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Mr Schackel

General Recommendation No 32: Special Measures

Thank you for the opportunity to provide this information to the Committee for its consideration in the drafting of a General Recommendation on the issue of special measures, as provided in articles 1(4) and 2(2) of the *International Convention on the Elimination of All Forms of Racial Discrimination (Convention)*.

We appreciate that we are sending this information to you at a very late stage of the process. As a result, we have kept our comments as brief as possible.

The Human Rights Law Resource Centre (**HRLRC**) respectfully recommends that the Committee's General Recommendation should provide for, or have regard to, the following issues:

1. The need for a General Recommendation on special measures

There is currently very limited jurisprudence on special measures under the Convention, and there is therefore a significant need to clarify issues arising from the obligation of State parties to adopt special measures.

Particularly in light of ongoing debate about the necessity for special measures, the General Recommendation should elucidate the purpose and significance of special measures and justify the need for the adoption of special measures by State parties.

2. Harmonisation of Terminology

As the Committee would be aware, the Committee on the Elimination of Discrimination against Women (**CEDAW**) has recently issued its General Comment No. 25 (**GC 25**) on the issue of special measures. We note that GC 25 uses the term “temporary special measures”. In light of the similarity of subject matter of CEDAW’s General Comment and CERD’s proposed General Recommendation, the Committee should consider using similar terminology so that jurisprudence can be further developed and harmonised and States parties’ obligations can be streamlined.

We note that the term “temporary special measures” has also recently arisen in discussion by the Committee on Economic, Social and Cultural Rights in its current drafting of its General Comment No 20 on Non-Discrimination.

3. Definition and scope of the term “temporary special measures”

The HRLRC considers that the General Recommendation should contain a definition of “temporary special measures” that seeks to clearly establish the essential characteristics, and limits, of special measures.

In particular, the definition should specify that special measures:

- are temporary measures;
- are designed to address structural inequalities within a society;
- must address a clear target group;
- must be for the benefit and enhancement of that target group;
- must have a clear objective;
- must be proportionate to their purpose; and
- must be subject to periodic monitoring and evaluation to establish whether there is a need for the special measure to continue being implemented.

Further, it should be emphasised that differential treatment does not necessarily constitute discrimination and that special measures are not discriminatory.

The HRLRC also considers that useful guidance might be provided by identifying some of the most commonly used types of temporary special measures, such as training and support, the establishment of targets, preferential treatment and use of quotas.

4. Obligation to implement temporary special measures

The HRLRC considers that the General Recommendation should highlight the obligatory nature of the requirement to implement temporary special measures to ensure substantive equality and address systemic discrimination. As soon as a person or group of persons has been identified as disadvantaged, marginalised, or otherwise unable to exercise their rights under the Convention, then State parties are *obliged* to implement temporary special measures to rectify this inequality.

5. Acknowledgement of the need for participation of groups affected by special measures

The General Recommendation should acknowledge the importance of the participation of affected groups in the formulation of special measures, particularly to ensure appropriateness and effectiveness of how the temporary special measures are designed.

6. Clarification of the difference between permanent measures and temporary special measures

The General Recommendation should ensure that temporary special measures are distinguished from permanent measures that secure advancement for groups that are discriminated against (for example, land rights for Indigenous peoples and the right of minorities to preserve and use their languages).

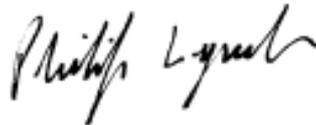
While it is recognised that temporary special measures may in fact be required to continue for a long period of time, such measures are only legitimate so long as they are terminated when *de facto* equality is achieved and sustained.

Thank you very much for the opportunity to provide this information to the Committee. We would be happy to provide any further information as required and would appreciate any further opportunities for input to the Committee.

Yours sincerely



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