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

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

ADDENDUM

Summary

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

I. INTRODUCTION

A. The request by the Intergovernmental Working Group

1. The Committee on the Elimination of Racial Discrimination (hereafter CERD or “the Committee”) welcomes the opportunity to address the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (hereafter “IGWG” or “Working Group”) on the development of complementary standards to the International Convention on the Elimination of All forms of Racial Discrimination (“the Convention”).

2. At the first session of the 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 (hereafter Durban Declaration and Programme of Action), and exchanged views with the Working Group on the application of existing international standards and the issue of the development of complementary standards.¹

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.”²

4. In addition, the Working Group requested the Office of the High Commissioner for Human Rights (OHCHR):

“to prepare a compendium of regional and international standards which combat racism, racial discrimination, xenophobia and related intolerance, to prepare an analytical report on these standards and identify possible areas where complementary international standards might be needed, and to make the compendium and the report available for the next session of the Working Group in order to assist the Working Group to fulfil its mandate to prepare complementary international standards.”³

5. In January 2004, OHCHR submitted the analytical report⁴ and the Compendium of international and regional standards against racism, racial discrimination,

¹ Report of the Intergovernmental Working Group on the Effective implementation of the Durban Declaration and Programme of Action on its first session, E/CN.4/2003/20, p. 7, para26.

²Ibid, , p. 11, recommendation 19(a) ; see also Resolution 2003/30 of the Commission on Human Rights, E/CN.4/2003/135 (Part I), p. 119, para 19.

³ *Ibid.*

⁴ “Complementary Standards: Examination of the Reports prepared for the session and recommendations for future work” E/CN.4/2004/WG.21/3.

xenophobia and related intolerance⁵ to the Working Group. Two members of the Committee and its former Chairman attended the second session of the Working Group and took part in the panel discussion on complementary standards.

6. At the second session of the Working Group, the Group requested “OHCHR to convey its invitation to CERD to submit written views on the effectiveness of the Convention, including its implementation”⁶ to the third session of the IGWG. This document is written in response to this request.

B. CERD’s commitment to the Effective Implementation of the Durban Declaration and Programme of Action

7. CERD is committed to the effective implementation of the Durban Declaration and Programme of Action. At its 60th session (March 2002), the Committee adopted general recommendation XXVIII on the Follow up to the Durban Declaration and Programme of Action. In this general recommendation, the Committee expressed “its willingness to:

- (a) cooperate fully with all relevant institutions of the United Nations system, in particular the Office of the High Commissioner for Human Rights, in following up the Durban Declaration and Programme of Action;
- (b) co-operate with the five independent eminent experts to be appointed by the Secretary-General to facilitate the implementation of the recommendations of the Durban Declaration and Programme of Action;
- (c) coordinate its activities with the other human rights treaty bodies with a view to achieving a more effective follow-up of the Durban Declaration and Programme of Action;
- (d) take into consideration all aspects of the Durban Declaration and Programme of Action concerning the fulfilment of its mandate”.

8. The Committee has also adopted a standard paragraph in its concluding observations through which it recommends to States parties that they “take account of the relevant parts of the Durban Declaration and Programme of Action and include information in [their] next periodic report on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level”⁷. The Committee has also had the opportunity to welcome the adoption of such action plans in several States parties as well as the establishment of committees to follow up the implementation of such plans.⁸

II. NORMATIVE STANDARDS

A. Article 1

⁵ “Compendium of international and regional standards against racism, racial discrimination, xenophobia and related intolerance”. E/CN.4/2004/WG.21/5.

⁶ Recommendation 20, E/CN.4/2003/20, p. 23.

⁷ See, for example, CERD/C/63/CO/1 (2003) para. 28, CERD/C/62/CO/7 (2003) para. 30

⁸ See for instance CERD/C/ 63/CO/ 8 (2003) para.6

1. General

9. Article 1 of the Convention defines racial discrimination as:

“any distinction, exclusion, 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 in the political, economic, social, cultural or any other field”.

10. In its general recommendation XIV (1993), the Committee noted that “a distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms.”⁹ In this respect, the Committee has highlighted States parties’ obligation to “undertake to prohibit and to eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.”¹⁰

11. The Committee also highlighted in its general recommendation XIV that differentiation of treatment will not constitute racial discrimination where “the criteria for differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4 of the Convention”.¹¹

2. Definition of discriminatory grounds/ vulnerable groups

12. Article 1 of the Convention does not specify the groups which fall under its protection, nor does it define terms such as “race”, “descent” or “national or ethnic origin”. The Committee, however, views the “Convention, as a living instrument, [to] be interpreted and applied taking into account the circumstances of contemporary society.”¹² Through its general recommendations, concluding observations and jurisprudence, CERD has elaborated upon the scope of protection of the Convention and demonstrated its continuing relevance and application to contemporary forms of racism suffered by specific groups which are mentioned in the Durban Declaration and Programme of Action.

⁹ See HRI/GEN/ 1/Rev.6, General recommendation No. XIV: Definition of discrimination, p.203, para 1.

¹⁰ A/56/18, para. 393. See also CERD/C/63/CO/7, para 8, where the Committee has established that “basing finding[s] of indirect discrimination on a quantitative condition is not in accordance with” article 1 paragraph 1.

¹¹ See HRI/GEN/ 1/Rev.6, General recommendation No. XIV: Definition of discrimination, p.203, para 2. Article 1, paragraph 4, provides that: “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

¹² See, for example, Communication No. 26/2002, Opinion adopted on 20 March 2003, CERD/C/62/D/26/2002, para 7.3.

13. The Committee frequently expresses its concern at States parties' failure to identify the ethnic and national minorities within their territory.¹³ In its guidelines for reporting provided to States parties, the Committee has highlighted the importance of States providing it with information on the ethnic characteristics of their population. Many States consider that, when conducting a census, they should not draw attention to factors like race lest this reinforce divisions they wish to overcome. If progress in eliminating discrimination based on race, colour, descent, national and ethnic origin is to be monitored, some indication is needed of the number of persons who could be treated less favourably on the basis of these characteristics. States which do not collect such information in their censuses are therefore requested to provide information on languages spoken as indicative of ethnic differences, together with any information about race, colour, descent, national and ethnic origins derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied.¹⁴

14. The Committee has reiterated its request for relevant information on the demographic composition of the population in General recommendation No. IV (1973)¹⁵. In its General Recommendation No. XXIV (1999), it stressed that "the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples." It also emphasises that "if the Committee is to secure the proper consideration of the periodic reports of States parties, it is essential that States parties provide as far as possible the Committee with information on the presence within their territories of such groups".¹⁶

15. In General recommendation VIII (1990), the Committee stated that in the absence of any justification to the contrary, the identification of individuals as members of a particular racial or ethnic group, is to be based on "self-identification by the individual concerned"¹⁷. Furthermore, in General Recommendation XXIV (1999), it drew the attention of States parties to the fact "that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognise others, may give rise to differing treatment for various groups within a country 's population".¹⁸

2.1 Minorities

2.1.1 Durban Declaration and Programme of Action:

16. The Declaration affirms the need to protect the ethnic, cultural, linguistic and religious identity of minorities and to ensure that members of such minorities are treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind.¹⁹

¹³ CERD/C/64/CO/8 (2004) § 7, CERD/C/63/CO/1 (2003) § 12, CERD/C/62/CO/10 (2003) § 7, CERD/C/62/CO/2 (2003) § 9, CERD/C/60/CO/6 (2002) § 9,

¹⁴ See the Committee's general guidelines regarding the form and content of reports to be submitted by States Parties, CERD/C/70/Rev.5, para. 8.

¹⁵ HRI/GEN/Rev.6, p. 197.

¹⁶ Ibid, p. 213.

¹⁷ Ibid. p. 200.

¹⁸ Ibid., p. 214.

¹⁹ Durban Declaration, para 66.

2.1.2 General recommendations:

17. The Committee has not adopted any general recommendation on the rights of persons belonging to minorities. In its General Recommendation XXIV, however, the Committee stresses that if it is to secure the proper consideration of the periodic reports of States parties, it is essential that these States provide it as far as possible with information on the presence within their territories of national or ethnic groups and indigenous peoples. Furthermore, General Recommendation XXIV also draws the attention of States parties to the fact that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognise others, may give rise to differential treatment for various groups within a country's population.²⁰

2.1.3. Concluding observations and jurisprudence:

18. The Committee has consistently interpreted the Convention so as to ensure protection of minorities against discrimination and has addressed this issue on numerous occasions when considering states reports²¹ and individual communications. For example, the Committee has recommended that States parties collect statistical data on persons belonging to minorities in order to be able to monitor policies in favour of minorities and assess the implementation of the Convention²².

2.2 Roma

2.2.1. Durban Declaration and Programme of Action

19. The Durban Declaration and Programme of Action highlight the ongoing racial discrimination suffered by Roma/Gypsy/Sinti/Travellers.²³ Furthermore, the Programme of Action calls upon States, *inter alia*, to “adopt appropriate and concrete policies and measures, to develop implementation mechanisms where these do not already exist and to exchange experiences, in cooperation with representatives of the Roma/Gypsy/Sinti/Travellers, in order to eradicate discrimination against them, enable them to achieve equality and ensure their full enjoyment of all their human rights, as recommended in the case of the Roma by CERD in its general recommendation XXVII, so that their needs are met”.²⁴

2.2.2. Thematic discussion and general recommendations

20. In 2000, the Committee organised a thematic discussion on the issue of discrimination against Roma, which culminated in the adoption of general recommendation XXVII. *Inter alia*, the recommendation encourages States to take legislative measures to eliminate all forms of racial discrimination against Roma and to implement national strategies and programmes to protect the Roma against discrimination by State bodies. In particular, the Committee recommended measures

²⁰ HRI/GEN/1/Rev. 7, General Recommendation XXIV, p. 216, paragraphs 1 and 3.

