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**COMPLEMENTARY STANDARDS: EXAMINATION OF SUBMISSIONS  
FROM THE COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION AND OTHER UNITED NATIONS BODIES AND  
SPECIALIZED AGENCIES**

**Views of the Committee on the Elimination of Racial Discrimination on the  
implementation of the Convention on the Elimination of All Forms of Racial  
Discrimination and its effectiveness**

**Summary**

The present report is submitted pursuant to a request made by the Working Group at its second session. The first section describes how the Committee on the Elimination of Racial Discrimination, in the course of its examination of the reports of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, encourages their implementation of the provisions of the Durban Declaration and Programme of Action. The second section describes the procedures used by the Committee in carrying out its role as the monitoring body for the Convention.

## **Introduction**

1. At its second session, the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action adopted among its recommendations a request to the Office of the High Commissioner for Human Rights (OHCHR) to convey an invitation to the Committee on the Elimination of Racial Discrimination (CERD) for its written views on the effectiveness of the Convention, including its implementation (E/CN.4/2004/20, para. 81, recommendation 20). The present document is submitted in accordance with that request.

2. The role of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD or the Convention) in combating racial discrimination cannot be overemphasized. The Convention requires implementation in multiple dimensions: political, legal, administrative and social. The Committee notes the acknowledgement in the Durban Declaration that “the obstacles to overcoming racial discrimination and achieving racial equality mainly lie in the lack of political will, weak legislation and lack of implementation strategies and concrete action by States” (para. 79). The Committee fully agrees with this observation and stresses further that, as is the case with all international normative standards, ICERD is very useful and effective for States that genuinely wish to abide by it. ICERD has helped to improve the situation in many countries. Where it has failed, it is because the necessary political will is lacking in the States concerned.

3. As of 31 July 2004, 169 States had ratified the Convention. The Committee notes that the Programme of Action “urges States that have not yet done so ... to accede to the ... Convention ... as a matter of urgency, with a view to universal ratification by the end of 2005”(para. 75). The Committee reiterates the fundamental importance of universal ratification of the Convention for the struggle against racial discrimination and urges all States to ratify the Convention in the immediate future. It is States’ failure to ratify or to implement the Convention, rather than gaps in the Convention itself, which the Committee has identified as the key issue in combating contemporary forms of racism.

4. The Committee also stresses the crucial need to make the Convention and the Committee’s recommendations and jurisprudence more visible and accessible to all. It is a fact to be regretted that the Convention, as well as the work of the Committee, are not given sufficient publicity at all relevant levels. In particular, the General Assembly does not pay sufficient attention to the Annual Report and to the work of the Committee. This situation needs to change if one really wishes to foster a more effective implementation of the Convention worldwide, with a view to increasing the provision of adequate protection to all victims of racial discrimination.

## **I. IMPLEMENTATION AND EFFECTIVENESS OF THE SUBSTANTIVE PROVISIONS OF THE CONVENTION**

## **A. Article 1**

5. The Committee has clarified the definition of racial discrimination as provided in article 1 through its jurisprudence, its concluding observations and several general recommendations, namely general recommendation XXIII on the rights of indigenous people, XXV on gender-related dimensions of racial dimension, XXVII on discrimination against Roma, XXIX on descent-based discrimination and XXX on discrimination against non-citizens. By doing so, it has contributed to providing protection against racial discrimination for the groups of victims identified in the Durban Declaration and Programme of Action, including minorities, the Roma, indigenous peoples, persons suffering from descent-based discrimination and non-citizens. The Committee has also highlighted its concern for gender-related dimensions of racial discrimination.

6. When referring to issues of racial discrimination in relation to indigenous peoples, the Committee regularly encourages States parties to consider ratifying other existing instruments, in particular the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). Similarly, when dealing with discrimination against non-citizens, the Committee recommends to States that they consider ratifying the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 and the Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol. The Committee therefore draws the attention of the Working Group to the need to strongly encourage ratification of these instruments in order to ensure better protection of the groups concerned.

