



**General Assembly**

Distr.  
GENERAL

A/HRC/AC.1/1/CRP.3  
18 February 2008

Original: ENGLISH ONLY

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HUMAN RIGHTS COUNCIL  
Ad Hoc Committee  
on the Elaboration of Complementary International Standards  
First session  
Geneva, 11-22 February 2008

**COMPLEMENTARY INTERNATIONAL STANDARDS**

**COMPILATION OF RECOMMENDATIONS**

**FROM THE 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**

### **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>1</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>2</sup>

66. At the international level, the reporting process creates a basis for constructive dialogue between States and the treaty bodies.<sup>3</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).

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<sup>1</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>2</sup> Ibid., para. 10.

<sup>3</sup> Ibid., para. 11.

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).

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>4</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.

**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>5</sup> and 2006<sup>6</sup> providing, inter alia, for an inquiry procedure.

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<sup>4</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.*

<sup>5</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>6</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

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

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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.

“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.”

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.

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>7</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

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<sup>7</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.

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 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;

(1) 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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