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**COMPLEMENTARY INTERNATIONAL STANDARDS**

**Study of the Committee on the Elimination of Racial Discrimination  
on possible measures to strengthen implementation through optional  
recommendations or the update of its monitoring procedures**

## Summary

The present report is submitted pursuant to a request made by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (IGWG) at its fourth session.

Part I (introduction) recalls the interaction between IGWG and the Committee on the Elimination of Racial Discrimination (CERD) and in particular the participation of CERD members in the sessions of IGWG as well as the report (E/CN.4/2004/WG.21/10 and Add.1) submitted by the Committee to IGWG in 2004 on its views regarding the effectiveness of the Convention, many points of which remain relevant.

Part II of the study provides an outline of the various procedures at the disposal of the Committee, highlighting recent developments such as, in particular, the new follow-up procedures developed by CERD both for its concluding observations and for its opinions adopted on individual and group communications, which are presented in detail. CERD also stresses that the initial assessment of the follow-up procedure is quite positive, including one country visit conducted in 2006 by the Coordinator on follow-up at the invitation of one State party.

The study also identifies various obstacles to the effectiveness of the monitoring role with which the Committee has been entrusted. CERD stresses in particular that non-compliance of States parties with their reporting obligations remains a major obstacle to the Committee's work and the effective implementation of the Convention. Regarding individual complaints, owing to the relatively small number of declarations accepting this procedure, coupled with a lack of awareness of the mechanism in those States which have made the declaration, the Committee notes that the potential of the procedure remains to be fully exploited.

In part III of the report, CERD presents the following conclusions and proposals of the Committee for the increased effectiveness of its procedures:

- CERD continues to urge States to regard the reporting process as being for their own benefit as well as obligatory in order to comply with article 9 of the Convention.
- CERD suggests that the practice of follow-up visits by the Coordinator on follow-up be further developed and that the framework for such visits be explored, including through the adoption of an optional protocol to the Convention which would elaborate further the conditions and procedures appropriate for such visits, including the financial aspects.
- CERD continues to encourage States to consider making the declaration under article 14 of the Convention providing for the possibility for individuals and groups of individuals to submit communications to CERD and to give adequate publicity to that mechanism. It further recalls its proposal concerning the establishment of a single body to deal with individual communications to all treaty bodies by the means of an optional protocol to the relevant treaties.

- The Committee suggests that an optional protocol to the Convention be adopted that would provide for an evaluation visit/inquiry procedure, in line with similar procedures under several other international human rights instruments regarding discrimination.
- Finally, the Committee suggests the inclusion in an optional protocol of provisions on the obligation of States to establish, designate or maintain national mechanisms working towards the prevention of racial discrimination and the promotion of equality that will operate in cooperation with the Committee so as to strengthen effectiveness of its monitoring role.

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## I. INTRODUCTION

### **Summary of interaction between the Committee on the Elimination of Racial Discrimination and the Intergovernmental Working Group at its first four sessions**

1. The Committee on the Elimination of Racial Discrimination (CERD or “the Committee”) welcomes the opportunity to address once again the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (IGWG or “Working Group”).
2. At the first session of IGWG held in 2003, two members of CERD addressed the Working Group on the measures taken by the Committee to implement the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and exchanged views with the Working Group on the application of existing international standards and the issue of the development of complementary standards (see E/CN.4/2003/20, para. 26).
3. At the conclusion of the session, the Working Group invited the Committee to:

“consider evaluating and assessing, as appropriate, the current implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in the context of manifestations of contemporary forms of racism and to provide the Working Group with its views on possible areas where complementary international standards might strengthen the fight against racism, racial discrimination, xenophobia and related intolerance” (ibid., para. 33, recommendation 19 (a)).
4. Two members of the Committee and its former Chairperson attended the second session of IGWG held in January 2004 and took part in the panel discussion on complementary standards. The Group requested “OHCHR to convey its invitation to CERD for its written views on the effectiveness of the Convention, including its implementation” (E/CN.4/2004/20, para. 81, recommendation 20) to the third session of IGWG.
5. At the third session of the Working Group, held in October 2004, two members of the Committee presented the views of CERD as presented in a document adopted by the Committee at its sixty-fourth session, held in August 2004 (see E/CN.4/2004/WG.21/10 and Add.1).
6. The views contained in that document were reiterated and further developed by the two CERD members who participated in the discussions which took place on the issue of complementary standards at the fourth session of IGWG, held in January 2006. CERD has reiterated its position in the following areas: the importance of compliance of States parties with their reporting obligations; concern about the limited number of individuals or group communications received by the Committee; the importance of the procedures developed by CERD to follow up on the recommendations addressed to States parties in concluding observations and in opinions adopted on individual and group complaints; the significance of early warning and urgent action measures to prevent existing problems from escalating into

conflicts; and the positive impact that the amendment to the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”) introducing the possibility of conducting country visits would have on the effectiveness of CERD (see E/CN.4/2006/18, para. 53).

