general climate of suspicion and negativity against those of immigrant origin, gen-

erated in part by public debates over immigration policies, the announcement of quotas for deportations and questions of DNA testing. Much more must be done to establish an acceptance of cultural diversity. Currently, she found, there is a widespread feeling within the community of visible minorities that to become a citizen of France is not sufficient for full acceptance; that acceptance will be granted only with total assimilation that forces them to reject major facets of their identities. Only when a way is found to shed the colour of their skins and hide the manifestations of their religion or the traditions of their ancestors will they be accepted as truly French. The message that they take from the name of the new Ministry of Immigration, National Identity, Integration and Co-development seems to be that the presence and increasing numbers of people of immigrant heritage is a threat to the national identity of France; that it is a problem that must be solved.

The independent expert commended recent anti-discrimination initiatives, including the 2004 Anti-discrimination Law and the establishment of the Independent High Authority for Equality and Against Discrimination (HALDE), an independent body with powers to mediate or refer discrimination cases for prosecution, conduct studies and promote non-discrimination programmes and activities. While welcoming the role of HALDE and civil society organizations in prosecuting discrimination on a case-by-case basis, she emphasized that targeted and more robust approaches are required to have a deeper and far-reaching impact on persistent discrimination experienced by minorities. Penalties for acts of racial discrimination should be sufficiently severe to act as a deterrent to future violations.

Given the level and nature of inequalities in France, fulfilling the negative obligation of non-discrimination is not enough to secure equality in practice. The State is under a positive obligation to create favourable conditions for the exercise of the rights of minorities. The independent expert calls for the promotion of equality through affirmative action policies in the field of employment that should help to transform the ranks of the civil service, the police, and other public and private institutions to fully reflect the broad diversity within French citizenry.

France has historically rejected the concept of minority rights and recognition of minority groups or collective rights as incompatible with the French Constitution and the principles of the Republic, which prioritize individual rights, equality, unity and universalism. This has been an obstacle to the adoption of policy initiatives that by their nature must acknowledge the reality of discrimination against specific population groups within French society. It has prevented any serious consideration of affirmative action programmes or the collection of statistical data concerning the socioeconomic status of population groups that can be disaggregated by ethnicity or religion. The independent expert recommends that such government measures, rather than being considered to violate the Constitution, should be seen as essential to achieving a true vision of “Liberté, Egalité, Fraternité”. The acknowledgement of ethnicity, religion and heritage should not be considered to threaten the principles of unity and equality that are the foundation of French society.

Minority women voiced specific additional concerns, including the rights and protection of minority women in abusive relationships; concerns over access to social services and protection mechanisms; access to justice; the legal status of women of immigrant origin in cases of divorce, encompassing the right to remain in France after divorce and the execution by French courts of foreign divorce judgments based on gender-biased laws; the rights of minority women relating to inheritance, housing and property; specific issues relating to the education of girls of Muslim faith; security issues and the high incidence of rape of women in disadvantaged minority communities in suburbs; and the lack of access to political participation of minority women.

The independent expert also received information regarding the situation of the Gypsy/Travellers, the Jewish community and linguistic minorities including the Breton, Basque, Catalan and Occitan communities.

INTRODUCTION

1. In conformity with her mandate's requirement to promote implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter "the 1992 Declaration on Minorities"), the independent expert visited France between 19 and 28 September 2007. She conducted extensive consultations with senior government representatives, including ministers responsible for human rights, urban policy and poverty, the President of the Constitutional Council and other senior officials, in order to assess government perspectives on minority issues in France. She also consulted civil society organizations, academic institutions, students and media representatives and held open discussion forums.¹ The independent expert visited Paris, Marseilles and Strasbourg and their environs, where she consulted directly with community members, local regional government representatives, regional intergovernmental organizations and others in order to gain their views and opinions. She held forums specifically for minority women in order to allow them to express their views, talk about their lives and raise the issues most important to them.

2. The independent expert expresses her thanks to the Government of France for the excellent assistance and cooperation extended to her during the preparation and conduct of her visit, and to those government officials with whom she met.

3. The independent expert wishes to thank the numerous non-governmental organizations and civil society groups that met with her, provided valuable information, and facilitated aspects of her visit. The important work being done by NGOs has ensured that issues relating to discriminatory policies and practices are on the political agenda and before the courts. The independent expert encourages additional support for such organizations.

4. The independent expert has chosen to focus primary attention on the experiences of French citizens and long-term residents of

¹ Quotes used in this report are original comments made to the independent expert during consultations with governmental and non-governmental sources during her visit. In all cases, the identity of the source is withheld.

immigrant heritage, particularly those of North African and Sub-Saharan origin, Muslims, and those from overseas departments and territories resident in mainland France. Persons belonging to such groups, often people of colour described as “visible minorities”, typically experience serious discrimination and are grossly under-represented in State and political institutions. Racism (including Islamophobia), discrimination, alienation and lack of social mobility for persons belonging to such groups were contributing factors to the violent urban upheavals that occurred in French cities in 2005.

5. The independent expert also held consultations with representatives of Gypsies/Travellers/Roma communities and linguistic minorities such as the Bretons and Basques and Occitan-speaking communities. That information will also be reflected in this report.

6. The independent expert’s evaluation of minority issues in France is based on the 1992 Declaration on Minorities and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally. These are: (a) the protection of a minority’s survival, through combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of their right to effective participation of members of minorities in public life, especially with regard to decisions that affect them. The current report is based upon analysis of these four areas of concern as they relate to France.

I. LEGAL AND POLITICAL CONTEXT

A. RECOGNITION OF MINORITIES IN FRANCE

7. France does not recognize the concept of minority rights and the official recognition of minority groups or collective rights is considered incompatible with the French Constitution and the principles of the Republic, which give priority to individual rights, equality, unity and universalism. In France’s 2007 report to the Committee on Economic, Social and Cultural Rights, the Government states: “Under the French Constitution, the nation is defined as being composed of persons with equal rights: ‘France is an indivisible, secular, democratic and social Republic. It guarantees equality of all citizens before the law without distinction as to origin, race or religion’ (art. 2). It follows from the French position that minorities are not recognized as holders of collective rights, but this position does not prevent the public manifestation or expression of diversity.”

8. Successive French Governments have maintained the position that there should be no official acknowledgement of the ethnic, religious or cultural characteristics of citizens, despite the recommendations of European and United Nations anti-discrimination bodies. France attached a reservation to article 27 of the International Covenant on Civil and Political Rights and to article 30 of the Convention on the Rights of the Child relating to the rights

of minorities.² France has not ratified the Council of Europe's Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. As a United Nations Member State, France is required to observe and conform to the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by consensus in 1992.