²¹ Further examples are given in the section below on article 5.

²² A/58/18, para 306.

²³ See Durban Declaration, para 68.

²⁴ See programme of action, para 40. See also paras 39 and 41-44.

to be undertaken by States to protect members of Roma communities against racial violence and to enhance their rights in the fields of education, living conditions, the media and participation in public life.

2.2.3. Concluding observations and jurisprudence

21. In examining State reports, CERD regularly recommends that States adopt national strategies in order to eradicate discrimination against Roma, in accordance with general recommendation XXVII, particularly in the areas of employment, housing and education.²⁵ In particular, the Committee has expressed concern in relation to the segregation of Roma children within the education systems of some States parties.²⁶ A further area of concern has been the Roma's exclusion from places intended for the general public.²⁷ The Committee has noted that despite the adoption of programmes for the integration of the Roma by some states parties, members of this minority often continue to experience difficulties in enjoying their fundamental rights in the fields of housing, health, employment and education, and are the subject of prejudicial attitudes.²⁸

2.3 Indigenous peoples

2.3.1 Durban Declaration and Programme of Action

22. Indigenous peoples have been identified in the Durban Declaration and Programme of Action as one of the main groups of victims of racism and racial discrimination.²⁹

2.3.2. General recommendations:

23. General recommendation XXIII (1997) affirms that discrimination against indigenous peoples falls under the scope of the Convention and urges States to take all appropriate means to combat and eliminate such discrimination³⁰. The Committee calls in particular upon States parties to:

“(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

²⁵ See CERD/C/64/CO/8 (2004) para 11, CERD/C/63/CO/1 (2003) § 21; A/57/18, § 378-385; A/54/18, § 126.

²⁶ A/57/18, § 97 and 382.

²⁷ CERD/C/60/CO/9 (2003) § 18.

²⁸ CERD/C/60/CO/8 (2002) § 14.

²⁹ See paras 22, 23, 39-45 of the Declaration and paras. 15 to 23 of the Programme of Action.

³⁰ Durban Declaration para 40. CERD general recommendation XXIII para 4(a).

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages”³¹

24. Furthermore, in general recommendation XXIII, the Committee “especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”³²

2.3.3. Concluding observations and jurisprudence

25. In the practice of the Committee, in particular in the examination of reports of States parties, the situation of indigenous peoples has always been a matter of close attention and concern. In examining States parties’ periodic reports, the Committee has pursued issues such as the conferral of land rights³³ and the exploitation of the resources on traditional land,³⁴ States parties’ accession to ILO Convention No. 169,³⁵ the need to reconcile the State's title to the country's natural resources with the rights of indigenous and tribal peoples³⁶ and the need to ensure the equitable sharing of resources derived from the exploitation of traditional lands and that the indigenous peoples’ prior informed consent is obtained.³⁷

26. The Committee has also raised States parties’ awareness regarding the high percentage of indigenous peoples who live in poverty, and the importance of States parties intensifying their efforts to improve the living conditions of the indigenous peoples in their territory. CERD has also stressed its wish to be provided with adequate information in periodic reports on the precise figures and key indicators relating to the enjoyment of economic, social and cultural rights by different ethnic groups, including indigenous groups, disaggregated by urban/rural population, age and gender.³⁸ Further issues addressed by the Committee include illiteracy amongst indigenous groups and the need for States parties to increase the number of bilingual teaching personnel.³⁹

2.4 Descent-based discrimination

³¹ See HRI/GEN/1/Rev.6, p. 212, general recommendation XXIII, para. 4

³² Ibid. para. 5.

³³ CERD/C/64/CO/8 (2004) para 12. CERD/C/64/CO/2 (2004) para 13.

³⁴ CERD/C/64/CO/9. (2004) paras 13-15.

³⁵ CERD/C/64/CO/5 (2004, para. 13.

³⁶ CERD/C/64/CO/9 (2004) para 12.

³⁷ CERD/C/62/CO/2 (2003) para 16.

³⁸ CERD/C/62/CO/2 (2003) para 13.

³⁹ CERD/C/62/CO/2 (2003) para 14.

2.4.1 Durban Declaration and Programme of Action:

27. The Durban Declaration and Programme of Action condemn discrimination against persons of Asian and African descent and indigenous and other forms of descent.⁴⁰

2.4.2 Thematic discussion and general recommendations:

28. Following the thematic discussion held on descent-based discrimination at its 61st session (August 2002), the Committee adopted General recommendation XXIX on the same issue. The Committee further clarifies that the term “descent” in article 1 paragraph 1 of the Convention “does not solely refer to ‘race’ and has a meaning and application which complement the other prohibited grounds of discrimination”⁴¹. The Committee “strongly reaffirms that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification, such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”.⁴²

29. The recommendation addresses, *inter alia*, legislative measures to be undertaken by States to outlaw all forms of descent based discrimination, the multiple discrimination suffered by women members of descent-based communities, the segregation of members of descent based communities and States’ obligations to ensure their equal enjoyment of civil, political, economic and social rights.

2.4.3. Concluding observations

30. When considering States parties’ reports, the Committee has reiterated its view that the situation with respect to castes falls within the scope of the Convention.⁴³ In light of its general recommendation XXIX, in one instance, the Committee requested information from the State party on its approach regarding the persistence of the consequences of traditional caste systems as it considered that this system may give rise to descent-based discrimination.⁴⁴ In another instance, the Committee expressed its concern at de facto caste-based discrimination and the culture of impunity and segregated residential areas for certain castes in one State party and requested that the concerned State party include information in its next periodic report on the follow-up measures it has taken to general recommendation XXIX.⁴⁵

2.5 Non-citizens (Article 1 para 2)

2.5.1 Durban Declaration and Programme of Action

⁴⁰ See, for example, Durban Declaration paras 32, 33, 334 and 35 (Africans and people of African descent), para 36(Asians and people of Asian descent), para 39, 41, 42 (indigenous peoples).

⁴¹ See HRI/GEN/1/Rev.6, General Recommendation XXIX, p. 224, preamble.

⁴² Ibid.

⁴³ CERD/C/304/Add.118 (2001), § 11.

⁴⁴ A/57/18, para. 406.

⁴⁵ CERD/C/64/CO/5 (2004), para. 12.

31. The Durban Declaration and Programme of Action identify “xenophobia against non-nationals, particularly migrants, refugees and asylum seekers” as “one of the main sources of contemporary racism”.⁴⁶ The Declaration reaffirms the responsibility of States to protect the human rights of migrants under their jurisdiction,⁴⁷ to eliminate racial discrimination against migrants in relation to issues such as employment, social services, education, health, and access to justice,⁴⁸ and to facilitate family reunion.⁴⁹

32. The Declaration recognizes that discrimination is a contributing factor to the forced displacement of people from their countries of origin as refugees and asylum-seekers⁵⁰ and a continuing experience of refugees, asylum-seekers and internally displaced persons⁵¹. It also urges States to facilitate the right of refugees to return to their home in safety and dignity.⁵²

2.5.2 Thematic discussion and general recommendation:

33. In general recommendation XX concerning the non-discriminatory implementation of the rights and freedoms specified in article 5, the Committee clarified that many of the rights and freedoms mentioned in article 5, such as the right to equal treatment before tribunals, are to be enjoyed by all persons living in a given State. Others, such as the right to participate in elections, to vote and to stand for election are the rights of citizens.⁵³

34. General recommendation XXII (1996) on the rights of refugees and displaced persons reiterates States’ obligations under article 5 of the Convention to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms and, inter alia, emphasises the right of refugees and displaced persons to return to their homes of origin under conditions of safety and to have their property restored to them. The Committee also urged States to observe the principle of non-refoulement.

35. The Committee held a thematic discussion on the rights of non-citizens at its sixty-fourth session (23 February – 12 March 2004) and adopted a new general recommendation (XXX) at its 65th session clarifying the responsibilities of States parties to the Convention with regard to non-citizens. In general recommendation XXX, the Committee affirms that “Article 1, paragraph 2 which provides for the possibility of differentiating between citizens and non-citizens, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights”. The new general recommendation also

⁴⁶ Durban Declaration, para 16. See also Programme of Action, paras 24-33 on migrants and 34-36 on refugees.

⁴⁷ Durban Declaration para 48.

⁴⁸ Durban Declaration para 51.

⁴⁹ Durban Declaration para 49.

⁵⁰ *Ibid.*, para 52.

⁵¹ *Ibid.*, para 53.

⁵² *Ibid.*, para 65.

⁵³ HRI/GEN/1/Rev.6, p. 208, General recommendation XX, para 3.

provides for the protection of non-citizens against hate speech and racial violence, and deals with issues regarding their access to citizenship, administration of justice, expulsion and deportation, and economic, social and cultural rights.

2.5.3 Concluding observations and jurisprudence

36. In examining the reports of States parties, the Committee has recommended that States provide information on non-citizens residing in their territory, including refugees and migrant workers,⁵⁴ and highlighted the Statelessness which may arise as a consequence of a State party's citizenship laws.⁵⁵ It has also recommended that States parties take measures to regularize the status of illegal immigrants and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁵⁶ and expressed concern at discriminatory practices against migrants in the areas of education and employment.⁵⁷

37. In relation to refugees and asylum seekers, the Committee has drawn States parties' attention to granting refugees "access to work, health care, housing and social services as well as the right to effective legal remedies".⁵⁸ It has also dealt with the repatriation of foreign children and the condition of reception centres for minors,⁵⁹ the automatic detention of undocumented migrants and asylum seekers,⁶⁰ States' failure to guarantee the non-refoulement of asylum seekers⁶¹ and xenophobic attitudes towards refugees and asylum seekers.⁶²

38. In examining States parties' reports, the Committee requests States parties to 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.⁶³

39. Discrimination against non-nationals has also been the subject of several communications to the Committee. In one such communication, the Committee determined that, where a non-national is refused a loan by an institution by reason of his or her foreign nationality, article 2 paragraph d of the Convention requires an investigation into reasons for the refusal.⁶⁴

2.6 Gender-related dimensions of racial discrimination

2.6.1 Durban Declaration and Programme of Action

⁵⁴ See for example, CERD/C/64/CO/4, 12 March 2004, para 7, CERD/C/60/CO/8, 21 March 2002, § 15.