### **Request of the Intergovernmental Working Group**

7. At the end of its fourth session, the Working Group recommended that with regard to procedural gaps, CERD be requested to conduct a further study on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures (*ibid.*, para. 108 (a)). This document is written in response to this request.

## **II. CURRENT PROCEDURES AND OBSTACLES TO THE EFFECTIVENESS OF THE MONITORING ROLE OF THE COMMITTEE**

### **A. Reporting procedure**

8. In accordance with article 9, paragraph 1, of the Convention, each State party has undertaken to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which it has adopted and which give effect to the provisions of the Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. Article 9, paragraph 1, also provides that the Committee may request further information from the States parties.

9. Non-compliance of States parties with their reporting obligations remains a major obstacle to the Committee’s work and the effective implementation of the Convention.<sup>1</sup> In its views submitted to IGWG in 2004, CERD had expressed concern at the fact that “as at 14 July 2004, 73 States parties were late in the submission of two or more reports, and among these, 19 States parties had reports which were overdue by at least 10 years” (E/CN.4/2004/WG.21/10/Add.1, para. 128). As at 14 February 2007, 83 States parties were late in the submission of two or more reports (see CERD/C/70/2) and among these, 16 States parties had reports which were overdue by at least 10 years.

### **Measures adopted to encourage compliance with reporting obligations**

10. The reporting process enables the Committee and States parties to identify problems and issues faced in combating racial discrimination. In order to assist the Committee in fulfilling the tasks entrusted to it pursuant to article 9 of the Convention and to enable the Committee and States parties to obtain a complete picture of the situation as regards the implementation of the provisions of the Convention, the Committee has developed a number of measures to encourage States to fulfil their reporting obligations.

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<sup>1</sup> This issue was already raised by the Committee in the views transmitted to the Intergovernmental Working Group in 2004. See E/CN.4/2004/WG.21/10/Add.1, para. 125.

11. Where a State has several outstanding periodic reports, the Committee may recommend that it submit the reports in a consolidated document together with its next periodic report. In such a case, CERD specifies in its concluding observations the date on which the consolidated report is due. Furthermore, in a case where the period between the date of the examination of the last periodic report and the scheduled date for the submission of the next periodic report is less than two years, the Committee may suggest in its concluding observations that the State party concerned, if it so wishes, submit the latter report jointly with the periodic report to be submitted at the following date fixed in accordance with article 9 of the Convention.

12. At its sixty-ninth session, held in August 2006, the Committee decided to start reviewing its reporting guidelines at its seventieth session in order to take into consideration the guidelines on a common core document and treaty-specific documents, as contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3 and Corr.1). The submission of a common core document including information of relevance to several or all treaty bodies aims to alleviate the reporting burden for States parties. The revised guidelines to be prepared by CERD in 2007 will take into account the information which States are requested to provide in the common core document, in particular information concerning equality and non-discrimination.

### **B. Review procedure**

13. The Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring the implementation of the Convention, decided in 1991 that it would proceed with the review of the implementation of the Convention by the States parties whose reports were at least five years overdue on the basis of the last reports submitted by the State party concerned and their consideration by the Committee.<sup>2</sup> This review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee decided also to apply the review procedure to seriously overdue initial reports. Furthermore, it decided that the review would be based on all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations.<sup>3</sup> The Committee may also consider relevant information from other sources, including from non-governmental organizations (NGOs).

14. At each session, the Committee selects up to seven countries whose reports are seriously overdue to be scheduled at its next session for a review of the implementation of the Convention. Most States parties respond to the Committee's decision to schedule the review by requesting that the review be postponed and agreeing to submit a report within six months to a year. The Committee considers all such requests and may agree to the postponement. However, it informs

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<sup>2</sup> See *Report of the Committee on the Elimination of Racial Discrimination, Official Records of the General Assembly, Forty-sixth Session, Supplement No. 18 (A/46/18)*, para. 27.

<sup>3</sup> *Ibid.*, *Fifty-first Session, Supplement No. 18 (A/51/18)*, para. 22.

the State party that the consideration of its situation without a report will again be scheduled for review if it fails to submit the report within the specified time frame, after which the Committee will then proceed to adopt concluding observations.

15. Concluding observations adopted in the absence of a State party report contain recommendations to the State party with a view to ensuring the implementation of the Convention.

16. At its sixty-fourth session in March 2004, the Committee developed its review procedure by providing that in the first instance, concluding observations adopted under the review procedure could be confidential and provisional. In such a case, the State party is notified that the provisional concluding observations will be made public unless it makes a firm commitment to submit a report to the Committee in the near future.<sup>4</sup>

### **C. Follow-up procedure**

17. The Committee considers that in order for the struggle against racial discrimination to advance according to the objectives of the Convention, it is very important that States parties implement its recommendations.