9. As stated in her initial report,³ the independent expert supports the view that the existence of minorities and the determination of which groups constitute minorities does not lie with the State alone, but is dependent on a range of both objective and subjective criteria, in accordance with the principles of international law. The Human Rights Committee, in its general comment No. 23 (1994) on article 27 (Rights of minorities), makes it clear that "the existence of an ethnic, religious or linguistic minority in a given State party does not depend on a decision by that State party but [needs] to be established by objective criteria". At the same time, minority status is closely tied to how a group defines itself.

B. DOMESTIC LEGISLATION RELEVANT TO MINORITY ISSUES

10. The independent expert notes the extensive legislative framework and institutional mechanisms established to combat racism, discrimination and anti-Semitism in France, which provide a strong legal foundation for the protection of the right to non-discrimination of persons belonging to minority groups. While space precludes a full analysis of relevant legislation and institutions, she highlights a number of developments which are particularly significant in relation to the protection and promotion of the rights of minorities.

11. The core of France's anti-discrimination regime is found in the Criminal Code and the Labour Code. French law has been interpreted as prohibiting the Government from collecting information about the racial or ethnic background of its citizens. The independent expert welcomes the additional provisions of Act No. 2004-1486 of 30 December 2004, inspired by European Union anti-discrimination directives. This Act prohibits discrimination "on the grounds of origin, gender, family/marital status, physical appearance, surname, state of health, disability, genetic characteristics, lifestyle, sexual orientation, age, political opinions, religious beliefs, union activities, and real or supposed membership or non-membership of an ethnic group, nation or race". Under the provisions of this Act, the Independent High Authority for Equality and Against Discrimination (Haute Autorité de Lutte contre les Discriminations et pour l'Égalité, HALDE) was established as an independent statutory authority, competent to deal with all forms of discrimination, whether direct or indirect, prohibited by law or by an international commitment ratified by France.

²The French reservation attached to both article 27 of the International Covenant on Civil and Political Rights and article 30 of the Convention on the Rights of the Child states that: "The Government of the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 27 (article 30 in the case of ICRC) is not applicable so far as the Republic is concerned."

³E/CN.4/2006/74.

12. Article 19 of the Act relating to discrimination on the grounds of ethnic origin and incorporating into domestic law Council directive No. 2000/43/EC of 29 June 2000 is significant in that, upon presentation of evidence of direct or indirect discrimination by a complainant and a finding that a *prima facie* case exists, it shifts the burden of proof on to the defendant to prove that the challenged action or measure was justified by facts unrelated to any type of discrimination. Previously, a serious obstacle to the prosecution of discrimination cases was that the burden of proof lay solely with the plaintiff. However, the concept of indirect discrimination is applied only in matters of employment and housing.

13. HALDE is composed of an 11-member Council. It receives complaints from victims, members of Parliament and NGOs and determines the action to be taken on claims and issues recommendations. It has powers to mediate or refer discrimination cases for prosecution; conducts studies; and promotes non-discrimination programmes and activities. HALDE can intervene directly in court cases and can propose a settlement involving the payment of a fine. Unfortunately, it lacks enforcement powers with respect to non-payment of fines but can use publicity to “shame” parties failing to comply. In 2006, over 35 per cent of the 4,058 claims received were on the grounds of discrimination on the basis of “origin”, indicating the victim is a person belonging to a visible minority. Nearly 43 per cent of all claims related to discrimination in employment. Of the 2,143 cases actually handled by HALDE in 2006, fines were proposed as settlements in 20 cases and 42 others were transferred to the State Prosecutor.⁴

14. HALDE can conduct investigations on its own initiative, allowing it to act independently even where no complaint is received. It uses the tool of “discrimination testing”,⁵ which compares how individuals who are similar in all significant respects but for ethnic origin are treated when seeking access to employment, housing or other public goods. Discrimination exists when the rejection rate for visible minorities is more than a specified rate higher than the “benchmark” testers. Importantly, French courts now accept the results of “discrimination testing” as admissible proof of discriminatory behaviour. However, a court official must be present to validate the “testing” evidence, which can be prohibitive.

15. The independent expert welcomed the positive work done by HALDE and recognizes that it is a young institution (created on 30 December 2004) and that it is still too early to fully assess its impact on decreasing racial discrimination. One positive sign is that its caseload more than tripled between 2005 and 2006. Creative initiatives by HALDE seek to raise awareness of discrimination and assist individuals in benefiting from its services, including a telephone shared-cost hotline and a radio programme hosted by HALDE’s President.

16. In March 2006, a new law (Law No. 2006–396 of 31 March 2006) on equal opportunities was adopted by the French Parliament following the outbreak of urban violence in French cities in autumn 2005. Focusing largely on promoting employment oppor-

⁴ HALDE 2006 Annual Report.

⁵ See the Equal Opportunities Act of 2 April 2006.

tunities in urban areas classified as “sensitive” or “high risk”, the law also gives HALDE additional powers. Among these are provisions enabling HALDE to recommend that local government representatives impose administrative penalties on companies found guilty of discriminatory behaviour.

17. HALDE is only empowered to propose the payment of a “settlement” by those found responsible for discrimination, however does not have the legal authority to impose a penalty. However, the ceilings on penalties that can be proposed by HALDE on both individuals (3,000 euros) and on legal entities (15,000 euros) are set at a very low level and such penalties are only infrequently applied. The punishments that can be imposed for acts of discrimination under the Penal Code can be considerably higher and include the possibility of prison terms in addition to fines of up to 75,000 euros for individuals.⁶ However, it was noted by non-governmental sources that despite the possibilities open to the courts, penalties for discrimination are usually low and symbolic rather than being sufficiently severe to act as a deterrent to future violations.

18. The independent expert notes the inactivity of an Inter-Ministerial Committee to Combat Racism, Anti-Semitism and Xenophobia, which has not been convened since 2005. Such bodies offer the potential to ensure coordinated policies and practices across ministries, recognizing their interrelated mandates and the need for cooperation and holistic approaches to combat racism and its impact on minorities. The local prosecutor in the Paris suburb of Bobigny noted the potential benefits of greater cooperation between the authorities responsible for criminal justice, including those responsible for alternatives to custodial sentencing and those with mandates relating to education and employment.