⁵⁵ CERD/C/64/CO/3 (2004) para 13.

⁵⁶ CERD/C/64/CO/6 (2004) para 12, CERD/C/64/CO/7 (2004) § 16

⁵⁷ CERD/C/64/CO/1 (2004) paras 14 and 15.

⁵⁸ CERD/C/64/CO/3 (2004) para 12.

⁵⁹ CERD/C/64/CO/6 (2004) para 14. CERD/C/64/CO/1 (2004) para 20.

⁶⁰ CERD/C/64/CO/1 (2004) para 17.

⁶¹ CERD/C/64/CO/1 (2004) para 18.

⁶² CERD/C/60/CO/8 (2004) § 17.

⁶³ CERD/C/63/CO/1 (2003) § 25. See also CERD/C/60/CO/9 (2002) § 15 in relation to "racial profiling".

⁶⁴ Communication No. 10/1997, Opinion adopted on 17 March 1999, CERD/C/54/D/10/1997, para 9.3.

40. The Durban Declaration and Programme of Action recognise the differentiated manner in which racial discrimination affects women and the need to incorporate gender perspectives into programmes and policies combating racial discrimination⁶⁵.

2.6.2. General recommendations

41. General recommendation XXV (2000)⁶⁶ notes that racial discrimination does not always affect women and men equally or in the same way. For example, certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups. The recommendation acknowledges the detrimental impact of racial and sexual discrimination on women's enjoyment of their civil, political, economic, social and cultural rights⁶⁷, and requests States parties to describe in quantitative and qualitative terms, the difficulties experienced by women in enjoying their rights under the Convention.⁶⁸ Data which has been categorized by race or ethnic origin should also be disaggregated by gender.⁶⁹

2.6.3. Concluding observations and jurisprudence

42. In examining State reports, the Committee has expressed its concern at the lack of information in periodic reports on the situation of women who belong to disadvantaged groups as victims of multiple discrimination,⁷⁰ and raised issues such as the right of women to transmit their nationality to their children and foreign spouses,⁷¹ the stereotyping of women, particularly those of foreign origin⁷² the ethnic dimensions of migration and trafficking in persons, particularly of women and children⁷³ and the disproportionate representation of women within communities of displaced persons.⁷⁴

B. Article 2

(i) The Durban Declaration and Programme of Action

43. The Declaration endorses the need to develop programmes, policies, legislation and positive measures to further the equal social development, and the realization of the civil, political, economic and social rights of all victims of racism.⁷⁵

⁶⁵ See, *inter alia*, paras 50, 51 and 69 of the Programme of Action.

⁶⁶ See Durban Declaration paras 2, 69 and general recommendation XXV paras 1-4).

⁶⁷ General recommendation XXV para 3. See also Durban declaration para 70.

⁶⁸ General recommendation XXV, para 6.

⁶⁹ *Ibid.*

⁷⁰ CERD/C/64/CO/5 (2004) § 16, CERD/C/63/CO/1 (2003) § 20, CERD/C/62/CO/2 (2003) § 15, A/57/18, § 404 and 443

⁷¹ CERD/C/64/CO/1 (2004) para 16.

⁷² CERD/C/63/CO/3 (2003) § 15.

⁷³ CERD/C/304/Add.118 (2001)§ 13.

⁷⁴ A/54/18, § 468.

⁷⁵ Para 107.

2. The Convention

44. Article 2, paragraph 1 of the Convention requires States parties to condemn racial discrimination and pursue policies eliminating racial discrimination. As the requirements of article 2 also fall within the scope of several other articles, the following discussion of article 2 will focus solely on article 2 (1) (d), concerning the public/private divide, and article 2 (2) regarding positive measures.

Public/private divide

45. Whilst article 1(1) of the Convention defines racial discrimination in terms of discriminatory acts performed in “field[s] of public life”, article 2(1)(c) addresses “ laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists”. Article 2(1)(d) also requires a State party to bring to an end “racial discrimination by any persons, group or organization”. The Committee is of the view that the Convention is directed to the elimination of racial discrimination wherever that discrimination may occur. Thus, in considering the report of one State Party, the Committee noted “with concern the position of the State party with regard to its obligation under article 2, paragraph 1 (c) and (d), to bring to an end all racial discrimination by any person, group or organization, that the prohibition and punishment of purely private conduct lie beyond the scope of governmental regulation, even in situations where the personal freedom is exercised in a discriminatory manner. The Committee recommend[ed] that the State party review its legislation so as to render liable to criminal sanctions the largest possible sphere of private conduct which is discriminatory on racial or ethnic grounds.”⁷⁶

Positive measures

46. Article 2, subparagraph 2, provides that positive measures should be adopted by States to ensure the full enjoyment of human rights and fundamental freedoms by all racial groups and individuals.

3. General recommendations

47. The Committee has not adopted any general recommendation on article 2.

4. Concluding observations and jurisprudence

48. Article 2 is a comprehensive provision addressing all aspects of States parties’ obligations to pursue a policy of eliminating discrimination. Inter alia, it embraces the obligation to ensure that public authorities and institutions refrain from engaging in racial discrimination, to prohibit racial discrimination by any person, group or organization, and to take positive measures where necessary to guarantee to all racial groups the full and equal enjoyment of human rights and fundamental freedoms. The establishment and strengthening of national human rights institutions is instrumental

⁷⁶ A/56/18, para 392.

to States fulfilling their obligations under article 2 of the Convention and is an issue which is regularly highlighted by the Committee.⁷⁷

49. In considering periodic reports, the Committee has emphasised the obligation for States parties to take “special and concrete measures” to guarantee certain racial groups or individuals the full and equal enjoyment of human rights and fundamental freedoms⁷⁸. Such measures should not be continued after the objectives for which they were taken have been achieved. In determining whether an action has an effect contrary to the purposes of the Convention, the Committee examines whether that action has an “unjustifiable, disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin”.⁷⁹

50. The Committee has underlined that “the adoption of special measures by States parties when the circumstances so warrant, such as in the case of persistent disparities, is an obligation stemming from article 2, paragraph 2, of the Convention”⁸⁰. It has thereby negated the contention of one State party that “the provisions of the Convention permit, but do not require States parties to adopt affirmative action measures to ensure the adequate development and protection of certain racial, ethnic or national groups.”⁸¹

C. Article 3

1. Durban Declaration and Programme of Action

51. The Declaration recognizes that apartheid constitutes a crime against humanity and is a major source and manifestation of racism, racial discrimination, xenophobia and related intolerance.⁸²

2. The Convention:

52. Article 3 requires States parties to condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all such practices in their territories.

3. General recommendations

53. As stated in general recommendation XIX⁸³, while article 3 of the Convention prohibits Apartheid, it also prohibits all forms of racial segregation in all countries and includes the “obligation to eradicate the consequences of such practices”. It extends to partial racial segregation as the “unintended by-product of the actions of private persons”. It is the obligation of all States parties to “monitor all trends which

⁷⁷ CERD/C/64/CO/5 (2004) para. 10, CERD/C/62/CO/2 (2003) para. 10.

⁷⁸ See for instance, CERD/C/63/CO/12 (2003) para.24.

⁷⁹ See HRI/GEN/1/Rev.6, General recommendation No. XIV: Definition of discrimination, para 1, p. 203.

⁸⁰ A/56/18, para 399.

⁸¹ *Ibid.*

⁸² Durban Declaration para 15.

⁸³ HRI/GEN/1/Rev. 6, p. 208.

can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports.”

54. The issue of segregation is also addressed by the Committee in its general recommendation XXVII on discrimination against Roma and in its general recommendation XXVIX on descent-based discrimination. In general recommendation XXVII, the Committee urges States to “develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing and to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance”.⁸⁴ It also recommends to States parties that they “prevent and avoid as much as possible the segregation of Roma students... [while] endeavour[ing] to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education”.⁸⁵ In General recommendation XXIX on descent-based discrimination, the Committee recommends to States parties that they “undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment.”⁸⁶

4. Concluding observations and jurisprudence

55. The Committee has noted that article 3 is applicable to situations of de facto racial segregation in various aspects of daily life. For instance, it has highlighted on several occasions that the placement of Roma children in “special schools” leads to segregation. While noting the efforts made by the concerned State party to meet the specific educational needs of Roma children, the Committee expressed concern that in some cases these efforts have led to segregated classes having a lower standard of education. The Committee recommended that “new programmes integrate Roma children into mainstream schools as far as possible, in order to avoid discrimination, and that the state party recruit more teachers and teaching assistants from the Roma minority”.⁸⁷

56. Segregation in housing is also a concern for the Committee in relation to Roma communities in many States. For instance, while welcoming the significant efforts invested in seeking optimal solutions to improve the deteriorating housing condition of Roma in a State party, the Committee was concerned, however, that, “in the long term, such solutions may perpetuate segregation”.⁸⁸

57. Segregation is also an issue of concern in connection with descent-based communities, and the Committee has expressed concern in its concluding observations regarding the existence of segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as at allegations that public funds were used for the construction of separate water taps for Dalits. It has recommended that the State party, “as a matter of priority,

⁸⁴ *Ibid.*, p. 219, para. 30.