18. Rule 65 of the Committee's rules of procedure (see HRI/GEN/3/Rev.2) provides the possibility for the Committee to request from States parties additional information, prior to the submission of their next periodic report, on the implementation of the Convention and of the recommendations formulated during the examination of the last report. At its sixty-fourth session, the Committee amended its rules of procedure relevant to follow-up activities by adopting the second paragraph to rule 65<sup>5</sup> providing for the appointment of a coordinator in order to further the implementation of rule 65, paragraph 1. At its sixty-fifth session, the Committee appointed a coordinator on follow-up and an alternate.<sup>6</sup> The mandate of the Coordinator and the alternate took effect as from the sixty-fifth session (August 2004).

#### **1. Terms of reference of the Coordinator on follow-up**

19. At its sixtieth session (March 2005), the Committee adopted terms of reference for the activities of the Coordinator,<sup>7</sup> who is responsible for monitoring compliance by States parties with the recommendations of the Committee. The Coordinator is mandated to ensure compliance with deadlines fixed by the Committee for the receipt of follow-up information. The Committee may ask the State party to submit information at a chosen time before the next reporting session

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<sup>4</sup> Ibid., *Fifty-ninth Session, Supplement No. 18 (A/59/18)*, para. 429.

<sup>5</sup> Ibid., para. 481.

<sup>6</sup> Ibid., para. 482.

<sup>7</sup> Ibid., *Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

of the concerned State. The Coordinator is charged with monitoring that the deadlines are respected by the State party. He/she is responsible for sending reminders (within a month of expiry of the deadline) to a State party when it has not supplied the optional information within the fixed deadline. If the information requested is not supplied or is considered unsatisfactory, the Coordinator can take the matter up with the State party.

20. The Coordinator, whose task should be shared with the country rapporteur for the report and concluding observations, analyses and assesses the information received from the State party pursuant to a request by the Committee for further information.

21. The Coordinator may make recommendations to the Committee when information is received and in the case of non-receipt of such information. The Coordinator may, inter alia, recommend that the Committee take note of the information, request further information in its next report, or remind the State party of recommendations included in its last concluding observations and its obligations as a party to the Convention.

22. The Coordinator submits a succinct progress report on his findings to the Committee at each session. The Committee sets aside time for discussion of the Coordinator's findings and the adoption of formal recommendations, if any, including, where appropriate, reconsideration of the date on which the next periodic report of the State party is due or whether the urgent action procedure should be applied. The meeting is held in private.

23. The Coordinator's findings are included in a chapter of the annual report of the Committee to the General Assembly on follow-up activities. If no information is received in spite of the reminder, this is recorded in the Committee's subsequent report to the General Assembly. In order to ensure transparency of the process, the optional information received from States parties is made available and placed on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

## **2. Guidelines on follow-up provided to States parties**

24. At its sixty-eighth session, held in March 2006, the Committee adopted guidelines on follow-up on concluding observations and recommendations<sup>8</sup> so as to assist States parties in their efforts to implement and follow up on the concluding observations and recommendations of the Committee.

### **Dissemination of the concluding observations**

25. The Committee encourages the State party to disseminate the concluding observations as widely as possible. It is recommended that they be translated into local languages and, in particular, languages of concerned minorities.

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<sup>8</sup> Ibid., *Sixty-first Session, Supplement No. 18* (A/61/18), annex VI.

### **Coordination of implementation efforts and designation of a focal point/liaison person**

26. The Committee acknowledges that its concluding observations touch on a wide range of issues and that their implementation will involve the active engagement and commitment of various ministries, departments and other stakeholders. There may consequently be a need to establish or strengthen existing mechanisms within the State party for the effective coordination of all activities related to the implementation of the Convention.

27. The State party is invited to designate a representative to act as a focal point in charge of liaising with the Coordinator on follow-up or the alternate. This would greatly facilitate the task of the Coordinator and communication between the State party and the Committee.

### **Regular reporting on progress**

28. The State party is required to submit comprehensive reports on the general fulfilment of its obligations under the Convention on a regular basis. The periodic reports should contain information on measures taken to implement the recommendations of the Committee, as requested in the reporting guidelines of the Committee. In addition, the Committee may, in accordance with article 9, paragraph 1, of the Convention, request information from the State party at any time and may, in its concluding observations, request States to provide information within a year on follow-up to some of its recommendations. The Committee would welcome receiving information between the regular reporting sessions on concrete steps taken by the State party to implement these recommendations.

### **Cooperation with national human rights institutions and non-governmental organizations**

29. The Committee invites the State party to involve national human rights institutions, NGOs and other stakeholders in the process of implementation of the Convention and of its concluding observations. This can be done by convening round tables and workshops on a regular basis with the aim of assessing progress in implementation.

### **Concluding observations and recommendations and national action plans**

30. In the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, States were called upon to elaborate action plans in order to combat racism, racial discrimination, xenophobia and related intolerance. In States where such plans or human rights plans of action have been developed, the concluding observations and recommendations can serve as key qualitative and quantitative indicators of progress made in the implementation of the Convention. In this way the observations and recommendations become integrated into domestic human rights strategies.

### **Assistance to follow-up activities**

31. The Coordinator on follow-up, or in his/her place the alternate, is available to meet with representatives of the State party to discuss the implementation of the concluding observations and recommendations.