II. IDENTITY, LANGUAGE, CULTURE AND RELIGION

A. ISSUES OF IDENTITY

19. Members of minority communities consistently described feelings of frustration that becoming a citizen of France is not sufficient for full acceptance by French society. They spoke of their sense that the precondition for acceptance is nothing less than total assimilation. They feel that rigid notions of French national identity required them to reject major aspects of their identities. Only when they find a way to disguise the colour of their skins and hide the manifestations of their religion or their traditions will they be accepted as truly French. They spoke of feeling unwelcome because of who they are. They referred to the newly named “Ministry of Immigration, National Identity, Integration and Co-development” as conveying a message that the presence and increasing numbers of people of immigrant heritage is a threat to French national identity. A Muslim community member in the Marseilles suburbs stated: “We are called upon to conform . . . but it is important to be

⁶Act 2004-204 of 9 March 2004 increased the applicable penalties for racial discrimination. Now, the penalty for a person committing an act of racial discrimination can be as high as three years’ imprisonment and a 45,000 euro fine. Where a discriminatory refusal of admission takes place on premises open to the public or with the aim of denying access, or where the discrimination is the act of a person vested with public authority, the penalties have increased from three to five years’ imprisonment, and from a 45,000 to a 75,000 euro fine.

proud and not hide your identity and culture. We have to respect the laws but be ourselves. The real French are also us: Mohammad and Fatima. Where are we going to go?"

20. The independent expert notes that debates under way during her visit in regard to a new immigration bill (subsequently adopted as Law No. 2007-1631 of 20 November 2007 relating to control of immigration, integration and asylum) regarding DNA testing for immigration applicants and quotas for deportations are highly relevant to her mandate. They contribute to generating a national climate of suspicion and negativity against those of immigrant or Muslim origin; creating a presumption that they are all illegal and are fraudulently bringing non-family members into France, a factor that may boost Islamophobia.

21. Community members stated that the commonly felt sense of exclusion and alienation is leading to an unfortunate anti-integration reaction, in which members of minority groups are retreating from mainstream French society, which they perceive as rejecting them. Manifestations can be seen in the growing radicalization of young Muslim men and an increase in ethnically-based gang culture. It was noted that the urban disturbances of 2005 were partly triggered by what was perceived as a violation of a mosque by police, which caused consternation throughout France's Muslim communities. A student of Algerian heritage in Strasbourg stated: "People always say to me 'where do you come from?' I come from Lyon. I am French. But when people keep asking me I feel less French and more Algerian. I am often told 'look at you, you are not French'. You end up saying you are from another country and you don't feel French any more."

B. LANGUAGE AND CULTURAL RIGHTS

22. Representatives and scholars of numerous linguistic and cultural minority groups from different regions in France, including the Bretons and Basques and the Catalan- and Occitan-speaking communities, strongly complained that their languages and cultural rights are not fully respected and promoted within France. They predict that some regional languages and elements of cultural identity and heritage are in danger of disappearing in the medium to long term. Following the amendment of the Constitution of France in 1992 to reflect the position of French as the language of the French Republic, community representatives described government policy to promote French at the expense of regional languages. Immigration trends have brought significant numbers of speakers of various non-European languages, notably Arabic, to France.

23. Basque community representatives reported that, despite community desire to maintain and preserve the Basque language, there are some 5,000 fewer Basque speakers than 10 years ago and the language is seriously endangered in France as a result of lack of official status. Representatives of the Catalan- and Occitan-speaking communities also pointed out that absence of recognition or official status results in a constant decline in the number of Basque, Catalan and Occitan speakers in both absolute and percentage terms to such an extent that, despite the recommendations of European and United Nations anti-discrimination bodies, these

languages are endangered languages limited to use in the private sphere with implications in both linguistic and cultural terms.

24. Breton representatives reported to the independent expert that subsidies had been stopped to schools for teaching of and in the Breton language. Independent Breton-language immersion schools (called *Diwan*) exist but are not part of the State education system since their incorporation was blocked by the French Constitutional Council, reportedly on the grounds that French is the language of the Republic and that no other language may be used as a language of instruction in State schools. Representatives of the Breton-speaking communities note that the numbers of speakers has declined from 1.3 million in 1900 to 200,000 today.

25. The Government states⁷ that “in the education system, regional and minority languages are taught as optional subjects and special competitive examinations are held to recruit first- and second-level teachers of the languages concerned, which include Basque, Breton, Catalan, Corsican and Occitan within metropolitan France and Creole, Tahitian and Melanesian languages overseas”. The Government underscores that “museums and cultural centres focusing on regional cultures have been established and festivals celebrating these heritages are supported by the Ministry of Culture and Communication and local authorities. The Ethnological Heritage Council and Mission established by the Ministry of Culture in 1980 have been tasked with preserving key constituents of the identity of local cultures and helping to coordinate ethnological research policy throughout metropolitan France and its overseas departments, regions and communities”.

26. The independent expert considers such issues to be central to the 1992 Declaration on the Rights of Minorities. Even when linguistic minorities are relatively well integrated in economic, social and political fields, the 1992 Declaration⁸ places great emphasis on preservation of linguistic, religious and cultural identity. The State is under a positive obligation to “create favourable conditions” in this regard. Information received suggests that policy and practice in France require review in consultation with the affected communities themselves, with a view to achieving consistency of approach and policy.

C. RIGHTS OF RELIGIOUS MINORITIES

27. France maintains the principles of secularism (*laïcité*) in regard to different religious faiths. Those of Muslim faith, however, may face particular challenges. Under conditions of societal intolerance, suspicion, misunderstanding of Islam and growing Islamophobia, the principle of non-discrimination alone is not sufficient to ensure equality in practice. Concerns were raised with the independent expert regarding provision of Muslim prayer facilities and mosques. There is no specific law on the construction of places of worship. While the same rules apply to all religious communities

⁷Third periodic report of the Government of France to the Committee on Economic, Social and Cultural Rights (E/C.12/FRA/3), 15 March 2007.

⁸Article 1 states that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity” and that “States shall adopt appropriate legislative and other measures to achieve those ends”.

with respect to leases, land use and ownership and building restrictions, community prejudices may result in unequal treatment by local authorities, leading to undue restrictions on Muslim communities. There is a perception of bias when in practice these laws are only relevant to the building of mosques because in secular France, Islam is the primary religion with a growing need for places of worship.

28. Estimates put the Muslim population in France at 5 to 6 million people, the largest in Western Europe, most of whom are part of settled and established communities. The independent expert welcomes the positive practice of government recognition of different religious communities and initiatives, including the establishment of the French Council of the Muslim Faith, that play an important role in a process of interfaith and inter-community dialogue.

29. The innovative “Marseilles Hope” initiative supported by town hall and municipal authorities is a collective of religious leaders who meet together and with local authorities to share information, views and issues, and to maintain positive and constructive communication. Founded in 1989 as a response to growing urban violence, the body promotes inter-community understanding and “social peace” through a range of activities including interfaith symposiums. Marseilles Hope was consistently highlighted by all respondents as an exemplary initiative of interfaith and community dialogue.