⁸⁵ *Ibid.*, p 218, para. 18.

⁸⁶ *Ibid.* p. 226, para. (o). See also paras. (n), (p) and (q) on the same issue.

⁸⁷ For various examples of such concerns and related recommendations, see A/58/18, paras. 238,163 and 386..

⁸⁸ *Ibid.*, para. 385.

take measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, and make determined efforts to ensure the practical and effective implementation of these measures”.⁸⁹

D. Article 4

1. General

1.1. Durban Declaration and Programme of Action

58. The Durban Declaration and Programme of Action condemns “political platforms and organizations based on racism, xenophobia or doctrines of racial superiority as incompatible with democracy and transparent and accountable governance” and affirms States’ obligations under article 4 of the Convention, in particular, article 4(b).⁹⁰

59. The Declaration also highlights that contemporary forms of racism and xenophobia are striving to gain recognition for ideas based upon notions of racial superiority by means of modern communication technologies, such as the Internet.⁹¹

1.2. The Convention

60. Article 4(a) requires States parties to penalize the dissemination of ideas based upon racial superiority or hatred, incitement to racial hatred, acts of violence against any race or group of persons of another colour or ethnic origin and incitement to such acts. Article 4(b) provides that States parties should declare illegal and prohibit organisations, and also organised and all other forms of propaganda activities, which promote and incite racial discrimination. They should also recognise participation in such organisations or activities as an offence punishable by law. In article 4(c), the Convention provides for the prohibition or incitement to racial discrimination by public authorities or public institutions, national or local.

1.3. General recommendations

61. In General recommendation I (1972),⁹² the Committee noted that the legislation of a number of States parties does not include the provisions envisaged in article 4(a) and (b) of the Convention and urged those State parties to consider enacting supplementary legislation in accordance with these provisions. This was complemented by general recommendation VII (1985)⁹³ in which the Committee reaffirmed that articles 4(a) and (b) are of a mandatory character and requested that States parties inform it more fully in their periodic reports of the manner and extent to which these provisions are effectively implemented, including information concerning

⁸⁹ CERD/C/64/CO/5 (2004) para. 12.

⁹⁰ Durban Declaration paras 85-87.

⁹¹ Durban Declaration paras 27, 91.

⁹² HRI/GEN/1/Rev.6, p. 195.

⁹³ Ibid., p. 199.

decisions taken by the competent national tribunals and other State institutions regarding acts of racial discrimination and related offences.

62. In 1993, the Committee adopted a third general recommendation (XV)⁹⁴ on article 4, in which it stressed that implementation of article 4 was of increased importance, owing to the “evidence received of organised violence based on ethnic origin and the political exploitation of ethnic difference”. The Committee further stressed that, in order to comply with the mandatory provisions of article 4, States parties must not only enact appropriate legislation but also ensure that it is effectively enforced.

63. Significantly, the Committee stressed its view that “the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression [as] embodied in article 19 of the Universal Declaration of Human Rights and recalled in article 5(d)(viii) of the Convention”. Furthermore, General Recommendation XV recalls the provisions of article 29, paragraph 2 of the Universal Declaration according to which “a citizen’s exercise of the right to freedom of opinion and expression carries special duties and responsibilities”, including “the obligation not to disseminate racist ideas”. The Committee also stresses that article 4 (a) penalises the financing of racist activities.

64. In general recommendation XV, the Committee recalls that “some States have maintained that in their legal order, it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination”. The Committee stresses that in order to comply with the requirements of article 4(b), such States must be vigilant in proceedings against such organisations at the earliest moment. They should ensure that such organizations as well as organised and other propaganda activities, be declared illegal and prohibited. The Committee further stresses that “participation in the organizations is, of itself, to be punished”.

1.4. Concluding observations and jurisprudence:

General

65. The existence and adequacy of national laws implementing the requirements of article 4 of the Convention is one of the main issues addressed by the Committee in considering States parties’ periodic reports. The Committee regularly expresses its concern at States parties’ failure to enact legislation in accordance with the requirements of article 4⁹⁵ and reiterates its view on the preventive role of legislation giving effect to article 4.⁹⁶ A frequent recommendation of the Committee to States parties in relation to article 4 is that they “declare as offences punishable by law any assistance to racist activities and the financing thereof, participation in racist organizations, acts of racial violence and incitement to such acts, and any refusal to provide goods or services on racist grounds [and that] ..an aggravating circumstance

⁹⁴ Ibid, pp. 204-205.

⁹⁵ See for instance CERD/C/64/CO/9 (2004), § 10; see also CERD/C/63/CO/7 (2003) § 10, CERD/C/63/CO/3 (2003), § 12; CERD/C/62/CO/10 (2003) § 9; CERD/C/62/CO/7 (2003)§ 22, 23; CERD/C/60/CO/6 (2002) § 6 and; CERD/C/304/Add.118 (2001) § 8.

⁹⁶ CERD/C/60/CO/6 (2002) § 6.

of racism ... be introduced in the Penal Code so that any offence based on racist grounds can be punished more severely.”⁹⁷

66. The mere enactment of laws prohibiting racial discrimination, however, does not satisfy the requirements of article 4 of the Convention. Such laws must also be enforced and alleged violations investigated. The Committee has therefore stressed that “when threats of racial violence are made, and especially when they are made in public and by a group, it is incumbent upon the State to investigate with due diligence and expedition.”⁹⁸

67. The Committee has noted, however, that a significant number of States parties fail to provide the Committee with sufficiently detailed information on the measures undertaken to implement article 4, thereby impeding the Committee’s ability to monitor States parties compliance with the article.⁹⁹ One such example is States parties’ failure to provide statistical information on the number of prosecutions which have been instigated pursuant to national legislation.¹⁰⁰

Racism and political parties

68. A number of communications received by the Committee relate to allegations concerning discriminatory comments made by members of political parties.¹⁰¹ The Committee has reminded State parties of the “need to balance freedom of expression with the requirements of the Convention to prevent and eliminate all acts of racial discrimination, particularly in the context of statements made by members of political parties”¹⁰² and has expressed its concern at the role of political parties and the media in inciting racial prejudice against ethnic minorities when examining States parties’ reports.¹⁰³

Reservations to article 4

69. The implementation and effectiveness of the Convention in relation to combating incitement to racial hatred by political parties and sections of the media is significantly hampered by the reservations and declarations which some 20 States parties have made regarding article 4 of the Convention.

70. For example, some States parties maintain that “criminal acts committed by the members or supporters of a racist organization may be prohibited and penalized by law, but not the existence of, and participation in, racist organizations”¹⁰⁴ Other States parties argue that it is for them to determine the correct balance between their

⁹⁷ CERD/C/63/CO/1(2003) § 17.

⁹⁸ Communication No. 4/1991, A/48/18, Annex IV, para 6.6.

⁹⁹ CERD/C/63/CO/6 (2003) § 12.

¹⁰⁰ See for instance CERD/C/64/CO/8 (2004), § 8; see also CERD/C/64/CO/5 (2004) § 14 and CERD/C/63/CO/7 (2003) § 11.

¹⁰¹ See, for example, Communication No. 22/2002, which concerned alleged discriminatory comments by a political party. Although the communication was held to be inadmissible for a failure to exhaust domestic remedies, the Committee brought para 115 of the Durban Programme of Action, relevant in this respect, to the attention of the State Party (see para 7 of the Communication).

¹⁰² Communication No. 27/2002 Opinion adopted on 19 August 2003, CERD/C/63/D/27/2002, § 9.

¹⁰³ See, for example, CERD/C/60/CO/8 (2002) § 18.

¹⁰⁴ See in this regard the expression of concern and recommendation by the Committee in CERD/C/64/CO/8 (2004) § 10.

obligations under article 4 and those under other human rights instruments, in particular their obligations to ensure the enjoyment of the rights to freedom of opinion, expression and association. When considering periodic reports, the Committee recommends that the concerned State parties consider withdrawing their reservations or declarations regarding article 4 and that they adopt the necessary legislation in order to ensure full compliance with article 4 (b) of the Convention.¹⁰⁵ Reservations have also been invoked by States when responding to allegations of contraventions of article 4 in individual communications.¹⁰⁶

2. Racism and incitement to racial hatred through the Internet

1.1. Declaration and Programme of Action

71. As stated in the Programme of Action, the Internet is at once a powerful tool for the promotion of universal respect for human rights¹⁰⁷ and the disseminator of “ideas of racial superiority”.¹⁰⁸

2.2 Convention

72. Article 4 (a) of the Convention, which provides that States parties should declare an offence punishable by law *all* dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as *all* acts of incitement to such acts, covers such dissemination and acts of incitement through the internet.

2.3 General recommendations

73. The three previously mentioned general recommendations adopted by the Committee on article 4 of the Convention -General recommendations I (1972), VII (1985) and XV (1993) - predate the emergence of the Internet but, *mutatis mutandis*, apply to this new medium. However, it should be stressed that in general recommendation XXIX¹⁰⁹ adopted in 2003, the Committee devoted a separate chapter to dissemination of hate speech, including through the mass media and the Internet. It recommended that States parties take strict measures against any incitement to discrimination or violence against descent-based communities, including through the Internet.

2.4. Concluding observations and jurisprudence

74. The Committee has expressed concern at the dissemination of racist propaganda on the Internet in a number of recent concluding observations, thus making clear that such dissemination falls within the scope of article 4 of the Convention. The Committee has requested from State parties, *inter alia*, that they clarify further the content and application of the relevant provisions of domestic law that address the existence and activity of racist organizations, including those that prohibit racist

¹⁰⁵ See, for example, CERD/C/62/CO/12 (2003) § 5, CERD/C/60/CO/6 (2002) § 7, A/56/18, § 391.