32. The State party may request technical assistance from OHCHR to assist in the implementation of the concluding observations and recommendations.

### **3. Provisional assessment of the procedure**

33. As at 14 February 2007, the Committee had received seven reports of States parties on the implementation of the recommendations addressed to them by the Committee following consideration of their initial or periodic reports. The Committee continued the constructive dialogue held with two of these States parties, by sending them letters with comments and requests for further information.

34. The Coordinator on follow-up was invited by one State party to conduct a visit from 21 to 23 June 2006 in order to discuss and assess the measures taken by the State party in order to follow up on the Committee's conclusions and recommendations. The report of the Coordinator on follow-up was then forwarded to the State party concerned.

35. During the visit, which was arranged by the Department of Justice, Equality and Law Reform of the State party, the Coordinator on follow-up met with government officials of the various departments involved in the implementation of the Committee's recommendations. He also met with the national human rights institution and a specialized institution established by the State party, as well as with a wide range of civil society representatives and the Chair of the Strategic Monitoring Group of the National Strategy against Racism adopted by the State party. The Coordinator on follow-up was also given the opportunity to visit, as he had requested, an accommodation centre for asylum-seekers.

36. This visit was the first one arranged by a State party for the Coordinator on follow-up. The Coordinator found the visit extremely useful and informative. He expressed his appreciation for the thorough follow-up report submitted by the State party prior to his visit, as well as for the effectiveness of the organization of the visit. The Coordinator also acknowledged with appreciation the report received from an NGO coalition.

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

37. In his report to the General Assembly at its forty-seventh session in 1993 on the work of the Organization, the Secretary-General identified the need to "explore ways of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action".<sup>9</sup> The statement received the full support of the chairpersons of human rights treaty bodies<sup>10</sup> and led to the adoption of innovative procedures by the Committee and other human rights treaty bodies.

38. At its forty-second session, held in March 1993, the Committee adopted a working paper<sup>11</sup> stating that efforts to prevent serious violations of the Convention should include both early

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<sup>9</sup> Ibid., *Forty-seventh Session, Supplement No. 1* (A/57/1), para. 101.

<sup>10</sup> Ibid., *Forty-ninth Session, Supplement No. 18* (A/49/18), para. 18, citing A/47/628, para. 44.

<sup>11</sup> Ibid., *Forty-eighth Session, Supplement No. 18* (A/48/18), annex III.

warning measures to address existing structural problems from escalating into conflicts, and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. At its forty-fifth session (1994), the Committee decided that preventive measures, including early warning measures and urgent procedures, should become part of its regular agenda.<sup>12</sup>

39. At its sixty-fifth session, held in August 2004, the Committee established a working group composed of five members charged with preparing its decisions under these procedures.<sup>13</sup>

### **Decisions adopted under the early warning measures and urgent procedures**

40. Since its adoption in 1993, 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 Convention.

41. In practice, the Committee has not specified whether a measure was being taken as an early warning measure or an urgent procedure. Measures taken by the Committee under the combined early warning measures and urgent procedures have included visits by members of the Committee, the submission of information to the Secretary-General, specific recommendations to States parties to avail themselves of the advisory services and technical assistance programme of OHCHR concerning, for example, possible technical assistance in the drafting of legislation or the training of officials in international human rights norms, and the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of racial discrimination.

42. At its sixty-sixth session, held in March 2005, the Committee held a thematic discussion on the prevention of genocide<sup>14</sup> during which it recalled that the Committee, acting under its prevention of discrimination early warning and urgent action procedures, had brought to the attention of the Security Council, through the Secretary-General, a number of country situations where systematic violations of human rights and persistent patterns of racial discrimination could escalate into violent conflict and genocide.

### **Declaration on the prevention of genocide**

43. Following the thematic discussion, the Committee adopted a declaration on the prevention of genocide<sup>15</sup> for the consideration of the States parties, the Special Adviser to the

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<sup>12</sup> Ibid., *Forty-ninth Session, Supplement No. 18 (A/49/18)*, para 17.

<sup>13</sup> Ibid., *Fifty-ninth Session, Supplement No. 18 (A/59/18)*, para. 483.

<sup>14</sup> See the summary records of the discussion, CERD/C/SR.1683 and 1684.

<sup>15</sup> For the text of the declaration, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, para. 459.

Secretary-General on the Prevention of Genocide, the Secretary-General, as well as the Security Council. In this declaration, the Committee decided, inter alia, to “strengthen and refine its anti-racial discrimination early warning and urgent action as well as follow-up procedures in all situations where indications of possible violent conflict and genocide prevail ...” (para. 4).

44. The Committee also stressed that it was imperative to “stimulate stronger ties and interaction between the local and global levels in, inter alia, developing national strategies for the prevention of genocide linked to national action plans for the elimination of racial discrimination developed in close collaboration with civil society, national human rights institutions and other non-State actors, as well as involving international bodies such as the Committee on the Elimination of Racial Discrimination and the Office of the United Nations High Commissioner for Human Rights” (para. 2).