7. Furthermore, the Committee recalls that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly in 1992 remains important for the protection of the rights of minorities. It also recalls the ongoing work of the open-ended intersessional working group of the Commission on Human Rights and its discussion of the draft United Nations declaration on the rights of indigenous peoples. This draft, adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 1994, was submitted to the Commission on Human Rights in 1995. The Committee recalls that the Commission and the General Assembly recommended that the declaration be adopted before the end of the International Decade of the World's Indigenous People (1995 – 2004).

## **B. Article 2**

8. In considering States parties' reports, the Committee has done its best to uphold the standards of the Convention and the mandatory nature of States parties' obligations under article 2. It has been encouraged by the active dialogue that has developed with many States parties in relation to the measures undertaken at the national level to implement this provision of the Convention. A number of States have in fact revised their laws and policies to ensure the effective implementation of article 2. Others, however, deny the existence of racial discrimination and merely cite legislative provisions prohibiting discrimination without addressing the difficulties in implementing such provisions and achieving de facto equality.

### **C. Article 3**

9. The implementation of States parties' obligations under article 3 of the Convention has been hindered by the fact that many States parties interpret the scope of the article as directed exclusively to apartheid in South Africa and fail to examine whether forms of de facto racial segregation are occurring on their own territory. Segregation, as defined in article 3 of the Convention, still occurs in various forms in a number of States, in particular in housing and education, and its eradication should be considered a matter of priority by all States parties to the Convention.

### **D. Article 4**

10. The Committee reiterates its view that the prohibition of the dissemination of all ideas based upon racial superiority or hatred, of organizations promoting and inciting racial discrimination, and of the participation in such organizations is compatible with the rights to freedom of opinion and expression and the freedoms of association and assembly. It therefore urges States parties to withdraw their reservations to article 4 of the Convention and to enact legislation so as to comply fully with the provisions of this article.

11. Bearing in mind the results of expert seminars and the studies drafted on the issue of racism on the Internet by the United Nations and other intergovernmental organizations over the past few years, the Committee recommends that any further study on this question take into account conclusions and recommendations made on these various occasions in order to avoid duplication. The Committee notes that, during the second session of the Intergovernmental Working Group, a discussion was initiated on the need to envisage the elaboration and adoption of a new instrument to combat racism on the Internet. The possibility that such an instrument might take the form of an additional protocol to the ICERD was also mentioned. Further discussion on such a possibility would need to be preceded by a thorough investigation and assessment of the added value of such a protocol in relation to the protective scope of the existing provisions of the Convention. In this respect, the Committee reiterates that article 4 of the Convention applies to material disseminated on the Internet and that it is the responsibility of States parties to ensure that their national laws accord with the requirements of the Convention. Difficulties in regulating the Internet do not absolve States parties of their obligations under this Convention.

12. The Committee urges States to strengthen their national legislation and ensure that it is fully compliant with article 4 of the Convention and that all forms of dissemination and incitement to racial hatred are punished, including material disseminated through the Internet. The Committee also reiterates its recommendation that they withdraw any reservations limiting the scope of article 4 of the Convention. The Committee further encourages States to undertake collaborative and cooperative measures to enforce relevant national laws more effectively and, in particular, to enhance cooperation between national law enforcement agencies and to provide special training for law enforcement officials. Furthermore, the Committee welcomes the development of innovative technologies and measures to combat the dissemination of racist propaganda on the Internet, such as the development of filtering software, the establishment of centres to monitor racist sites on the Internet and codes of conduct for the Internet industry. Finally, the Committee urges all States

parties to sensitize the public to the existence of racism on the Internet through educational programmes.