¹⁰⁶ Communication No. 26/2002, Opinion adopted on 20 march 2003, CERD/C/62/D/26/2002, para 4.7.

¹⁰⁷ Programme of Action, para 141.

¹⁰⁸ Programme of Action, para 143.

¹⁰⁹ See HRI/GEN/1/Rev.6, p. 226, paras. (r), (s) and (t).

propaganda on the Internet.¹¹⁰ On another recent occasion, while noting with satisfaction the State party's efforts aimed at combating racist propaganda and the spread of racist and xenophobic material on the Internet, including the then forthcoming ratification of the Council of Europe Convention on Cybercrime and its Additional Protocol, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, the Committee expressed concern at the sharp increase in the number of complaints received. The Committee encouraged the State party to continue its efforts to combat this contemporary manifestation of racial discrimination and expressed the wish to be informed of measures taken in this regard.¹¹¹ Positive measures welcomed by the Committee to combat this form of discrimination include the establishment of a reporting centre for discrimination on the Internet to combat racism on Internet sites.¹¹²

E. Article 5

1. Durban Declaration and Programme of Action and Programme of Action

75. The Durban Declaration and Programme of Action advocate the elimination of racial discrimination in the enjoyment of all human rights and highlight the interrelation between poverty, underdevelopment, economic disparities and racial discrimination.¹¹³

2. The Convention

76. Article 5 of the Convention requires States parties to ensure equality before the law in the enjoyment of all human rights, whether they be civil, political, economic, social or cultural.

3. General recommendation/statements

77. General recommendation XX (1996)¹¹⁴ stresses that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. It also provides that any restriction imposed by a State upon the rights and freedoms mentioned in article 5 must comply in purpose and effect with article 1 of the Convention. Furthermore, the Committee emphasises that "to the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination". The Committee also makes clear that "many of the rights mentioned in article 5 (...) are to be enjoyed by all persons living in a given State."

78. In monitoring States' compliance with article 5, the Committee pays particular regard to the potentially discriminatory effects of legislation and practices to combat terrorism. In the Committee's "Statement on Racial Discrimination and Measures to Combat Terrorism" of 8 March 2002, the Committee emphasized that "measures to

¹¹⁰ See CERD/C/64/CO/2, para. 19.

¹¹¹ See CERD/C/64/CO/7 (2004) para. 11. See also A/56/18, para 114 and A/55/18, para 311.

¹¹² A/55/18, para 311.

¹¹³ Durban Declaration, para 18.

¹¹⁴ HRI/GEN/1/Rev.6, pp. 208-209.

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 “insist[ed] 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.”¹¹⁵

4. Concluding observations and jurisprudence:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

79. The Committee has noted that article 5(a) applies to all types of judicial proceedings, including trial by jury, and that in fulfilling their obligations under para (a) of the article, States parties must give due attention to the impartiality of juries.¹¹⁶

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

80. In its concluding observations, CERD has highlighted the obligation for States to respect the principle of non-refoulement of refugees and asylum seekers¹¹⁷. This was confirmed by the Committee in its new general recommendation on discrimination against non-citizens in which it requests States to “ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment”¹¹⁸.

81. The Committee has also drawn attention to ill-treatment of minorities, in particular Roma, and other vulnerable groups in society by law enforcement officials¹¹⁹, disproportionately high incidence of deaths in custody of members of ethnic or racial minorities¹²⁰. The Committee has also expressed its concern at racist attacks against ethnic minorities by skinheads and neo-Nazis.¹²¹

82. The Committee has noted the persistence of such acts of violence against particular vulnerable groups despite the adoption of adequate measures¹²² and insisted on the need for sustained efforts to achieve a more effective application of existing legislation. Furthermore, the Committee systematically stresses the importance of

¹¹⁵ A/57/18 (Chapter XI) (C).

¹¹⁶ Communication No. 3/1991, Opinion adopted on 15 March 1994, CERD/C/44/D/3/1991, paras 9.2-10.

¹¹⁷ CERD/C/64/CO/7 (2004) para. 14.

¹¹⁸ See CERD/C/64/Misc.11/rev.3, General Recommendation XXX on discrimination against non-citizens, paragraph. 27.

¹¹⁹ CERD/C/64/CO/5 (2004)

¹²⁰ A/58/18, para 537.

¹²¹ CERD/C/62/CO/7, para. 27.

¹²² A/58/18,, para. 381.

public education campaigns promoting awareness of diversity and multiculturalism in order to contribute to the eradication of violence against members of minorities and indigenous groups.¹²³ Specific groups such as professionals working with persons belonging to minority groups should be the primary targets of these education campaigns.¹²⁴ States are also requested to increase law enforcement officials' sensitivity to matters involving racial discrimination and to implement human rights education programmes for the armed forces and the police,¹²⁵ as well as prison staff.¹²⁶ As stressed in General Recommendation XXIX, training programmes should be organised, in countries with descent-based communities, for public officials and law enforcement agencies "with a view to preventing injustices based on prejudice against [such] communities".¹²⁷ In its new general recommendation XXX on discrimination against non-citizens, the Committee also recommends to States parties to "combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights".¹²⁸

83. In monitoring States compliance with article 5(b), the Committee has also emphasised the fundamental importance of States parties ensuring that measures undertaken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin. In one instance, the Committee has therefore expressed its deep concern at the anti-terrorism legislation enacted by one State party which provided for the indefinite detention of non-nationals without charge or trial pending deportation, where the non-national is suspected of terrorism related activities. "While acknowledging the State party's national security concerns, the Committee recommend[ed] that the State party seek to balance those concerns with the protection of human rights and its international legal obligations"¹²⁹. In another instance, the Committee has expressed its concern about reports of particular groups being singled out by law enforcement officials in their efforts to combat terrorism¹³⁰ and the expulsion of persons charged with terrorist acts or suspected of participating in such act.¹³¹ In both contexts, the Committee drew the State party's attention to the above-mentioned statement of 8 March 2002.

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

¹²³ A/58/18, para. 406.

¹²⁴ *Ibid.*, para. 456.

¹²⁵ *Ibid.*, para. 181.

¹²⁶ *Ibid.*, para. 58.

¹²⁷ See HRI/GEN/1/Rev.7, General Recommendation XXIX, p. 230, para. 5 (y).

¹²⁸ See CERD/C/64/Misc.11/rev.3, General Recommendation XXX on discrimination against non-citizens, paragraph. 21.

¹²⁹ A/58/18, para 536.

¹³⁰ A/58/18, para 192.

¹³¹ A/58/18, para 473.

84. Inter alia, the Committee has addressed the representation of ethnic minorities in the police force,¹³² the under-representation of disadvantaged groups in government, legislative bodies and the judiciary,¹³³ the right of long-time permanent residents to participate in local elections¹³⁴. It has recommended that State parties undertake analyses of the participation of members of minorities in government service and political institutions.¹³⁵

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State.

85. In Communication No. 13/1998, the Committee held that resolutions prohibiting Roma from settling in certain areas violated article 5(d)(i) of the Constitution and recommended that the State Party “take the necessary measures to ensure that practices restricting the freedom of movement and residence of Roma under its jurisdiction are fully and promptly eliminated.”¹³⁶

86. In several concluding observations, the Committee has addressed issues regarding the right of asylum seekers to a residence permit. In relation to one State party, the Committee welcomed the “possibility that asylum-seekers can be granted a residence permit even after their claim has been rejected on judicial appeal, provided they are able to demonstrate objectively that they cannot return to their country.”¹³⁷ In its new general recommendation XXX on discrimination against non-citizens adopted at its 65th session, the Committee also recommends to States parties to “ensure that laws concerning deportation or other form of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies”.¹³⁸ General Recommendation XXX also urges States parties to “avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.”¹³⁹

(ii) The right to leave any country, including one's own, and to return to one's country

87. The Committee requests States parties to provide adequate information on the enjoyment by members of minorities of the right to leave their own country and return to it.¹⁴⁰ In one instance, the Committee noted with appreciation that a large number

¹³² CERD/C/64/CO/7 (2004), para. 15.

¹³³ CERD/C/64/CO/5 (2004), para. 17.

¹³⁴ CERD/C/63/CO/7 (2003), para. 12.

¹³⁵ CERD/C/63/CO/1 (2003), para. 19.

¹³⁶ Communication No. 13/1998, Opinion adopted on 8 August 2000, CERD/C/57/D/13/1998, para 10.3.

¹³⁷ CERD/C/64/CO/7 (2004), para. 14.

¹³⁸ See CERD/C/64/Misc.11/rev.3, General Recommendation XXX on discrimination against non-citizens, paragraph. 25.

¹³⁹ Ibid, para. 28.