45. The declaration also highlights the determination of the Committee to “provide the Special Adviser on the Prevention of Genocide with timely and relevant information on laws, policies and practices that may indicate systematic or systemic discrimination based on race, colour, descent, or national or ethnic origin which may potentially result in violent conflict and genocide” (para. 3).

#### **Indicators of patterns of systematic and massive racial discrimination**

46. As a follow-up to its declaration on the prevention of genocide, the Committee developed and adopted at its sixty-seventh session a special set of indicators of patterns of systematic and massive racial discrimination,<sup>16</sup> so as to strengthen the capacity of the Committee to detect and prevent at the earliest possible stage developments in racial discrimination that may lead to violent conflict and genocide.

47. The indicators may serve as a tool for the Committee to assess the existence of factors known to be important components of situations leading to conflict and genocide. If one or more of the indicators are present, this should be clearly stated in the concluding observations or decision, and the Committee shall recommend that the State party report, within a fixed deadline, to the Committee under the follow-up procedure on what it intends to do to ameliorate the situation.

48. The Committee identified the following indicators:

1. Lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination.
2. Systematic official denial of the existence of particular distinct groups.

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<sup>16</sup> Ibid., para. 20.

3. The systematic exclusion - in law or in fact - of groups from positions of power, employment in State institutions and key professions such as teaching, the judiciary and the police.
  4. Compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity.
  5. Grossly biased versions of historical events in school textbooks and other educational materials as well as celebration of historical events that exacerbate tensions between groups and peoples.
  6. Policies of forced removal of children belonging to ethnic minorities with the purpose of complete assimilation.
  7. Policies of segregation, direct and indirect, for example separate schools and housing areas.
  8. Systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media.
  9. Grave statements by political leaders/prominent people that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority.
  10. Violence or severe restrictions targeting minority groups perceived to have traditionally maintained a prominent position, for example as business elites or in political life and State institutions.
  11. Serious patterns of individual attacks on members of minorities by private citizens which appear to be principally motivated by the victims' membership of that group.
  12. Development and organization of militia groups and/or extreme political groups based on a racist platform.
  13. Significant flows of refugees and internally displaced persons, especially when those concerned belong to specific ethnic or religious groups.
  14. Significant disparities in socioeconomic indicators evidencing a pattern of serious racial discrimination.
  15. Policies aimed at the prevention of delivery of essential services or assistance, including obstruction of aid delivery or access to food, water, sanitation or essential medical supplies in certain regions or targeting specific groups.
49. As these indicators may be present in States not moving towards violence or genocide, the assessment of their significance for the purpose of predicting genocide or violence against identifiable racial, ethnic or religious groups should be supplemented by consideration of the following subset of general indicators:

- (a) Prior history of genocide or violence against a group;
- (b) Policy or practice of impunity;
- (c) Existence of proactive communities abroad fostering extremism and/or providing arms;
- (d) Presence of external mitigating factors such as the United Nations or other recognized invited third parties.

50. When receiving information between sessions of the Committee about grave incidents of racial discrimination covered by one or more of the relevant indicators, the Chairperson of the working group on early warning/urgent action, in consultation with its members and with the Coordinator on follow-up and the Chairperson of the Committee, may take the following action:

- Request further urgent information from the State party.
- Forward the information to the Secretary-General and his Special Adviser on the Prevention of Genocide.
- Prepare a decision to be submitted for adoption by the Committee at its next session.
- Adopt a decision at the session in the light of the most recent developments and action taken by other international organizations.

#### **E. Individual complaints procedure**

51. In addition to considering States parties' reports submitted in accordance with article 9, paragraph 1, of the Convention, the Committee also considers communications submitted by individuals and groups within the jurisdiction of the States parties that have made the declaration under article 14 of the Convention. Paragraph 2 of article 14 provides for the possibility to establish or indicate a body within the national legal order which is competent to receive and consider petitions from individuals and groups of individuals who claim to be victims of a violation of any of the rights set forth in the Convention and who have exhausted other available local remedies. A petitioner who is unable to obtain satisfaction from the body established has the right to communicate the matter to the Committee within six months.

52. Owing to the relatively small number of declarations, coupled with a lack of awareness of the mechanism in those States which have made the declaration, the potential of the procedure has not been fully exploited. When CERD sent its views to the Intergovernmental Working Group in 2004, only 45 countries had made the declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14. As of 14 February 2007, only 6 more States had made the declaration, bringing the total number of States parties that have accepted the procedure to 51.

**New procedure of follow-up to individual communications adopted in 2005**

53. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experience of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session, to establish a procedure to follow up on its observations and recommendations adopted following the examination of communications from individuals or groups of individuals and to add two new paragraphs to its rules of procedure.<sup>17</sup>

54. At its sixty-eighth session, the Committee appointed a Rapporteur for follow-up on opinions who presented a report to the Committee with recommendations on further action to be taken.<sup>18</sup> This report, which was updated and adopted by the Committee at its sixty-ninth session, incorporates all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention.