#### **E. Article 5**

13. The Committee's ability to examine States parties' compliance with their obligations under article 5 is often frustrated by the failure of some States to provide sufficient information, such as results of specific studies, as well as data, disaggregated by ethnicity and gender, on the enjoyment of the rights enumerated in article 5. In particular, some subparagraphs of article 5 are dealt with rather superficially by some States parties in their periodic reports. Article 5 does not of itself create civil, political, economic, social or cultural rights. The Convention assumes the existence and recognition of these rights and obliges States parties to ensure that they are enjoyed without discrimination based on race, colour, descent, or national or ethnic origin. In this respect, the Committee draws the attention of States parties to its general recommendation XX (1996).

14. The lack of information provided by some States parties may also be caused, in part, by the fact that some of the rights enumerated in article 5 of the Convention still lack precision and shared understanding. This is the case of cultural rights, which are disseminated in numerous international and regional instruments dealing with human rights in general or minorities or indigenous peoples' rights. In the view of the Committee, the adoption of an international instrument on cultural rights describing the content of these rights, on the basis of the current state of international law, would be a useful tool for the work of the Committee. Furthermore, the Committee might envisage the elaboration and adoption of additional general recommendations addressing States parties' obligations under the individual paragraphs of article 5 that will supplement its general recommendation XX on this provision.

#### **F. Article 6**

15. A recurrent difficulty faced by the Committee in monitoring States' compliance with the requirements of article 6 of the Convention is the failure by some States parties to provide information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 6, but also on the practical implementation of these measures and the number of complaints that lead to the granting of adequate remedies to victims.

16. Article 6 requires that States provide effective protection and remedies for all victims of racial discrimination, citizens and non-citizens alike, thereby allowing migrants, refugees and all other vulnerable groups to seek protection and remedies against acts of racial discrimination. The Committee is, however, aware of the difficulties that victims of racial discrimination continue to face in many countries.

17. It has been noted that victims have had difficulties in taking forward their cases because procedures may be too demanding. In this respect, States parties are invited, inter alia, to regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin, so that once a complainant has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective

and reasonable justification for the differential treatment. In addition, many victims of racial discrimination do not always obtain appropriate legal assistance owing to their economic and/or social conditions. Moreover, many are reluctant to complain of racial discrimination for, inter alia, fear of reprisals, lack of confidence in the police and justice systems, insufficient awareness of their rights and the insensitivity of authorities to cases of racial discrimination.

18. The Committee invariably requests States parties to ensure that appropriate provisions are available in national legislation, and to inform and make accessible to vulnerable groups all legal remedies in the field of racial discrimination, including access to effective remedies and reparations.

## **G. Article 7**

19. Although the Convention addresses the question of education for tolerance, the Committee is conscious that human rights education and the promotion of understanding, tolerance and friendship among nations and racial or ethnic groups as well as the protection of cultural diversity continue to be neglected by a number of States parties. The Committee therefore supports the recommendation adopted by the Working Group at its second session, related to “the establishment of educational plans or guidelines to promote tolerance, cultural interaction, respect for cultural diversity and human rights guaranteed at the international level” (ibid., recommendation 2). Noting the Working Group’s intention to coordinate its work with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Committee wishes to draw the attention of the Working Group to the Universal Declaration on Cultural Diversity, adopted by the UNESCO General Conference in 2001. It also recalls that a draft convention is being prepared by UNESCO on this issue, which offers the possibility to elaborate further upon the guidelines already set forth in the Declaration.

20. Furthermore, in light of the fundamental importance of human rights education to the elimination of racial discrimination, the Committee urges the Working Group to give due consideration to the need for a new convention on human rights education.