¹⁴⁰ CERD/C/304/Add.80, para. 21; CERD/C/64/CO/4.

of people who had fled their lands during the time of armed conflict had returned to the territory of the State party concerned and that the State party had established a fund to assist the returnees in the process of resettlement.¹⁴¹ In another instance, while noting the challenges confronted by the State party in meeting the needs of large numbers of refugees, returnees and displaced persons, the Committee expressed concern that return was still hindered by legal and administrative impediments and hostile attitudes adopted by some central and local officials. It strongly urged the State party to take effective measures to prevent discrimination against returning refugees from particular minorities, especially as regards the restitution of their property, tenancy and occupancy rights, access to reconstruction assistance and rights to residency and citizenship.¹⁴²

(iii) *The right to nationality*

88. The Committee has expressed its concern, *inter alia*, at the “misuse of nationality Codes for political ends”.¹⁴³ It has encouraged greater access to language courses where language competence is a precondition to naturalization¹⁴⁴ and requested detailed information on the operation of new citizen laws which require applicants to pass language tests.¹⁴⁵ In other instances, it has expressed concern at the denial of citizenship to persons affected by HIV/AIDS, who may belong to groups vulnerable to racism and racial discrimination.¹⁴⁶ In another instance, the Committee has recommended that the State party take effective measures to ensure the right to acquire nationality for non-citizens, including for non-Muslims and children of mixed couples, without any discrimination.¹⁴⁷ In another instance, the Committee expressed nevertheless concerned that a woman who was national of the state party is unable to transmit her nationality to her child when she is married to a foreign national, and that a foreign man is unable to acquire nationality of the State party.¹⁴⁸

(iv) *The right to marriage and choice of spouse*

89. The Committee has highlighted the importance of ensuring that women’s rights are respected, irrespective of the community to which they belong, including the right to consent to marriage.¹⁴⁹ In another instance, concern was expressed that marriage between nationals and foreigners was subject to prior approval by the Minister of the Interior. The Committee also noted with concern that the State party does not appear to guarantee freedom of marriage between nationals and non-nationals unless the latter were nationals of specific States. It stressed that such a distinction, based upon national origin was not consistent with article 5 (d) (iv) of the Convention.¹⁵⁰

¹⁴¹ CERD/C/304/Add.21, para. 11.

¹⁴² CERD/C/60/CO/2, para. 13.

¹⁴³ CERD/C/62/CO/1 (2003), para. 11.

¹⁴⁴ CERD/C/63/CO/7 (2003), para. 13.

¹⁴⁵ CERD/C/60/CO/8 (2002), para. 11.

¹⁴⁶ CERD/C/60/CO/8 (2002), para. 12.

¹⁴⁷ A/57/18, para. 464.

¹⁴⁸ CERD/C/62/CO/8 para. 14

¹⁴⁹ CERD/C/64/CO/9 (2004), para. 25.

¹⁵⁰ CERD/C/60/CO/11 (2002), paras. 13 and 14.

(v) *The right to own property alone as well as in association with others*

90. Principal areas of concern for the committee under article 5(d)(v) have included property rights of indigenous peoples. For example, the Committee has requested information on the effect of the establishment of traditional subsistence territories and the enactment of a new Land Code on the property rights of indigenous people.¹⁵¹ The Committee has also drawn attention to the return of property to members of minorities who had been arbitrarily expelled and their property expropriated, and to the indemnification of the victims of such expropriations.¹⁵²

91. The right of internally displaced persons to have expropriated property returned to them has also featured in the decisions made by the Committee under its early warning measure and urgent procedure. In one such decision, the Committee determined that the State party in question “must recognize that all displaced persons have the right freely to return to their homes of origin under conditions of safety and that once returned, all displaced persons have a right to have any property that was seized in the course of the conflict restored to them and to participate equally in public affairs upon their return.”¹⁵³

92. The Committee has welcomed positive measures such as the establishment of institutions for the protection of human rights by one State party, which inter alia, have enhanced women’s access to ownership of property.¹⁵⁴

(vi) *The right to inherit*

93. In the context of article 5(d)(vi), the Committee has brought to the attention of States parties the need to ensure that the law respects the right of refugees¹⁵⁵ and indigenous peoples¹⁵⁶ to inherit. The Committee has also expressed its concern at dual legal systems regulating marriage and inheritance and recommended that those systems be revised to avoid discrimination.¹⁵⁷ In one instance, the Committee noted with concern that the State party’s legislation did not, in principle, allow members of different religions to inherit from each other and emphasized that such a situation should not result in certain categories of people being excluded from the right to inherit, given the requirements of article 5 (d) (iv) of the Convention.¹⁵⁸

(vii) *The right to freedom of thought, conscience and religion*

94. A recurrent problem faced by the Committee in examining States parties compliance with article 5(d)(vii) is States parties’ failure to provide sufficient information regarding minorities enjoyments of their right to freedom of thought,

¹⁵¹ CERD/C/62/CO/7 (2003) , para. 20. See also A/57/18, 2000, para. 332, A/54/18, para. 158, 194, 469, 473.

¹⁵² CERD/C/62/CO/11 (2003) , para. 5 and 10, A/57/18, 2000, para. 99; A/56/18, 2000, para. 213. See also CERD/C/63/CO/1 (2003) , para. 22 in relation to compensation for religious property.

¹⁵³ A/54/18, March 1999, Decision 5 (54) , para. 9(d). See also A/54/18, Decision 1(55) , para. 5.

¹⁵⁴ A/57/18, 2000, para. 440.

¹⁵⁵ CERD/C/64/CO/3 (2004) , para. 12.

¹⁵⁶ A/57/18 (2002) , para. 332.

¹⁵⁷ CERD/C/304/Add.16, 27/9/96, para. 20; CERD/C/304/Add.3, 28/3/96, para. 13 and 19.

¹⁵⁸ CERD/C/60/CO/11, para. 15.

conscience and religion.¹⁵⁹ The Committee has also been mindful of the intersectionality of freedom of religion and freedom from racial discrimination. For example, the Committee has drawn attention to the prohibition of discrimination on ethnic grounds against such communities as Jews and Sikhs¹⁶⁰ whilst on another occasion, it has expressed concern about a State party's legislation which discriminated on both ethnic and religious grounds.¹⁶¹

95. The Committee has also dealt with the difficulties encountered by certain national minorities in recovering and obtaining compensation for their religious properties.¹⁶²

(viii) The right to freedom of peaceful assembly and association

96. The Committee has noted the lack of information in States parties reports regarding practical instances of the implementation of the right to peaceful assembly and association¹⁶³ and expressed concern at reports that members of minority associations have suffered violations of the right to freedom of assembly and association.¹⁶⁴

97. In relation to indigenous peoples, the Committee has highlighted the need for States to “enhance the enjoyment of the right of association for the protection and promotion of [indigenous] culture”.¹⁶⁵

(e) Economic, social and cultural rights

98. The Committee frequently expresses its concern at the deleterious effects of racial discrimination on the enjoyment by members of minorities of all economic, social and cultural rights. For example, the Committee often notes with concern discrimination against the Roma in respect of access to education, health services, housing, education and employment.¹⁶⁶ Similarly, the Committee has highlighted the negative impact of natural-resource exploitation on indigenous peoples' environment, health and culture¹⁶⁷ and more generally, the disadvantages which indigenous persons face in the enjoyment of their social and economic rights, such as the right to employment, housing, social welfare and health care.¹⁶⁸

(i) The right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration

¹⁵⁹ CERD/C/60/CO/15, 21/5/2002, § 4; CERD/C/304/Add.83, 12/4/2001, § 11, A/49/18, § 227.

¹⁶⁰ A/58/18, § 539.

¹⁶¹ A/58/18, § 428.

¹⁶² CERD/C/63/CO/1, para. 22.

¹⁶³ CERD/C/304/Add.18 (1996) § 10, A/48/18, 15 September 1993, § 263.

¹⁶⁴ CERD/C/62/CO/5 (2003) § 16. See also CERD/C/304/Add.116, 27 April 2001, § 11.

¹⁶⁵ CERD/C/64/CO/4 (2004) § 15.

¹⁶⁶ CERD/C/63/CO/1, § 21; CERD/C/64/CO/3, § 8(a) and 15; CERD/C/63/CO/11, § 23.

¹⁶⁷ CERD/C/64/CO/9, § 15.

¹⁶⁸ A/57/18, § 424, CERD/C/304/Add.69,

99. High levels of unemployment and discrimination in relation to access to work for members of minorities, in particular members of Roma communities constitute a major problem which the Committee tackles on a regular basis in its concluding observations. Unemployment rate among the Roma remains disproportionately high in many countries.¹⁶⁹ The lack of employment opportunities, low salaries and precarious working conditions are the frequent plight of many members of indigenous groups¹⁷⁰ and persons of African descent.¹⁷¹ In States parties with a high proportion of migrant workers, the Committee has expressed its concern about allegations of substantial prejudice against these workers, in particular those coming from Asia and Africa. It has expressed concern in particular, regarding the situation of female domestic workers¹⁷² and has drawn the attention of the State party to its general recommendation XXV on gender-related dimensions of racial discrimination.

100. The Committee has highlighted that measures related to employment do not violate article 5(e)(i) if they affect all non-nationals in a similar way. For example, the Committee determined that an examination and quota system for foreign trained doctors did not violate article 5(e)(i) of the Convention as the system applied to all overseas trained doctors irrespective of race or national origin.¹⁷³

101. In relation to positive measures undertaken by State parties, the Committee has welcomed initiatives such as the creation of integration councils in one State party, to improve the employment opportunities for minorities and refugees and ensure ongoing integration.¹⁷⁴

(ii) *The right to form and join trade unions*

102. This right is rarely addressed by States in their periodic reports. The Committee has, however, expressed concern that extreme poverty and social exclusion have adversely affected the rights of indigenous peoples under article 5, including the right to form and join trade unions.¹⁷⁵

(iii) *The right to housing*

103. The Committee's examination of States reports has highlighted the difficulties faced by the Roma,¹⁷⁶ persons of immigrant origin¹⁷⁷ and refugees in gaining access to housing. In relation to these communities, the Committee has been mindful of the need to ensure that any housing projects instigated for minorities do not perpetuate segregation in the long term and therefore encouraged one State party to "continue its activities in the area of research relating to the problem of housing and to seek

¹⁶⁹ A/58/18, paras. 384, 162, 542.

¹⁷⁰ Ibid., paras. 59,

¹⁷¹ Ibid, para. 341.

¹⁷² CERD/C/62/CO/8, paras 16 and 17.

¹⁷³ Communication No. 8/1996, Opinion adopted on 12 March 1999, CERD/C/54/D/8/1996, paras 9.2 and 10.