30. The independent expert was informed that incidents of violent attacks on persons belonging to national or ethnic, religious and linguistic minorities and reported racist and anti-Semitic incidents have declined.⁹ However, it was widely stated by community members and representatives that various manifestations of discrimination, including on the basis of their Muslim or foreign-sounding names, continue to impact seriously on their opportunities and equal treatment. In such fields as employment and access to housing, this problem is so widespread that some feel compelled to disguise their names and religious identities.

D. GYPSIES/TRAVELLERS¹⁰ IN FRANCE

31. Gypsy/Traveller community members and representatives reported increasing levels of discrimination against such groups and continuing failure to prosecute offenders. Issues of concern include the failure to provide serviced parking areas for caravans and disproportionate taxing of caravans; access to identity cards and documentation issues; obstacles to the right to vote and participate in political life; forced evictions; obstacles to the purchase of private property; difficulties with regard to education; and the incidence of harassment, abuse and violent attack against members of such

⁹The National Consultative Committee for Human Rights (NCCHR) reported 974 racist and anti-Semitic incidents in 2005, down 38 per cent from the 1,574 incidents recorded in 2004.

¹⁰Note on terminology—The independent expert recognizes debate regarding appropriate terminology in France and for the purposes of this report conforms to the ERRC uses of the terms “Gypsies” and “Travellers” to refer to individuals and groups who are descended from groups that have long been citizens of France and who have for many generations played a role in French society and history. The category “Gypsies and Travellers” includes persons of diverse culture, frequently self-identifying as “Sinti”, “Manouche”, “Kale”, “Gitan”, “Roma”, “Yenish”, “Traveller” or other.

groups. They highlighted a general climate of racism against Gypsies/Travellers that perpetuates racist stereotypes, exclusion and discrimination and leaves many extremely vulnerable.

32. Governmental representatives acknowledged claims that certain local authorities openly defy national legislation relating to the rights of Gypsies and Travellers. Law No. 2000–614 of 5 July 2000 relating to the Welcome and Housing of Travellers establishes the legal requirement for municipalities of over 5,000 residents to provide parking areas for Gypsy/Traveller caravans. National authorities confirmed that while an estimated 40,000 such sites are required, only 8,000 currently exist. Municipal authorities reportedly prefer to pay penalties than comply with the law. In many cases, sites, where provided, do not meet required minimum standards of infrastructure and environmental adequacy. Complaints were received that Gypsy/Traveller caravans are subject to prohibitively high taxes (imposed locally by communes) aimed at dissuading them from remaining in municipalities.

33. A new law adopted by Parliament in 2007 seeks to encourage communes to abide by the law. Law No. 2000–614 grants those in compliance with requirements to assign parking areas for caravans the ability to fast-track the eviction process of caravans parked illegally. Ministry of Interior officials noted that the law had been approved by Traveller associations on the grounds that it would encourage communes to create legal parking facilities for Travellers.

34. Gypsies and Travellers are subject to a range of special laws, including rules regarding documentation and the requirement for a travel permit (periodically renewable). Those found not to be in possession of a valid travel permit are subject to a heavy fine and/or a one-year prison sentence. They are not entitled to vote until they have been administratively attached to a municipality for three years, under article 10 of Law No. 69–3 of 3 January 1969 relating to the exercise of ambulatory activities and to the regime applicable to persons circulating in France without a fixed domicile or residence. The qualifying period for all other citizens is only six months. In view of the travelling lifestyles of Gypsies and Travellers, such legislation effectively disenfranchises many members of such communities; it is discriminatory with respect to the right of citizens to vote and stand for election to public office.

35. Responsibility for government policies concerning the Roma/Traveller communities rests with the Ministry of the Interior, and other ministries including those responsible for housing, health and education. In discussions with the Cabinet of the Ministry, the independent expert noted that the framework that dominated the discussion of those policies was one of “law and order” rather than the rights of citizens. This was emphasized by the fact that the official responsible for Traveller affairs was a senior General of the Gendarmerie, as was his predecessor.

36. The independent expert notes that the nomadic lifestyles of many Gypsies and Travellers do not diminish the right of their children to have access to education, for families to have access to adequate health care and social services, and the possibility to seek and obtain temporary or longer-term employment.

III. NON-DISCRIMINATION AND EQUALITY

37. During community forums in Paris and Marseilles, the independent expert was informed of common experiences of discrimination of people from visible minorities. Some described having been barred from leisure venues such as clubs, discos and bars, often with the excuse of “a private party”. The “testing” methodology to reveal discrimination has been used increasingly to good effect in these situations. In June 2007, five employees from four Paris discotheques were fined for discrimination after turning away those of African and Arab origin, marking the first time that a Paris court has issued a ruling based on the testing methodology. A representative of an anti-discrimination NGO in Paris stated: “Those born in France do not accept discrimination in the way that their parents or grandparents did, but even those of third or fourth generation continue to be discriminated against over an origin that they know very little about.”

38. Dedicated forums for minority women revealed specific additional issues affecting women, such as the rights and protection of minority women in abusive relationships, including concerns over access to social services and protection mechanisms; access to justice; the legal status of women of immigrant origin in cases of divorce, including the right to remain in France after divorce and the execution by French courts of foreign divorce judgements that were based on gender-biased laws; the rights of minority women relating to inheritance, housing and property; specific issues relating to the education of girls of Muslim faith; security issues and the high incidence of rape of women in disadvantaged minority communities in suburbs; and the lack of access to political participation of minority women.

39. The near complete absence of people of colour in the French media is indicative of a wider problem of their “invisibility” within French society in general, to the extent that the appointment of the first black newsreader to a prime-time television news broadcast in 2006 was itself headline news. The lack of a representative voice for minorities in French politics creates a combined effect of both invisibility and silence of France’s minority groups, which additionally feel physically segregated from mainstream French society by public housing policies that consign them to isolated urban suburbs.

40. The independent expert was told of messages emanating from political parties and senior politicians that have been unwelcoming at best and in some instances of a racist and inflammatory nature. After the 2005 riots, the Minister of the Interior, Mr. Sarkozy, remarked that he would “clean the scum off the streets with a high-pressure hose”. This was commonly referred to by community members and has left a legacy of resentment among Muslim communities. The independent expert considers that the messages emanating from the highest officials of the State must be unambiguous in signalling full commitment to promoting non-discrimination, equality and diversity. As a community member in the Marseilles suburbs stated: “The administration is the first to say ‘be careful of discrimination’, but they are the ones creating the discrimination.”