55. The table to be found in the report of the Committee to the General Assembly at its sixty-first session<sup>19</sup> shows a complete picture of follow-up replies from States parties received up to 18 August 2006, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. An annual update will be provided by the Rapporteur and will be included in annual reports of the Committee.

56. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be so considered because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

57. At the time of completion of the present study, the Committee had adopted final opinions on the merits with respect to 22 complaints and found violations of the Convention in 9 cases. In 8 cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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<sup>17</sup> Ibid., annex IV.

<sup>18</sup> Ibid., *Sixty-first Session, Supplement No. 18 (A/61/28)*, para. 486.

<sup>19</sup> Ibid., annex V.

### **III. RECOMMENDATIONS TO STATES AND PROPOSALS FOR INCREASED EFFECTIVENESS OF THE COMMITTEE'S MONITORING PROCEDURES**

#### **A. Reporting and review procedures**

58. The Committee recalls that at its fourth session, the Intergovernmental Working Group “remind[ed] States parties of the need to comply with their reporting obligations under relevant human rights treaties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, as a matter of priority” (E/CN.4/2006/18, para. 105 (c)).

59. The Committee has been encouraged by the response of most States parties to the review procedure during the past few years. It has resulted in the submission of many overdue reports for consideration by the Committee. The review procedure has allowed the Committee to take more effective control of the reporting process and has encouraged States parties to resume a fruitful dialogue with the Committee.

60. The continuing non-compliance of some States parties with their obligations under article 9 of the Convention, however, remains a major source of concern for the Committee.

61. The Committee has been mindful of the calls made over the past few years 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 has engaged and is committed to engaging further in the future with other treaty bodies, the Human Rights Council 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 further ways to improve the effectiveness of the treaty body system.

62. During its two sessions to be held in 2007, the Committee will work towards the adoption of revised reporting guidelines taking into account the information to be provided by States in the common core document. It hopes that these guidelines, together with the guidelines for the common core document, will provide adequate guidance to States, thereby alleviating the difficulties they may have encountered during the drafting of their reports.

63. When the Committee observes the need for technical assistance regarding the drafting of reports, it will continue to recommend to States parties that they request such assistance from OHCHR.

64. CERD continues to urge States to regard the reporting process as being for their own benefit as well as obligatory to comply with article 9 of the Convention. States parties should see the process of preparing their reports for the treaty bodies not only as an aspect of the fulfilment of their international obligations, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. The report preparation process thus offers an occasion for each State party to:

(a) Conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;

(b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;

(c) Identify problems and shortcomings in its approach to the implementation of the treaties; and

(d) Plan and develop appropriate policies to achieve these goals.<sup>20</sup>

65. The reporting process should encourage and facilitate, at the national level, public scrutiny of government policies and constructive engagement with relevant actors of civil society conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.<sup>21</sup>

66. At the international level, the reporting process creates a basis for constructive dialogue between States and the treaty bodies.<sup>22</sup>

### **B. Follow-up procedure**

67. As stated in paragraph 35 above, the Coordinator on follow-up conducted in June 2006 for the first time a visit at the invitation of a State party in order to discuss and assess the measures taken by the State party in order to follow up on the Committee's conclusions and recommendations. On the basis of this example of good practice, the Committee is of the view that follow-up visits, together with the follow-up reports submitted for consideration, provide the Coordinator with an optimum overview of the steps taken towards the implementation of the recommendations addressed by the Committee to the State party concerned one year earlier.

68. In the views sent to the Intergovernmental Working Group in 2004, the Committee had already stated that, in order to enhance the dialogue between the Committee and States parties and facilitate the practical implementation of the Convention, 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 and 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 (E/CN.4/2004/WG.21/10, para. 25).

69. Furthermore, at its fourth session, the Intergovernmental Working Group identified procedural gaps and stressed the "need for CERD to be able to undertake country visits [as well as the] need to formalize the procedure of follow-up to the recommendations addressed to States parties by CERD in its concluding observations as well as in opinions on individual communications" (E/CN.4/2006/18, para. 78).

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<sup>20</sup> As provided in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3), para. 9.

<sup>21</sup> *Ibid.*, para. 10.

<sup>22</sup> *Ibid.*, para. 11.

70. Bearing in mind the support expressed by the Intergovernmental Working Group, the development of the follow-up procedure of the Committee between 2004 and 2007, as well as the positive assessment of the visit undertaken by the Coordinator on follow-up in June 2006 in the context of this new procedure, the Committee suggests that the practice of follow-up visits be further developed and that the framework for such visits be explored, including through the adoption of an optional protocol to the Convention as a legally consolidated instrument to elaborate further the conditions and procedures appropriate to such visits, including the financial aspects.

### **C. Individual communications procedure**

71. As stated in paragraph 53 above, owing to the relatively small number of declarations, coupled with a lack of awareness of the mechanism in those States which have made the declaration, the potential of the procedure has not been fully exploited. The development of the Committee's jurisprudence has been further impeded by a significant number of the communications before the Committee being declared inadmissible for a failure to exhaust domestic remedies.