¹⁷⁴ CERD/C/60/CO/5, § 6.

¹⁷⁵ A/50/18, § 310.

¹⁷⁶ CERD/C/64/CO/8, para. 11; CERD/C/64/CO/6, para.8(a), 15; A/57/18, , para.384;

CERD/C/304/Add.68, para 11.

¹⁷⁷ CERD/C/64/CO/3, para 16.

solutions that promote the social integration of the Roma.”¹⁷⁸ Similarly, the Committee has addressed the issue of “de facto residential segregation” and requested that the State party in question ensure compliance with the law against discrimination in the allocation of housing and, in its next report, supply information on the measures taken to address such segregation.¹⁷⁹ The Committee is mindful of claims of racial discrimination in the provision of rental accommodation and requested that one State party review the issue and provide the committee with information on the matter in its next periodic report.¹⁸⁰

(iv) The right to public health, medical care, social security and social services

104. The Committee has urged States parties to ensure the rights of non-nationals, in particular undocumented migrants,¹⁸¹ and refugees¹⁸² to social security and social services. It has also brought to the attention of States parties the need to develop a “social security system which takes into account the specific needs of indigenous peoples”.¹⁸³ Furthermore, the Committee has expressed on many occasions concern in relation to problems regarding limited access to health care, higher child mortality and shorter life expectancy for Roma.¹⁸⁴

(v) The right to education and training

105. Access to education in minority languages and the possibility for members of minorities and indigenous groups to learn their language or receive education in their language is another major issue dealt with by the Committee in the concluding observations addressed to States parties. The fact that the teaching of minority languages and literature in schools is permitted may be meaningless if the state is not fully committed to applying systematically its plan for bilingual education.¹⁸⁵ The question of resources allocation may become quite sensitive, in particular in poorer countries, when a balance needs to be struck between the minorities’ interests and those of the nation as whole. In one instance, the Committee, while understand[ing] that the exercise of the right to study and to be taught in the mother tongue means that a specific number of members of a minority must be present in a particular geographical area, ... “nevertheless recommended that the State party ensure that the rights of members of minorities are not unduly restricted outside areas where the minorities are concentrated”.¹⁸⁶

106. In another case, the Committee¹⁸⁷ expressed concern about the impact on minorities of the move to a new national language as the language of instruction in a short time frame. Without contesting the move as such, the Committee encouraged the State party “to remain attentive and flexible to the needs and abilities of the persons primarily affected...” and stressed “the importance of maintaining a close dialogue

¹⁷⁸ CERD/C/63/CO/4, , para 13.

¹⁷⁹ CERD/C/304/Add.103, para 14.

¹⁸⁰ CERD/C/304/Add.94, , para 9.

¹⁸¹ CERD/C/63/CO/9, para 10.

¹⁸² CERD/C/304/Add.87, para 13.

¹⁸³ CERD/C/304/Add.112, para 12.

¹⁸⁴ A/58/18, para. 542.

¹⁸⁵ *Ibid.*, para. 427.

¹⁸⁶ *Ibid.*, paragraph 310.

¹⁸⁷ *Ibid.*, para. 452.

with the schools and local communities, including both parents and children”. The Committee further urge[d] the State party to monitor the reform process closely in order to ensure that a high quality of education is maintained by, inter alia, considering an extension of the transition period to bilingual education and preventing any negative effects that might otherwise arise”.¹⁸⁸

(vi) The right to equal participation in cultural activities

107. The Committee recommends to States to ensure that members of indigenous groups can exercise their rights to their own culture, the use of their own language and the preservation and development of their own identity.¹⁸⁹ The Committee has stressed that minorities should have the right to express themselves in their own languages. In one instance, it welcomed the state party’s decision to take measures to increase broadcast time in minority and indigenous languages on public radio and television and urged the State party to ensure that these measures are intended for all minorities.¹⁹⁰

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

108. The Committee has expressed its concern at the difficulties experienced by the Roma and other minorities in gaining access to places and services intended for public use.¹⁹¹ In considering individuals communications, the Committee has emphasized the importance it attaches to State parties’ obligations under article 5(f) of the Convention, in particular their duty to ensure “prompt and effective police investigations of complaints” and to ensure that the right established under article 5(f) “is enjoyed without discrimination by all persons, nationals or foreigners, under the jurisdiction of the State party”.¹⁹²

F. Article 6

1. Durban Declaration and Programme of Action

109. The Durban Declaration and Programme of Action firmly acknowledge that the victims of racial discrimination must be accorded access to justice including legal assistance, appropriate protection and remedies including the right to seek just and adequate reparation or satisfaction for any damage suffered.¹⁹³

¹⁸⁸ Ibid., para. 452.

¹⁸⁹ A/58/18, para. 142.

¹⁹⁰ Ibid., paras 23 and 145.

¹⁹¹ CERD/C/63/CO/1 (2003) § 24

¹⁹² Communication No. 20/200, Opinion adopted on 13 March 2002, CERD/C/60/D/20/2000, para 10. See also Communication No. 11/1998, Opinion adopted on 9 August 2001, CERD/C/59/D/11/1998, para 11.

¹⁹³ Durban Declaration para 104.

2. The Convention

110. Article 6 of the Convention requires States to ensure that everyone in their jurisdiction can seek effective protection and remedies against acts of racism in the national tribunals and State institutions and just and adequate reparation for any damage suffered. This provisions is to be read in conjunction with article 4 providing the obligation for States parties to declare acts of racial discrimination offences punishable by law.

3. General recommendations

111. In general recommendation XXVI (2000)¹⁹⁴, the Committee clarified that the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination is not necessarily limited to the punishment of the perpetrator of the discrimination. Courts and other competent authorities should also consider awarding financial compensation or damage, whether material or moral, suffered by the victim. At its sixty-fifth session, the Committee decided to discuss at its sixty-sixth session, to be held from 21 February to 11 March 2005, a new general recommendation on racial discrimination in the administration of justice.

4. Concluding observations and jurisprudence

112. According to the Committee's reporting guidelines¹⁹⁵, States parties should include in their periodic reports adequate information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 6 of the Convention, in particular, measures taken to assure to everyone within the jurisdiction of the reporting State effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms. States should also indicate the measures taken to assure to everyone the right to seek from such tribunals just and adequate reparation or satisfaction for any damage as a result of such discrimination. Finally, reports should include information on the practice and decisions of the courts and other judicial and administrative organs relating to cases of racial discrimination as defined under article 1 of the Convention.

113. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination¹⁹⁶. One of the most frequent concerns expressed by the Committee regarding the implementation of article 6 by States parties is the very small portion of cases to be adequately investigated. States are requested to report on police complaints systems and to provide statistical information on the number and nature of complaints of racial discrimination received, prosecutions launched, and penalties imposed.¹⁹⁷

¹⁹⁴ HRI/GEN/1/Rev.6,p. 215.

¹⁹⁵ CERD/C/70/Rev.5, p.7.

¹⁹⁶ See, for example, CERD/C/63/CO/6, § 16, CERD/C/63/CO/1, § 26, CERD/C/62/CO/10,, § 10

¹⁹⁷ *Ibid.* para. 92.

114. The Committee frequently urges State parties to investigate why there are no complaints of racial discrimination and whether, in particular, it may be because the country does not have a sufficient span of legislation to combat discrimination. States parties should also verify that the lack of such complaints is not the result of victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination.¹⁹⁸

115. In examining individual complaints, the Committee looks to the substance of the investigations instigated by the State Party.¹⁹⁹ Police and public prosecutors must fully investigate complaints related to acts of racial discrimination. Thus the Committee has held that the discontinuance of the investigation of a complaint prior to determining whether the alleged victim had been insulted on racial grounds, denied the alleged victim the opportunity to establish whether his rights under the Convention had been violated.²⁰⁰ When examining another individual communication, the Committee has observed that a State party's "freedom to prosecute criminal offences, commonly known as the expediency principle, should be applied in each case of alleged racial discrimination in the light of the guarantees laid down in the Convention."²⁰¹

116. Just and adequate compensation does not necessarily entitle the victim to economic compensation in addition to the criminal conviction and punishment of the perpetrator. However, "in accordance with article 6 of the Convention, the victim's claim for compensation has to be considered in every case, including those cases where no bodily harm has been inflicted but where the victim has suffered humiliation, defamation or other attack against his/her reputation and self esteem"²⁰², for example, where a person is refused entry to a public place solely by reason of his or her national or ethnic background.²⁰³ Similarly, civil remedies will not be considered an adequate form of redress where the complaint alleges the commission of a criminal offence and seeks a conviction of the alleged perpetrator.²⁰⁴

G. Article 7

1. Durban Declaration and Programme of Action

117. The Declaration recognizes that human rights education is a "key to changing attitudes and behaviour based on racism, racial discrimination, xenophobia and related intolerance"²⁰⁵ It underlines the essential role of education which is sensitive to and respects cultural diversity, in the prevention and eradication of all forms of intolerance

¹⁹⁸ CERD/C/64/C0/1, para.22.

¹⁹⁹ Case No. 10/1997, Opinion adopted on 17 March 1999, Case No. 16/1999, Opinion adopted on 13 March 2000.

²⁰⁰ Communication No. 16/1999, Opinion adopted 13 March 2000, CERD/C/56/d/16/1999, paras 6.2-9.

²⁰¹ Communication No. 1/1985, Opinion adopted on 10 August 1988, CERD/C/36/D/1/1984, para 9.4.

²⁰² Communication No. 17/1999, Opinion adopted on 17 March 2000, CERD/C/56/D/17/1999, para 6.2. (See also Communication No. 25/2002, CERD/C/62/D/25/2002, 16 April 2003, para 6.3.)