41. Racism within the police service that has become institutionalized was highlighted as an ongoing problem. Community sources described racial profiling in stop-and-search procedures, among many intimidating and humiliating police practices, heavy-handed and aggressive policing, and what they perceive to be an “anti-black culture” of the police which extends to structural issues of recruitment. Some community members spoke of police techniques to make people stay in their neighbourhoods. Many commented that heavy-handed and insensitive policing practices had been the major factor in triggering the urban disturbances of 2005. It was noted that neighbourhood or “proximity” policing techniques designed to build relationships and confidence between local communities and the police had been abolished prior to the disturbances.

42. The effects of discrimination and exclusion have resulted in disproportionately high levels of poverty among visible minorities who are long-term residents or French citizens of immigrant heritage. Community members and NGOs described urban ethnic and religious ghettos as clear concentrations of poverty within French society. While government representatives also acknowledge the problems of poverty in the urban suburbs, the independent expert is concerned that the Government views poverty among minority communities as solely social or economic problems rather than as problems closely related to discrimination against members of minority groups.

43. The independent expert focused on three areas that particularly featured in her consultations as being problematic in regard to discrimination against persons belonging to minorities: housing, education and employment.

A. HOUSING

44. The independent expert visited the suburbs of Paris and Marseilles, including Bobigny and La Courneuve in Paris, areas affected by urban upheavals and violence in 2005, and the northern suburbs of Marseilles. Her visits enabled her to consult with local residents and to see for herself housing conditions and local demographics in these areas. Despite the lack of statistical data along ethnic and/or religious lines, visits to the poorest suburbs of Paris reveal an obvious high proportion of “visible” minorities and religious minorities.

45. Consistently, when poor immigrants arrive, those belonging to certain ethnic or religious groups are allocated to the poorest housing in specific neighbourhoods that have become highly ethnicized, resulting in a discriminatory pattern of de facto segregation. Housing in these suburbs is often dilapidated and poorly maintained. There are chiefly towering high-rise apartment blocks lined up in neighbourhoods devoid of any of the beauty or verve characteristic of the streets of central Paris. Teenage boys loiter on street corners; not in school and not at work. These are poor neighbourhoods, clearly economically depressed and spiritually depressing. Community members commonly noted that quality public housing in central locations or higher income areas is rarely allocated to those of immigrant heritage.

46. By all accounts, the level of discrimination in the private housing market also considerably limits housing options for visible minorities. Discrimination persists in spite of legislation prohibiting bias in residential leases.¹¹

47. Government officials acknowledged areas of some 70 per cent “foreign” residents and the creation of what has become recognized as the “ghetto” phenomenon, officially acknowledged only in recent years. Community representatives reflected that the urban blight of these areas has been attributed to ethnic minorities themselves who are blamed for their own conditions, in a process of stigmatization which extends to other spheres of life. Many residents said that their very address in the “sensitive suburbs” provides further grounds for discrimination. When employers receive applications indicating that the job-seeker lives in a ghetto, they reject it because it means the applicant is a minority. One community member stated: “When they read La Courneuve on your application, it goes in the bin.”

48. Physically isolated housing areas, including suburbs such as Clichy-sous-Bois, were noted as being seriously deprived in the development of public transport, resulting in major problems of isolation. Clichy-sous-Bois is only 10 km distant but reportedly more than 1.5 hours from central Paris by public transport. This places major labour markets, such as central Paris, effectively out of reach for those living in such areas. A community member in La Courneuve stated: “People from here don’t go to the centre of Paris. Most of the people here are hostages to their neighbourhood. It is a housing ghetto, but also a mental ghetto.”

49. NGO representatives and community members in both Paris and Marseilles described low quality, poorly maintained and unsanitary housing. Some commented that inadequate conditions and environment, combined with problems of discrimination and unemployment, contribute to a “climate of despair” and a spiral of urban decay conducive to such problems as drug dealing and violent crime, including a high incidence of rape of young women.

50. A government representative in the suburb of Bobigny in Paris acknowledged that: “We think that there is a link between what happened [2005 urban violence] and a failure of urban policy.” Policy debates tacitly recognize, while failing to analyse, the reality of ethnic ghettos. NGOs noted that only since 2000 has the problem begun to appear on the political agendas of the Government and other major parties, and that it has been given added impetus by the 2005 urban upheavals. During her visit to La Courneuve, the independent expert witnessed redevelopment schemes under way that focused on renovating existing tower blocks of better quality and demolishing others in favour of lower-level developments with communal gardens and improved leisure facilities.

51. Conflicting opinions were expressed regarding solutions to the problem of ghettoization. Some propose the break-up of the

¹¹The Government states in its report to the Committee on the Elimination of Racial Discrimination dated 15 March 2004 that the Act of 17 January 2002 concerning social modernization amended article 1, paragraph 2, of the Act of 6 July 1989 on housing leases. This explicitly prohibits refusal to rent housing for reasons related to the tenant’s origins, name, physical appearance, habits, sexual orientation, beliefs, race or nationality. The Act establishes that the burden of proof that denial was justified lies with the landlord.

ghettos through policies of relocation and urban redevelopment with the express purpose of dispersing minorities throughout French neighbourhoods. They recognize that this approach would require proactive measures to decrease negative attitudes among some ancestral French toward those of immigrant origin. Others believe that solutions lie in investing to improve such areas; their infrastructure, access to services and employment options.

52. Under French law,¹² all communes are required to have a certain percentage of low-cost housing. Community sources complained that rich communes ignore the law and would rather pay fines for non-compliance than live with poor minorities. Some suburban residents noted that accusations of “communitarianism” also stem from ethnic concentrations and misinformed perceptions of voluntary isolationism from wider French society. As one community member commented: “We want to integrate but we are not allowed to. It is very hard for example to get finance from a bank because of our background, name or colour. Then when we are forced to take initiatives within our communities we are accused of ‘communitarianism’.”

53. The Urban Policy Minister, Ms. Fadela Amara, commented on planned activities and substantial funding for the National Urban Renewal Agency (ANRU) aimed at upgrading social housing through 2012. The Minister noted that this would be with the express objective of creating mixed neighbourhoods in the suburbs. In January 2008, the Minister is to unveil the “plan of respect and equality of chance”, which will consist of initiatives in education and accomplishment, employment access, economic development, public transport and culture for the deprived suburbs. The plan is being developed through a process of consultation and debate with those living in the suburbs and local authorities, including via a blog. Part of the plan entitled “Hope Suburbs, a Dynamics for France” recommends reinforcing the powers of the HALDE in relation to the problems of the suburbs.

