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DURBAN REVIEW CONFERENCE  
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Item 6 of the provisional agenda

**REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE  
PREPARATORY COMMITTEE AND THE DURBAN REVIEW CONFERENCE  
AND CONTRIBUTIONS OF HUMAN RIGHTS BODIES AND MECHANISMS**

**Replies submitted by the Committee on the Elimination of Racial Discrimination to  
the questionnaire prepared by the Office of the United Nations High Commissioner  
for Human Rights, pursuant to decision PC.1/10 of the Preparatory Committee  
of the Durban Review Conference at its first session**



follow-up mechanisms and other relevant United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance and suggestions in order to enhance them.

**Reply**

1. The Committee notes the acknowledgement in paragraph 79 of the Durban Declaration that

**(b) Declarations under article 14 of the Convention regarding communications by individuals and groups of individuals**

5. Despite the encouragements of the Intergovernmental Working Group and calls to States made by CERD in its concluding observations, the number of States that have made this declaration has only progressed from 34 to 52 between 2001 and 2008. The lack of availability of this international remedy for victims of racial discrimination is very much regretted by the Committee.

**(c) States' compliance with reporting obligations to the Committee**

6. Delays in reporting remains a major obstacle to the Committee's work and the effective implementation of the Convention. As at 27 March 2008, 84 out of 173 States parties were late in the submission of two or more reports.<sup>1</sup>

7. The 28 States parties listed in the table below are at least 10 years late in the submission of their reports.

**Table 1**

**Late submission of State party reports (10-year delays)**

Sierra Leone	Fourth periodic report due since 1976
Liberia	Initial report due since 1977
Gambia	Second periodic report due since 1982
Somalia	Fifth periodic report due since 1984
Papua New Guinea	Second periodic report due since 1985
Solomon Islands	Second periodic report due since 1985
Central African Republic	Eighth periodic report due since 1986
Afghanistan	Second periodic report due since 1986
Seychelles	Sixth periodic report due since 1989
Ethiopia	Seventh periodic report due since 1989
Saint Lucia	Initial report due since 1991
Maldives	Fifth periodic report due since 1993

<sup>1</sup> See CERD/C/72/2 for information on the overall situation with regard to the submission of reports by States parties in accordance with article 9 of the Convention.

**Table 1 (continued)**

Chad	Tenth periodic report due since 1996
Monaco	Initial report due since 1996
Malawi	Initial report due since 1997
United Arab Emirates	Twelfth periodic report due since 1997
Burkina Faso	Twelfth periodic report due since 1997
Kuwait	Fifteenth periodic report due since 1998
Niger	Fifteenth periodic report due since 1998
Panama	Fifteenth periodic report due since 1998
Philippines	Fifteenth periodic report due since 1998
Serbia	Fifteenth periodic report due since 1998
Swaziland	Fifteenth periodic report due since 1998
Peru	Fourteenth periodic report due since 1998
Burundi	Eleventh periodic report due since 1998
Cambodia	Eighth periodic report due since 1998

8. The 28 States parties listed in the table below are at least five years late in the submission of their reports.

**Table 2**

**Late submission of State party reports (5-year delays)**

Iraq	Fifteenth periodic report due since 1999
Cuba	Fourteenth periodic report due since 1999
Gabon	Tenth periodic report due since 1999
Jordan	Thirteenth periodic report due since 1999
Uruguay	Sixteenth periodic report due since 2000
Haiti	Fourteenth periodic report due since 2000
Guinea	Twelfth periodic report due since 2000
Rwanda	Thirteenth periodic report due since 2000
Syrian Arab Republic	Sixteenth periodic report due since 2000
Holy See	Sixteenth periodic report due since 2000
Zimbabwe	Fifth periodic report due since 2000
Malta	Fifteenth periodic report due since 2000
Cameroon	Fifteenth periodic report due since 2000
Chile	Fifteenth periodic report due since 2000
Lesotho	Fifteenth periodic report due since 2000



**Steps taken by the Committee to enhance its effectiveness and further suggestions in this regard**

11. Since 2001, CERD has developed further its monitoring procedures in order to enhance its effectiveness. In particular, it has adopted new procedures to ensure adequate follow-up to its opinions adopted under article 14 of the Convention as well as to its concluding observations. In 2007, it has also revised its reporting guidelines (see CERD/C/2007/1) so as to facilitate the drafting of reports.

12. Since the creation of its early-warning and urgent-action procedure in 1993, the Committee has adopted numerous decisions under this procedure and made recommendations to States parties to the Convention as well as, through the Secretary-General, to the Security Council for action to prevent serious violations of the Convention, in particular those that could lead to ethnic conflict and violence. At its seventy-first session, held in August 2007, CERD revised its early-warning and urgent-action procedure guidelines (see new guidelines in A/62/18, annex III). According to the new guidelines, the Committee shall act under this procedure when it deems it necessary to address serious violations of the Convention in an urgent manner. The Committee is guided by the indicators set out in its guidelines which clarify the criteria upon which it bases its review of country situations under this procedure.