## **II. IMPLEMENTATION AND EFFECTIVENESS OF THE COMMITTEE’S PROCEDURES**

### **A. Reporting procedure**

21. The continuing failure of some States parties to comply with their obligations under article 9 of the Convention is a major source of concern for the Committee. The Committee is mindful of calls by the Secretary-General and others for the reform of the treaty body system and the simplification of States parties’ reporting obligations to the human rights treaty bodies. The Committee is committed to engaging with other treaty bodies, the Commission on Human Rights and other organs and bodies of the United Nations system on the development of a more efficient and effective treaty body system and to pursuing consultations with OHCHR in relation to the introduction of an expanded core document. Such a document would cover all commonalities between treaties, with reports then focusing on treaty-specific issues, with particular reference to follow-up to each treaty body’s previous concluding

observations. In June 2004, the Chairman of the Committee attended the third inter-committee meeting and the meeting of chairpersons of the committees, at which it was agreed that it is open to States to adopt such an approach in their reporting to treaty bodies.

## **B. Review procedure**

22. The Committee has been encouraged by the response of most States parties to the review procedure as it has resulted in the submission of overdue reports for consideration by the Committee. The review procedure has allowed the Committee to exercise more effective control of the reporting process and has encouraged States parties to resume a fruitful dialogue with the Committee. The Committee, however, continues to urge States parties to use the reporting process for their own benefit rather than considering it a burden to comply with article 9 of ICERD. The value of reporting should primarily be in the interest of the State party and those under its jurisdiction.

## **C. Follow-up**

23. The Committee emphasizes the fundamental importance of States parties' implementing the recommendations of the Committee. To monitor such implementation, the Committee has amended its rules of procedure to provide for the appointment of a coordinator on follow-up to concluding observations of the Committee. At its sixty-fifth session, held in August 2004, the Committee appointed its first coordinator who will follow up on the implementation of recommendations addressed to States parties in cooperation with the country rapporteurs.

## **D. Early warning and urgent action procedure**

24. The early warning and urgent action procedure has enabled the Committee to take a more active role in preventing racial violence and intolerance and in responding to serious violations of the Conventions. In conflict situations, or when there is a serious risk of a conflict, it is essential that the Committee not only fulfil its role of examining States parties' reports, but also of addressing current developments in all States parties. The procedure has encouraged non-reporting States parties to resume their dialogue with the Committee on their implementation of the Convention and has enhanced cooperation between the Committee and United Nations bodies and agencies in combating contemporary manifestations of racial discrimination. At its sixty-fifth session, the Committee established a working group in charge of preparing its decisions under this procedure.

## **E. Country visits**

25. To enhance the dialogue between the Committee and States parties and facilitate the practical implementation of ICERD, country visits may be envisaged in cases where the Committee, in consultation with the State party, considers that such visits would further the objectives of the Convention. In the opinion of the Committee, these country visits would complement its work under other existing procedures. This would allow the Committee to obtain as detailed and comprehensive a picture as possible of the situation concerning racism and intolerance in States parties to the

Convention. Such visits would provide an opportunity for Committee members to meet officials from the various ministries and national public authorities dealing with issues within the Committee's remit. This would also allow the Committee members to meet representatives of national human rights institutions and non-governmental organizations working in the field of human rights and racial discrimination and others concerned with matters within the mandate of the Committee. The Committee considers that such visits may be implemented within the framework of its early warning or other existing procedures, or through the adoption of an additional protocol to the Convention as a legally consolidated instrument to elaborate further the conditions and procedures appropriate to such visits, including the financial aspects.

#### **F. Individual communications procedure**

26. As of 31 July 2004, only 45 countries had made the declaration in accordance with article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals. The limited number of declarations, coupled with a lack of awareness of the mechanism in those States that have made the declaration, has hampered the effectiveness of the procedure.

To enable victims to avail themselves of the remedy provided under article 14 and to allow the Committee to develop a more comprehensive jurisprudence on the provisions of the Convention, it is imperative that more States parties make the declaration under article 14 of the Convention. The Committee also calls on those States parties that have made the declaration under article 14 to increase the awareness of the mechanism amongst the people in their territory and ensure that the procedural aspects are understood and adhered to in order to reduce the incidence of complaints being declared inadmissible, in particular for non-exhaustion of domestic remedies.

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