B. EMPLOYMENT

54. The principle of non-discrimination set forth in article L.122–45 of the Labour Code prohibits any difference in treatment on grounds of “origins, sex, customs, family situation, actual or supposed membership or non-membership of an ethnic group, nation or race, political opinions, physical appearance, family name, genetic characteristics, state of health or disability”, yet NGOs have flagged racial discrimination in employment as a major problem in France. In March 2007, the International Labour Organization presented results of a major national “practice testing” survey measuring discrimination against immigrant-origin workers in access to employment.¹³ The survey found that four out of five employers preferred ancestral French workers over candidates of Maghreb or black African origin. Only 11 per cent of French employers were

¹²Law No. 2000–1208 of 13 December 2000 relating to solidarity and urban renewal states in article 55 that all towns with more than 50,000 inhabitants have to make available 20 per cent of social housing.

¹³The France National Discrimination Testing Report presented in March 2007 was invited and financed by the DARES research division of the France Ministry of Employment and Social Cohesion. The full report is available at: http://www.ilo.org/public/english/protection/migrant/download/france_discr_fr.pdf.

considered to have complied with equal treatment standards throughout the recruitment process.

55. The independent expert was informed that it is common practice for job advertisements as well as notifications relating to rental housing to refer to “BBR”, indicating “Bleu, Blanc, Rouge”, the colours of the French flag. This is commonly understood as a coded reference that only “white” French people are invited to apply or will be considered.

56. An historic court ruling in 2007 found a subsidiary of the cosmetic firm L’Oreal guilty of racial discrimination in selecting only white applicants for an advertising campaign, the first time that a major company has been found guilty of such a discrimination offence in France. L’Oreal, together with a recruitment company it had contracted, was fined 30,000 euros. Despite this landmark ruling, the penalty imposed does not appear commensurate with the seriousness of the offence and is insufficient (in view of L’Oreal’s annual profits of 1.83 billion euros in 2006) to send a strong message to employers that discriminatory practices will not be tolerated by the courts.

57. Black and Muslim women spoke of having degrees or professional qualifications but not being able to find work in their field and having to accept low-paid, temporary cleaning jobs. Even in these positions, they described finding that white women are treated differently and have greater job security. A Muslim woman in a Marseilles suburb stated that despite being at the top of her class in her university law studies, she had subsequently been unable to obtain an internship position with a legal firm, whereas all of her white peers had obtained and completed their internships. She fears that her failure to secure an internship, a requirement for certification, will prevent her from becoming a lawyer.

58. In 2004, a French employment agency answered 258 job advertisements for senior salespeople and managers by sending a total of 1,806 fictitious résumés.¹⁴ Almost 30 per cent of white French men and 26 per cent of white French women received positive responses. But when the résumés were changed to have Arab-sounding names, the positive response rate dropped to only 5 per cent. A community member of Algerian origin talked with the independent expert about her difficulty in finding work in Marseilles and stated: “I am of Algerian origin, but I am very white. I can get in the door, but when they hear my name is Fatima the excuses come.”

59. The independent expert welcomes initiatives proposed by the Minister of Justice, Ms. Rachida Dati, one of three recently appointed female ministers from minority backgrounds, who in July 2007 instructed all Attorney Generals in France to appoint to their offices dedicated staff with the specific assignment to prosecute discrimination.

60. Ordinance No. 2005–901 of 2 August 2005 established the “PACTE” (The Pathway to Civil Service Careers) as an alternative means of entry to low-level regional, hospital and State civil service

¹⁴The Adia employment agency worked with French sociologist Jean-Francois Amadiou to complete the study on discrimination in recruitment practices and published its report in May 2004, Enquête << Testing >> sur CV-Adia/ Paris I- Observatoire des discriminations. <http://cergors.univ-paris1.fr/docsatelecharger/pr%E9sentation%20du%20testing%20mai%202004.pdf>.

posts rather than via the standard competitive examination processes, with the aim of making the civil service more representative.¹⁵ However, the programme only targets entry into the lowest level jobs and is limited to two-year contracts. In addition, the independent expert was informed by senior police commissioners of programmes, including the Cadets of the Republic Programme, which have been established to assist young people from all sectors of society in entering the police force. While anecdotally noting its success, police commissioners were unable to provide figures relating to the results in promoting diversity because identifying the graduates of the programme by ethnicity or minority status would be committing an offence under criminal law.

61. On several occasions, the independent expert was informed by members of ethnic and religious minorities that they had experienced severe problems in finding employment in the police service despite having passed the qualifications and that discrimination remains commonplace within the police force. As a community representative in a Marseilles suburb noted: “It is hard to convince young people to do competitive examinations when they say ‘show us the examples of those who have succeeded’ and there are none.” A case filed before HALDE shortly after the independent expert’s visit focused media attention on issues of discrimination within the police service. A policeman of Moroccan heritage charged that he was asked racist questions in his interview for the officers’ competition, such as “Does your wife wear the veil?”¹⁶

62. Some proposed initiatives seeking to counter discrimination on the grounds of name or address, such as anonymous application forms, continue to be debated and have met with support in some ministries. A system of urban tax-free zones has also been created and will be extended by the Government to assist in bringing investment and employers to particular areas of high unemployment. Of course, relocating industries to ghetto areas must go hand in hand with requirements or incentives to hire local residents.

63. Some companies are taking the lead in promoting diversity in the workplace through internal equality and non-discrimination policies. Since October 2004, heads of 60 companies with operations in France, including Airbus, IBM and Total, have signed a “Charter on Diversity” to promote non-discrimination, employment opportunities and promotion of minorities. Lack of statistical data continues to hamper evaluation of progress and the outcome of this and other initiatives. HALDE notes that it has worked to encourage companies to adopt more transparent internal staffing and recruitment practices. Practices such as “legacy hiring” and recruitment based on social networks are commonplace in certain sectors of the French labour market. By their nature, hiring practices that are not merit-based or transparent work to exclude minorities.

¹⁵The Government states that the aim of PACTE is to make the civil service more representative of the society it serves, by trying to curb discrimination and exclusion. PACTE is open to those between 16 and 25 with no qualifications, and is a contract governed by public law lasting between one and two years and offering training and work experience in “Category C” posts, including maintenance, clerical and secretarial positions. It provides access to civil-servant status after an aptitude test.

¹⁶http://reverso.nouvelobs.com/url/result.asp?url=http://tempsreel.nouvelobs.com/actualites/societe/20071206.OBS8586/un_policier_saisit_la_halde_pour_discrimination_au_conc.html&autotranslate=on&template=General&directions=65544.

C. EDUCATION

64. The independent expert notes the high priority given to issues of education within France as well as French legislation and public policy, as demonstrated in the Government's country reports to the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child. However, she remains concerned that a reliance on current approaches to tackling discrimination issues fails to fully address the specific situations facing families and children from particular ethnic, religious and linguistic communities.