²⁰³ Communication No. 17/1999, Opinion adopted on 17 March 2000, CERD/C/56/D/17/1999, para 6.3.

²⁰⁴ Communication No. 10/1997, Opinion adopted on 17 March 1999, CERD/C/54/D/10/1997, para 6.1.

²⁰⁵ Para 95. See also paras 80 and 96

and discrimination.”²⁰⁶ In the sphere of information, the Programme of Action emphasises the importance of recognising the value of cultural diversity and of putting in place concrete measures to encourage the access of marginalised communities to the media through, *inter alia*, the presentation of programmes that reflect their cultures and languages.²⁰⁷

2. The Convention

118. Article 7 of the Convention requires States parties to undertake measures in the fields of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination and to promoting tolerance and friendship among nations and racial or ethnic groups.

3. General recommendations

119. In general recommendation No. V (1977),²⁰⁸ the Committee noted with regret that few States parties included information in their periodic reports on the measures which they had adopted to give effect to the provisions of article 7. Information provided had often been general and perfunctory. The Committee therefore requested that States parties include adequate information on the measures which they have adopted to give effect to each limb of article 7.

120. This general recommendation is to be read in conjunction with the reporting guidelines of the Committee in which detailed requirements are made concerning the information which States parties should include in their periodic reports regarding implementation of article 7. The Committee requests that States parties provide it with information on their educational system, steps taken to promote human rights issues in the school curricula and training of teachers, and whether the purposes of instruments such as the Convention are included in education and teaching.²⁰⁹ In the cultural sphere, information is requested from States parties on “the role of institutions or associations working to develop national culture and traditions to combat racial prejudices and to promote intra-national and intra-cultural understanding, tolerance and friendship among nations and racial or ethnic groups.”²¹⁰ Finally, States should report on the role of the State media in disseminating information to combat racial prejudices and of the mass information media in publicizing human rights.²¹¹

121. General recommendation No. XIII (1993)²¹² draws the State parties attention to the fact that law enforcement officials should receive intensive training to ensure that they uphold the human rights of all persons in the performance of their duties. It also calls upon States parties to review and improve the training of such officials so that the standards of the Convention and the Code of Conduct for Law Enforcement Officials (1979) are fully implemented.

²⁰⁶ Para 97.

²⁰⁷ Para. 142.

²⁰⁸ HRI/GEN/1/Rev.6,p. 197.

²⁰⁹ Compilation of Guidelines of on the form and content of reports to be submitted by States Parties to the international human rights treaties. HRI/GEN/2/Rev.1., p. 39.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² HRI/GEN/1/Rev.6, p. 203.

4. Concluding observations and jurisprudence

122. The Committee is concerned that in some countries, the substance of the Convention is not brought to the attention of the public. In one instance, where the state argued that it was not doing so on the grounds that the population was relatively homogeneous, the Committee reminded the State party of its obligation under article 7 to give the general public regular information on the substance of the Convention.²¹³ Furthermore, the Committee frequently requests States parties to provide further information about their human rights education initiatives and urges States to implement more comprehensive human rights education programmes.²¹⁴ It has expressed its concern at the adequacy of educational and training activities undertaken by States parties where negative racial and ethnic stereotypes persist.²¹⁵ Where inadequate information is provided by a State party on measures undertaken to implement its obligations under article 7, the Committee requests the State to provide “information on human rights education and training to promote understanding among racial and ethnic groups and for teachers and pupils, law enforcement officials, members of political parties and media professionals.”²¹⁶

123. Concerning the media, the Committee has expressed concern about information on patterns of racial discrimination affecting people of African and Asian descent and at expressions of prejudice in the media against such people, as well as against foreigners and refugees.²¹⁷ The Committee not only recommends to States parties that they take measures to prevent and punish racist practices in the mass media but also that they provide funding to ensure that the media constitutes an instrument that helps to combat racial prejudice and fosters a climate of understanding and acceptance among the various groups which make up the country's population.²¹⁸

124. As mentioned above in developments related to article 5 (vi), the Committee requests States to ensure that members of minorities can exercise their rights to their own culture.²¹⁹ Furthermore, the Committee welcomes efforts made by States parties to protect and promote cultural diversity, including through the adoption of legislation on multiculturalism and the development of relevant policies.²²⁰

A. Current procedures

1. Reporting procedure

125. Non-compliance with States parties' reporting obligations has been a major obstacle to the Committee's work and the effective implementation of the Convention.

²¹³ CERD/C/64/CO/1, para.24.

²¹⁴ CERD/C/64/CO/4 (2004) para 17.

²¹⁵ CERD/C/63/CO/7 (2003) § 19.

²¹⁶ CERD/C/63/CO/1 (2003) § 27(b).

²¹⁷ A/57/18, para. 335.

²¹⁸ A/54/18 para.285

²¹⁹ A/58/18, para. 142.

²²⁰ Ibid., para. 320.

1.1 Reporting obligations and the examination of reports

126. 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.

127. The reporting process enables the Committee and States parties to identify common 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 guidelines specifying the required form and content of States parties' reports.²²¹

1.2 Non-compliance with reporting obligations

128. The Committee has developed several measures to encourage States to fulfill their reporting obligations. Where a State has several outstanding periodic reports, the Committee recommends that the State party submit the reports in a consolidated document together with its next periodic report and 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. Despite these measures, delays in the submission of States parties' reports persist. As at 14 July 2004, 73 States parties were late in the submission of two or more reports²²², and among these, 19 States parties had reports which were overdue by at least 10 years.

2 Review procedure

2.1 Presentation of the procedure

129. 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 provisions 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

²²¹ See CERD/C/70/Rev.5.

²²² Note by Secretary-General, "Submission of reports by States parties under article 9, paragraph 1 of the Convention", CERD/C/478, 14 July 2004, pp. 4-14.

by the Committee.²²³ 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 to also 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.²²⁴ The Committee also considers relevant information from other sources, including from non-governmental organizations.

130. At each session, the Committee selects up to 7 countries whose reports are seriously overdue to be scheduled at its next session for a review of the implementation of the Convention. Most State parties respond to the Committee's decision to schedule the review of their country's implementation of the Convention by requesting that the review be postponed and agreeing to submit a report within 6 months to a year. The Committee considers all such requests and may agree to the postponement. However, it informs the State party that it 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. Concluding observations adopted in the absence of a State report contain recommendations to the State party with a view to ensuring the implementation of the Convention. At its 64th session in March 2004, the Committee amended its review procedure by providing that in the first instance, any concluding observations adopted under the review procedure would be confidential and provisional in nature. The State party is notified that the provisional concluding observations will be made public unless it makes a firm commitment to submit a report by the next session of the Committee.

3. Follow up procedure

131. If the struggle against racial discrimination is to advance, and the Convention is to be of effect, it is of fundamental importance that States parties implement the recommendations of the Committee.

132. Rule 65 of the Committee's rules of procedure provides the possibility for the Committee to request from States 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 64th session (2004), the Committee added a second paragraph to rule 65 providing for the appointment of a coordinator on follow-up and of an alternate, for a period of two years, who are to act in cooperation with the country rapporteurs.

4. Early warning and urgent action procedures

4.1. Introduction

²²³ See Report of the Committee on the Elimination of Racial Discrimination, A/46/18, p. 17, § 27.

²²⁴ Report of the Committee on the Elimination of Racial Discrimination, A/51/18, p. 5, § 22.

133. In his report, “An Agenda for Peace”, the Secretary-General identified “the need to consider ways to empower the Secretary-General and the expert human rights bodies to bring massive violations of human rights to the attention of the Security Council together with recommendations for actions.”²²⁵ The statement received the full support of the chairperson of human rights treaty bodies²²⁶ and led to the adoption of innovative procedures by the Committee and other human rights treaty bodies.

134. At its forty-second session held in March 1993, the Committee adopted a working paper²²⁷ stating that efforts to prevent serious violations of the Convention should include both early 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.²²⁸ At its 65th session held in August 2004, the Committee established a working group in charge of preparing its decisions under these procedures.

4.2 Decisions adopted under the early warning measures and urgent procedures

135. In practice, the Committee fails to specify whether a measure is 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 the Office of the High Commissioner for Human Rights 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.

136. Notably, the early warning and urgent action procedures have been effective in triggering the resumption, or in some cases the initiation, of a dialogue between the Committee and States parties. In a recent decision, the Committee took action in the light of reports on serious violations of the rights of indigenous communities, including land rights, in the State party, and requested the submission of the State’s initial report overdue by eighteen years as a matter of urgency, including information on the situation of indigenous peoples.²²⁹ The State party complied with the Committee’s request, and the examination of the report provided it with a further opportunity to make specific recommendations and thereby reinforced its decision under the early warning and urgent action procedures. In another case, the Committee used its early warning and urgent action procedures, *inter alia*, to call on the State party concerned to halt immediately serious acts of violence against members of a

²²⁵ A/57/1.

²²⁶ A/49/18, para 18 citing A/47/628, para 44.

²²⁷ A/48/18, Annex. III.

²²⁸ A/49/18, para 17.

²²⁹ A/58/18, Decision 3(62).

specified minority as well as deprivation of access to adequate food and health care. It urged the Secretary General of the United Nations to draw the attention of the competent UN bodies to the worrisome human rights situation in the State party and to request them to take all appropriate measures, including the dispatch of a mission to the State party and the provision of humanitarian assistance to members of the concerned minority.²³⁰ As in the previous case, the State party in question had not reported to the Committee in over 18 years. Once again, however, the Committee's decision under the early warning and urgent action procedure encouraged the State party to submit its outstanding reports to the Committee.

5 Individual complaints procedure

137. 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 a 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 right to communicate the matter to the Committee within six months.

²³⁰ Ibid, Decision 1(63), paras 6 and 7.