72. To enable victims to avail themselves of the remedy provided under article 14 of the Convention and to allow the Committee to develop comprehensive jurisprudence on the provisions of the Convention, it is essential that more States parties make the declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications.

73. Those States parties which have made the declaration under article 14 should increase the awareness of the mechanism amongst the people in their territory and ensure that the procedural aspects are understood and adhered to.

74. In this regard, the Committee recalls that at its fourth session, the Intergovernmental Working Group "encourage[d] States parties to the Convention to consider making the declaration under article 14 of the Convention providing for the possibility for individuals and groups to submit individual communications to CERD, and to give adequate publicity to that mechanism" (E/CN.4/2006/18, para. 105 (d)).

75. At the brainstorming meeting on reform of the treaty bodies ("Malbun II" meeting) held from 14 to 16 July in Liechtenstein, the Committee made a proposal concerning the establishment of a single body to deal with individual communications.<sup>23</sup> The CERD proposal could be operationalized by the means of an optional protocol attached to the relevant treaties. The establishment of a single body dealing with the examination of individual complaints would contribute to reinforce the effectiveness, coherence, visibility and accessibility of the United Nations human rights treaty body system, without amending the existing treaties.

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<sup>23</sup> *Report of the Committee on the Elimination of Racial Discrimination, Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18), para. 503.*

**D. Need to enhance the effectiveness of the Committee through the establishment of an evaluation visit/inquiry procedure**

76. The Committee draws the attention of IGWG to the fact that the two other instruments relating to discrimination, i.e. discrimination against women and discrimination against persons with disabilities, have been supplemented by two optional protocols adopted respectively in 1999<sup>24</sup> and 2006<sup>25</sup> providing, inter alia, for an inquiry procedure.

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<sup>24</sup> Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women provides:

“1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

“2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

“3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

“4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

“5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.”

<sup>25</sup> Article 6 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities provides:

“1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

“2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

77. CERD does not have at its disposal a similar procedure allowing for inquiries. In conflict situations or when there is a serious threat of a conflict, however, it is essential that the Committee not only fulfil its role of examining States parties' reports, but also be able to address current developments and urgent situations that may occur in States parties.

78. In its declaration on the prevention of genocide adopted in March 2005 (see paragraphs 44 ff above), the Committee resolved to strengthen and refine its anti-racial discrimination early warning and urgent action as well as follow-up procedures in all situations where indications of possible violent conflict and genocide prevail. The Committee stated that in such cases, it would consider in-country visits to obtain first-hand information on the situation.

79. The Committee proposes, therefore, to explore the need to enhance its capacity to prevent serious forms and consequences of racial discrimination, including situations where indications of possible violent conflict and genocide prevail, through an evaluation visit/inquiry procedure. It stresses that it is also through inquiry procedures that human rights are given concrete meaning.

80. The Committee therefore suggests that an optional protocol to the Convention be adopted which would provide, inter alia, for such a procedure.

#### **Main elements of the procedure to be considered**

81. Consideration should be given to the type of violations upon which an inquiry can be initiated as well as to the sources of the information on which the inquiry is based. The inquiry procedure should provide an opportunity to address structural causes of violations of the Convention, thus fostering the cooperative nature of the monitoring mechanism. Certain stages of the procedure should be conducted confidentially. The procedure could include, with the consent of the State party concerned, a visit to the territory of the State party. Follow-up measures should also be included as part of the procedure.

82. If the Committee becomes aware of reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, including if one or several of the indicators identified by the Committee in 2005 apply (see paragraph 49 above), the Committee shall invite the State party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

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“3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

“4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

“5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.”

83. Taking into account any observations that may have been submitted by the State party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted, and with the consent of the State party, the inquiry may include a visit to its territory.

84. Such an inquiry shall be conducted confidentially and the cooperation of the State party shall be sought at all stages of the proceedings.

85. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State party concerned, together with any comments and recommendations.

86. The State party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

87. The Committee may invite the State party concerned to include in any reports issued under article 9 of the Convention details of any measures taken in response to an inquiry conducted under this article.

88. The Committee may, if necessary, after the end of the period of six months referred to, invite the State party concerned to inform it of the measures taken in response to such an inquiry.

89. After such proceedings have been completed with regard to an inquiry, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the General Assembly.

90. States parties should take all appropriate measures to ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee or accessing any procedure established under the Convention and its optional protocol.

91. The possibility of joint visits together with other treaty bodies which also have at their disposal an inquiry procedure should be envisaged.

**E. Need to enhance the promotion of racial equality and protection against discrimination through national mechanisms**

92. Article 14 of the Convention provides:

“... ”

“2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

“3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be

deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

“... ”

93. Only 9 out of 51 States have officially declared that they had created such a body or have designated the pre-established body or institution, such as their constitutional court, which was competent for the examination of such complaints.<sup>26</sup>

94. Several States parties, however, including those that have not referred to this body at the time of making the declaration under article 14 of the Convention, have established bodies such as human rights commissions or human rights ombudsmen whose broad mandate includes racial equality and non-discrimination. Other States parties have established racial equality commissions or ombudsmen on racial discrimination.