65. Disproportionate dropout rates were highlighted as a serious issue facing those belonging to minority communities. The Government has sought to address such issues via training, career advice and vocational initiatives, in particular via Law No. 2006-396 of 31 March 2006 on equal opportunities. However, anti-discrimination organizations noted a tendency for members of minority groups to be directed towards vocational courses rather than studies required for university and professional preparation.

66. Government and NGO representatives highlighted to the independent expert the continuing problem of exclusion from access to France's "elite" schools and universities, traditionally the means of entry to the civil service in France. The independent expert welcomed plans to enhance pre-training facilities in some schools, noted by the Minister Fadela Amara, and initiatives to create partnerships between schools in difficult areas and elite schools, to help facilitate access for those from minority communities.

67. Gypsy/Traveller communities face particular challenges in regard to the education of their children as a result of their ambulatory lifestyles, resulting in particularly low participation levels and high dropout rates. Community representatives noted worrying trends of Gypsy/Traveller children being placed in schools or classes for those with learning impediments without evidence of impaired learning abilities. Circular No. 2002-101 of 25 April 2002 provides guidelines on the "Schooling of Traveller Children and Non-Sedentary Families", which aim to increase participation in the education system; however, Gypsy and Traveller representatives complain that these remain largely unimplemented.

68. Particular issues face minority girls in the sphere of education. During consultations, the issue of the wearing of the veil by Muslim girl students and the wider debate regarding religious symbols in French schools was frequently discussed. The independent expert urges that such debates be conducted in an open and inclusive manner and with the rights and interests of the child to the fore, including within Muslim communities themselves. She considers that caution must be exercised in legislation and policy that, irrespective of neutral intent, impact disproportionately on those faiths for which external, visible symbols or clothing are considered important tenets of faith, including Muslims, Orthodox Jews and Sikhs.

D. COMPARISONS BETWEEN MARSEILLES AND PARIS

69. Discrimination in housing, policing, and unemployment, together with a lack of social and geographical mobility are impor-

tant contributing factors to social unrest. The independent expert noted that Marseilles was relatively unaffected during the urban upheavals of 2005. She visited Marseilles to understand the particular circumstances and dynamics that contributed to its stability, meeting with senior government representatives, community groups and local residents, and with the innovative “Marseilles Hope” collective of religious leaders.

70. Consultations revealed that the limited nature of disturbances in Marseilles can be attributed to various factors, including a closer proximity between the housing for minorities and the city centre, which countered feelings of isolation; more community-sensitive policing; stronger family and social cohesion; more meaningful dialogue between communities and religious leaders and between communities and local authorities; relatively greater employment opportunities for those from minority groups; an explicit recognition and celebration of the diverse cultures and communities by local authorities; and the historical and geographical factors that have contributed to Marseilles’ development as a multicultural city.

IV. POLITICAL PARTICIPATION OF MINORITIES

71. Article 2.3 of the 1992 Declaration on the Rights of Minorities states that: “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.” This is a guarantee that must be read in conjunction with the political rights of citizens under articles 2.1 and 25 of the International Covenant on Civil and Political Rights.

72. Although minorities in France account for an estimated 12 per cent of the population, according to the Institute Montaigne, an independent French institute, only 2 of the 555 members of the lower house elected in metropolitan (non-overseas) France come from the country’s black, Asian and North African minorities.¹⁷ In the 2007 elections, France’s governing political party, the Union for a Popular Movement (UMP), had only seven minority candidates running for election while the opposition Socialists had 20 candidates, mostly in the Paris region.¹⁸ A total of 7,639 candidates stood for 577 seats, including France’s overseas possessions.

73. The legitimate interests of minorities are not fully considered within political institutions that do not reflect the diversity of French society. Parliamentary debates on key issues relevant to minorities, including policy to combat racism and discrimination and to promote equality and immigration issues, are being conducted without representatives of minorities, who are frequent victims of discrimination. Lack of minority representation constitutes an extremely serious problem of underrepresentation in the legislative and at all levels of political structure. A significant sector of French society feels excluded from the organs of power, as a result of which those deliberative bodies suffer a deficit in the absence of

¹⁷ Research quoted in *The Economist*, 25 October 2007, *Minorities and legislatures: Must the rainbow turn monochrome in parliament?*

¹⁸ Figures quoted by IFOP, the French market research institute established in 1938 to conduct polls and public research, http://www.ifop.com/europe/groupeifop/gr_fr.htm.

their views. This raises issues of legitimacy and a legislative process that is not fully informed.

74. The rise of far-right political platforms within mainstream French politics influences the nature of political discourse and decision-making according to community representatives. They highlighted a growing nationalist, anti-immigrant discourse and political climate, exemplified by the slogan “France, love it or leave it”. This sends a message to communities not to complain. One community member in the suburbs stated: “If I speak of my living conditions, they will say I hate France. Given that climate, it is hard to have a dialogue on how to improve things.” NGO representatives noted that despite recent urban violence in 2005, issues of disadvantaged urban communities and discrimination featured little in 2007 election campaigns of major parties. Rather, immigration controls and tougher law and order measures were the primary campaign issues, suggesting that solutions to urban problems are being sought in “get tough” policies rather than in improved approaches to employment opportunities, urban redevelopment and human rights.

V. CONCLUSIONS AND RECOMMENDATIONS OF THE INDEPENDENT EXPERT

75. In spite of important national anti-discrimination legislation, serious racial discrimination is experienced by members of minority communities in France that is entrenched and institutionalized in nature. A political culture of denial has been an obstacle to effective measures to fully implement non-discrimination laws and to take concrete steps to address the complex inequalities that have been generated. The recent explosions of urban discontent have alerted authorities to the need for change.¹⁹

76. The independent expert urges the Government to take fully into consideration the analysis of the present report in developing policy responses to the urban upheavals. The most important actions that can be taken by Government lie in addressing the underlying causes of discontent and working towards structural solutions.

Acknowledgement of the reality

77. The Government of France is urged to: (1) recognize the existence of national or ethnic, religious and linguistic minorities within its territories and to withdraw its reservation to article 27 of the International Covenant on Civil and Political Rights relating to the rights of persons belonging to minorities and article 30 of the Convention on the Rights of the Child; and (2) ratify the European human rights treaties relating to the rights of minorities, including Protocol No. 12 to the European Convention on Human Rights and the Council of Europe’s Framework Convention on the Protection of National Minorities.

¹⁹The independent expert notes that further incidents of unrest and violence occurred in the suburbs of Paris (Villiers-le-Bel) in November 2007, following the tragic death of two young men after a collision between their motorcycle and a police vehicle. She deeply regrets this further violence.

Guarantees of non-discrimination and equality

78. France's anti-discrimination legislation should be amended to allow the imposition of penalties and fines for discriminatory practices that are sufficiently severe as to act as a deterrent to future violations. Legislation should also be amended to grant HALDE meaningful enforcement powers when there is a failure to comply with agreed settlement fines. Courts should impose more severe penalties for discriminatory acts, as allowed for under the Penal Code.