13. As extensively outlined in the above-mentioned study submitted to IGWG in 2007 (A/HRC/4/WG.3/7), CERD wishes to reiterate its proposal to elaborate an optional protocol to the Convention which would include the three following procedural innovations designed to enhance its own effectiveness:

- An inquiry procedure established in line with similar procedures under other international instruments relating to discrimination:<sup>2</sup> The Committee proposes the adoption of an optional protocol which would provide, inter alia, for an inquiry procedure regarding grave or systematic violations by a State party of rights set forth in

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<sup>2</sup> See article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and article 6 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

the Convention. Such a procedure would provide an opportunity to address structural causes of violations of the Convention, including in cases where one or several of the indicators of patterns of systematic and massive racial discrimination identified by the Committee in 2005 in its follow-up decision to its declaration on the prevention of genocide apply;<sup>3</sup>

- Follow-up visits by the Coordinator on follow-up: 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”.<sup>4</sup> Bearing in mind the support expressed by IGWG, the development of the follow-up procedure of the Committee between 2004 and 2007, as well as the positive assessment of the follow-up visit undertaken by the Coordinator on follow-up in June 2006 to one State party, the Committee suggests that the practice of follow-up visits be further developed and th foll009 -9.5(TD.0005 Tothe)4.5(rthe 5(e)4 Committ)8



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 its monitoring functions.

### **Question 5**

What steps should be taken by Governments to ratify and/or implement the Convention on the Elimination of All Forms of Racial Discrimination and give proper consideration to the recommendations of the Committee?

### **Replies**

#### **(a) Ratification of the Convention**

1. Those States that have not yet done so should ratify ICERD as soon as possible. The six following States which have signed the Convention have not yet ratified it: Bhutan (26 March 1973), Grenada (17 December 1981), Guinea Bissau (12 September 2000), Nauru (12 November 2001), Sao Tome and Principe (6 September 2000) and Djibouti (14 June 2006).

2. The following 16 States have neither signed nor ratified the Convention: Angola, Brunei Darussalam, Cook Islands, the Democratic People's Republic of Korea, Dominica, Kiribati, Malaysia, Marshall Islands, Federated States of Micronesia, Myanmar, Niue, Palau, Samoa, Singapore, Tuvalu and Vanuatu.

#### **(b) Article 14 of the Convention**

3. 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.

4. As stated in paragraph 53 of CERD's 2007 study, 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

- (iv) In the spirit of the World Conference on Human Rights and other similar conferences which encouraged States to consider reviewing any reservation with a view to withdrawing it,<sup>7</sup> any plans to limit the effect of reservations and ultimately withdraw them within a specific time frame.
7. Article 20 of the Convention provides criteria for admissibility and validity of reservations.

racial discrimination, xenophobia and related intolerance in order to foster the effective implementation of the DDPA; identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related.

### **Reply**

1. Shortcomings in the implementation by States of the Convention often stem not only from a lack of political will, but also from a lack of a clear understanding by many States parties regarding the meaning and scope of the definition of the concept of racial discrimination, as provided in article 1 of the Convention. The Committee recalls, that, as provided in article 1 of the Convention, the term “racial discrimination” shall mean “any distinction, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms on the political, economic, social, cultural or any other field of public life”.

2. In its concluding observations as well as in various general recommendations, the Committee has clarified further the meaning of the grounds of race, colour, descent or national or

4. These general recommendations should be read in conjunction with previous general recommendations of CERD which remain of high relevance to contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in particular:

- (a) General recommendation 23 on the Rights of Indigenous Peoples; and
- (b) General recommendation 27 on discrimination against Roma.<sup>9</sup>

5. Double or multiple discrimination is a continuing source of concern for CERD as it increasingly affects some individuals and groups. In this regard, CERD wishes to recall its general recommendation 25 on gender-related racial discrimination<sup>10</sup> in which it drew States parties' attention to double discrimination on the grounds

7. The Committee also wishes to draw particular attention to the statement adopted during its first session after the events of 11 September 2001 (sixtieth session, held in March 2002), “on racial discrimination and measures to combat terrorism” in which it emphasized that “measures to combat terrorism ... are to be considered legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law”. It also urged States to ensure that any such measures “do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin” and “insisted that the principle of non-discrimination must be observed in all areas, in particular in matters concerning liberty, security and dignity of the person, equality before tribunals and due process of law, as well as international cooperation in judicial and police matters in these fields”.<sup>13</sup>

8. Since the adoption of this statement and when monitoring States’ compliance with article 5, the Committee has systematically paid particular regard to the potentially discriminatory effects of legislation and practices to combat terrorism. The Committee has requested from States parties that they provide information on the effect which national legislation to combat terrorism has had on the implementation of the Convention, particularly on identity, entry and residence checks of foreigners, the right of asylum and extradition.<sup>14</sup> When

9. Since the Durban Conference, CERD has adopted several general recommendations and numerous concluding observations and opinions on individual communications which have addressed discrimination affecting the most disadvantaged groups, inter alia, Roma, indigenous peoples, descent-based communities, migrant workers, including undocumented migrants, asylum-seekers, refugees and insidious and pervasive forms of discrimination such as racial profiling. It will continue to address contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance as they emerge through a dynamic interpretation of the Convention and further strengthening of its monitoring procedures.

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