95. CERD strongly believes that the implementation and monitoring of the Convention, as well as the implementation of and follow-up to its concluding observations, strongly benefit from the activities of such national mechanisms working towards the promotion of equality and protection against discrimination on the grounds of race, colour, descent, or national or ethnic origin at the domestic level.

96. Over the past few years, the Committee has welcomed and encouraged interaction with national human rights institutions that provide it with written information prior to the consideration of State party reports. The Committee examines all periodic reports in public meetings, which representatives of national human rights institutions can attend (space in the room is reserved specifically for them). Furthermore, provided the State party agrees, the Committee allows representatives of national human rights institutions to take the floor “independently” of the State party delegation in plenary on the second day of the consideration of the report.

97. The Committee favours the establishment of national mechanisms working towards the promotion of equality and protection against discrimination on the grounds of race, colour, descent, or national or ethnic origin at the domestic level in all States parties. This body should not only have the competence to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set

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<sup>26</sup> Argentina - National Institute to Combat Discrimination, Xenophobia and Racism (INADI); Belgium - Centre pour l'égalité des chances et la lutte contre le racisme (Centre for Equal Opportunity and the Struggle against Racism); Liechtenstein - Constitutional Court; Luxembourg - Commission spéciale permanente contre la discrimination; Montenegro - Federal Constitutional Court; Portugal - High Commissioner for Immigration and Ethnic Minorities; Romania - National Council for Combating Discrimination; Serbia - Federal Constitutional Court; South Africa - South African Human Rights Commission.

forth in the Convention and who have exhausted other available local remedies, but also broader competences so as to contribute to the promotion of equality and the elimination of discrimination on the grounds of race, colour, descent, or national or ethnic origin.

98. The Committee therefore suggests the inclusion in an optional protocol of provisions on the obligation of States to establish, designate or maintain national mechanisms working towards the prevention of and protection against discrimination on the grounds of race, colour, descent, or national or ethnic origin, as well as the promotion of equality, that will operate in cooperation with the Committee so as to strengthen the effectiveness of the monitoring role of CERD.

99. The optional protocol should not prescribe the particular form that the national mechanism should take. States will have the flexibility to choose the most appropriate type of mechanism for their particular context. The possibility of mechanisms could be provided for federal States.

100. Where an independent national human rights institution already exists in the State party, its mandate could be extended to comply with the requirements provided in the optional protocol to the Convention.

### **Criteria and guarantees for the effective functioning of national mechanisms**

101. The Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles", General Assembly resolution 48/134, annex) should provide an important source of guiding principles for the establishment, composition and operation of national mechanisms designated under the optional protocol.

102. States parties should guarantee the functional and financial independence of the national mechanism designated under the optional protocol as well as the independence of its personnel, including by way of earmarked funding from the State budget.

103. States parties should strive to ensure that the membership of the national mechanism reflects gender balance as well as adequate representation of groups identified on the basis of race, colour, descent, or national or ethnic origin who are part of the population in the State party.

104. The States parties undertake to make available the necessary resources for the independent functioning of the national mechanism designated under the optional protocol.

105. The competent authorities of the State party concerned should examine the recommendations of the national mechanism designated under the optional protocol and participate in dialogues with the body on measures taken to implement the provisions of the Convention.

106. In accordance with the Paris Principles, the national mechanism designated under the optional protocol should be granted, inter alia, the powers and functions to:

(a) Make recommendations to the relevant authorities with the aim of improving the promotion and protection of the rights of persons belonging to one of the groups of victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention;

- (b) Submit proposals and observations concerning existing or draft legislation;
- (c) Establish contact with the Committee, submit information to the Committee and meet with the Committee;
- (d) Conduct public awareness-raising and other advocacy activities for the promotion of the rights and obligations included in the Convention;
- (e) Promote cooperation on issues related to the implementation of the Convention between all relevant bodies and stakeholders at the national and international levels, including government ministries, State-funded bodies, local authorities, the private and voluntary sectors, the relevant NGOs, specialized agencies and United Nations bodies;
- (f) Publish, with the relevant authorities, guidelines concerning all matters of relevance for the implementation of the Convention;
- (g) Identify the needs for protection of persons belonging to one of the groups of victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1 of the Convention and select the most effective and appropriate ways to respond to these needs, including the initiation, commissioning and encouragement of research;
- (h) Promote the establishment of national database and information centres about the rights and the relevant services in relation to the victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention;
- (i) Advise and protect victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention;
- (j) Investigate complaints by the victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention;
- (k) File legal actions in the courts and national tribunals in their own name and in the name of victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention;
- (l) Submit an annual national report on its activities relevant to the promotion and protection of the rights of victims or potential victims of discrimination on one of the grounds enumerated in article 1, paragraph 1, of the Convention.

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