79. Robust affirmative action policies should be put in place to counter the effects of long-term discrimination against minorities. The independent expert encountered strong opinions both for and against affirmative action policies, from civil society groups and governmental sources. The terminology of "positive discrimination" was commonly used, which she believes creates misleading perceptions of "privileges" given to people from certain sectors of society at the expense of others. Using such terminology sabotages public support from programmes that generate equality in ways that benefit everyone.

80. A wider debate is required on the issue in France that is open, informed and inclusive, and that builds on the experiences of other United Nations Member States and the recommendations of regional and international institutions. Such a debate should be framed by the concept of special measures/affirmative action as it is understood in international standards, including articles 1.4 and 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

81. The independent expert shares the view of the Committee on the Elimination of Racial Discrimination that efforts to combat discrimination in France are hampered by inadequate statistical information on the grounds of race, ethnicity or religion. She welcomes the current debate regarding the use of statistical data, including its constitutionality, and hopes this debate will continue to be informed by the experiences and practice of other European countries.²⁰

82. The collection of data regarding the socio-economic status of the population disaggregated by ethnic and religious identities as well as along gender lines is recommended as an essential tool to reveal the full extent of social problems experienced by persons belonging to different ethnic and religious minority groups. Such data will assist in the development of appropriate and effective policies and practices to combat the effects of discrimination.

83. The Government should undertake confidence-building and awareness-raising measures among all communities, including minority groups, to promote and encourage participation in voluntary data collection, including census registration, and allay fears that data collection will be used as a means of deepening rather than combating discrimination.

84. The Inter-Ministerial Committee to Combat Racism, Anti-Semitism and Xenophobia has been inactive since 2005 and should

²⁰ On 15 November 2007, the Constitution Council, in its decision No. 2007-557 DC, approved Law No. 2007-1631 relating to control of immigration, integration and asylum, without article 63 relating to racial or ethnic data, which it declared contrary to the Constitution.

be reinstated and convened on a regular basis. Such a body offers the potential to ensure coordinated policies and practices across the ministries, recognizing their interrelated mandates and the need for holistic approaches in efforts to combat racism and discrimination and to promote the rights of minorities.

85. Following consultations with the High Commissioner for Active Solidarity Against Poverty in France, the independent expert notes that policy initiatives designed to address the needs of the poor as an aggregate group rather than targeting the specific nature of the obstacles faced by minority groups will fail to create sustainable solutions to their poverty, highlighting the recommendations of the 2007 report *Minorities, Poverty and the Millennium Development Goals*.²¹

Discrimination in employment

86. The public sector must lead by example in promoting and ensuring equality, non-discrimination and diversity, in order to send a clear message to all sectors of society. The Government should undertake more aggressive strategies to dramatically increase the number of people with immigrant heritage in the public service, particularly the police, civil service and the judiciary, in order better to reflect the broad diversity within French citizenry. These efforts should be evaluated on the basis of results or outcomes, using statistical data disaggregated to reveal the number of visible minorities who have been newly employed and their advancement. In the private sector, anonymous employment applications should be encouraged.

Discrimination in housing

87. The independent expert welcomes proposed initiatives to improve housing and living conditions in French suburbs. However, she considers that substantial investment in urban renewal should be just one component of a much wider policy package, which includes employment and education in the broader context of dedicated anti-discrimination initiatives. She emphasizes that priority should be given to ensuring that new or renovated housing is first offered to long-term residents of such suburbs.

88. When communes fail to meet the regulations regarding the availability of a specified percentage of social housing that must be allocated to poor families, they should be severely penalized to the limit specified in the law. The Government should establish effective means to monitor compliance with the laws in this regard.

89. Furthermore, the severe penalties currently foreseen in law should be imposed on municipalities that violate laws adopted to implement the rights of individuals belonging to Gypsy/Traveller communities. No municipality should be allowed to disregard the law with impunity.

Discrimination in education

90. The Government should evaluate its current programmes that focus on under-achieving schools against specific studies on

²¹ A/HRC/4/9, paras. 104 and 109.

the educational obstacles faced by minority students, both those of immigrant heritage and those from Gypsy/Traveller communities. Special measures should be adopted to guarantee the right to education in mainstream schools for children of Gypsy/Traveller families. Steps should be taken to protect the right of those children to not be segregated into schools or classes for the learning impaired when there is no evidence of need.

Inclusion of minority women

91. Women from the various minority groups in France face complex issues and specific challenges. In addition to discrimination in the fields of education, employment and housing, they are often confronted with specific challenges relating to family matters when their immigration status is tied to that of their husband. Divorce proceedings in foreign courts of certain countries can create problems for the realization of rights that they might have under French law. These special concerns require targeted attention and dedicated resources within relevant ministries and local and regional authorities.

92. The full and effective participation of minority women must be seen as an essential component of Government and civil society efforts to address their issues. The establishment of an advisory body to HALDE on minority women's issues should be considered as a means of gaining the views and experiences of minority women and assisting in the planning, design, implementation and evaluation of policies in order to address their specific issues and concerns.

Promotion of language, religion and cultural rights

93. The independent expert supports calls for France to ratify the European Charter for Regional or Minority Languages, which provides valuable guidance to all European States in their treatment of such issues, and for the preservation and promotion of the rich cultural and language heritage of each State. The Government of France should support the use of regional and minority languages as a medium of instruction in the early years of public primary education for students who so request.

94. The independent expert supports the conclusions and recommendations which the Special Rapporteur on freedom of religion or belief stated in her report on her visit to France in 2005, namely, that Law 2004-228 of 15 March 2004 on "laïcité" and the wearing of conspicuous religious symbols in public schools "constitutes a limitation of the right to manifest a religion or a belief [. . .] and has mainly affected certain religious minorities, and notably, people of a Muslim background". The independent expert supports the Special Rapporteur's recommendation that the Government should closely monitor the way that education institutions are implementing the law and adopt a flexible implementation of the law which would accommodate schoolchildren for whom the display of religious symbols constitutes an essential and freely chosen element of their faith.

Enhancement of political participation

95. Full and effective participation in national and regional political structures, as well as representation within key government ministries and institutions, is essential to future efforts to protect and promote the rights of minorities. Political parties in France should seek ways to increase the number of persons belonging to minorities that win election to national regional and local government structures.

96. The Government of France should establish consultative bodies of persons belonging to minorities to facilitate the full and effective participation of minorities in all decisions that affect them, and in the planning, design, implementation and evaluation of policies and programmes in respect of minority issues and those which impact on the lives of minorities.



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