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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination
Sixty-fifth session

Summary record of the second part (public)* of the 1664th meeting
Held at the Palais des Nations, Geneva, on Monday, 16 August 2004, at 3 p.m.

Chairperson: Mr. Yutzis

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.1664.

The public part of the meeting was called to order at 3.55 p.m.

Organizational and other matters *(continued)*

Response by the Committee to the request by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action (continued)

Consideration of document CERD/C/65/Misc.17 (distributed at the meeting in English only)

Conclusions regarding the implementation and effectiveness of the Committee's procedures

Procedure for the presentation of reports

1. **Mr. Pillai** wished to know whether the procedure for the elaboration of an expanded core document described in the paragraph under examination had been the subject of a decision at the Inter-Committee Meeting and, if so, whether the Committee was required to implement it.

2. **The Chairperson** said that at the present stage, the procedure in question was a proposal that had been approved at the most recent meeting of Chairpersons of the human rights treaty bodies and would be examined by each of the committees.

3. **Mr. de Gouttes** reiterated the proposal he had made at a previous session (CERD/C/SR.1649/Add.1), namely, to replace, in the tenth line, the words "concise reports" with "targeted reports".

4. *The paragraph, as amended was adopted.*

Examination procedure

5. **Mr. Herndl** suggested that in the last sentence, the words "as an obligatory act" should be replaced by "considering it as a necessary burden".

6. **Mr. Avtonomov**, objecting to the suggestion, said that the idea of obligation, which was inherent to all treaties, should be maintained in that sentence.

7. **Ms. January-Bardill** said that, in order to encompass Mr. Avtonomov's idea, the adjective "obligatory" should be added to the words "reporting process".

8. **Mr. Sicilianos** suggested that, at the end of the last sentence, the words "and of the persons under its jurisdiction" should be added.

9. *The paragraph, as amended, was adopted.*

Follow-up procedure

10. **Mr. Sicilianos**, recalling that in another of the Committee's documents concerning the same matter, the term employed was not "rapporteur" but "coordinator", suggested that the paragraph should be modified accordingly.

11. **Mr. de Gouttes** endorsed the suggestion but reminded the members that the Committee had always considered it wiser to entrust the task of follow-up to a working group rather than a coordinator.

12. **Mr. Herndl** proposed that in the second sentence, the word "ensure" should be replaced by "monitor".

13. *The paragraph, as amended, was adopted.*

Early warning measures and urgent action procedure

14. **Mr. Avtonomov** said that with regard to the last sentence of the paragraph under examination, the urgent action procedure did not apply solely to States parties that failed to submit reports. Indeed, it might turn out to be necessary when a State party that regularly submitted its periodic reports suddenly ceased to do so. He therefore proposed that the words "non-reporting" should be deleted.

15. *The paragraph, as amended, was adopted.*

Procedures for individual communications

Paragraphs 1 and 2

16. **Mr. Herndl**, supported by **Mr. de Gouttes**, **Mr. Lindgren Alves** and **Mr. Valencia Rodríguez**, proposed that the last sentence of the first paragraph should be deleted because it gave the impression that the Committee's jurisprudence in the area of individual communications was insufficient since the Committee had allegedly declared too many of them inadmissible on the grounds of failure to exhaust domestic remedies.

17. **Mr. Pillai** considered it important for States parties and individuals to know that the Committee was all too often obliged to declare the communications before it inadmissible for that reason, and was therefore in favour of maintaining the last sentence.

18. **Mr. Kjaerum** was also in favour of maintaining the last sentence because it was important to encourage States parties that had made the declaration under article 14 of the Convention to set up a body within its national legal order that would be competent to receive and examine petitions from individuals who claimed to be victim of a violation of any of the rights set forth in the Convention and who had exhausted other available local remedies, in accordance with article 14, paragraph 2.

19. **Mr. Cali Tzay** said that, in many countries, victims of violations did not lodge complaints with national bodies because they knew that they would not be heard and that their complaint would be dismissed for lack of proof. He therefore recommended that the last sentence be maintained in order to make States parties aware of the situation.

20. **Mr. Thornberry**, in an effort to reach consensus, proposed that the last sentence of the first paragraph should be deleted and that, at the end of the second paragraph, after the words "adhered to", the following words should be added: "in order to reduce the incidence of complaints declared in admissible, in particular for non-exhaustion of domestic remedies".

21. **The Chairperson** said that, in the absence of any objections, he would take it that the Committee wished to approve Mr. Thornberry's proposal.

22. *Paragraphs 1 and 2, as amended, were adopted.*

Country visits

23. **Mr. Sicilianos** reviewed the major issues that had emerged when the Committee had last considered the matter of country visits. Some members had been in favour of organizing such visits only within the framework of the urgent action procedure, namely in cases of large-scale serious violations of the principle of non-discrimination, while others had envisaged recourse to that method under circumstances other than those involving the urgent action procedure and had been in favour of adopting an optional protocol providing for the organization of such visits; still others had considered the adoption of a protocol to

be unnecessary, since visits of that kind had already been organized by the Committee on three occasions.

24. The Committee did not need to reach consensus on the matter but merely to inform the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action of the diverse opinions of its members.

25. **Mr. de Gouttes** proposed that the last two sentences of the paragraph should be replaced by: "The Committee considers that these country visits can be implemented within the framework of the urgent action procedure or other procedures, or of an optional protocol to the Convention authorizing such visits." It was indispensable to insert a final sentence, to read: "In any event, new methods for organizing these visits must be found in order to ensure the application of the Convention and the most comprehensive protection of victims of racial discrimination."

26. **Mr. Lindgren Alves** said that he did not wish the Committee to take initiatives in the area of country visits, a matter that traditionally fell within the purview of the Commission on Human Rights. He was not, however, opposed to the adoption of the paragraph as it stood.

27. **Mr. Pillai** said that the text of the paragraph was very important and should be drafted as clearly as possible. The first sentence was problematic because it implied that the Committee intended to carry out visits to States parties in response to allegations that the Convention had been violated. The visiting procedure should instead be linked to the early warning procedure.

28. **Mr. Tang** said that the text was not realistic because it was obvious that States parties about which it had been claimed that they had violated provisions of the Convention would refuse to allow visits.

29. **Mr. Herndl** fully endorsed Mr. de Gouttes' proposal to modify the last part of the paragraph. In his view, Committee members were hesitant because the text seemed to imply that visits could be carried out on the grounds of putative violations of the Convention. Country visits were a general matter that concerned not only alleged violations of the provisions of Convention but above all, in general, dialogue and cooperation between the Committee and States parties.

30. He proposed that, in the first sentence, the passage saying that the decision to make a visit would be made following the receipt of reliable information indicating violations of the Convention by a State party, should be deleted. Such a modification would have the advantage of implying, for example, that the Committee might carry out visits in order to discuss various aspects of the report of the State party concerned. A sentence concerning the financial aspects of the procedure should nevertheless be added to the paragraph.

31. **Mr. Avtonomov** said that the Committee members' reluctance concerning the text was legitimate, particularly because of the legal questions that it raised. The visiting procedures under discussion were not new, since visits had already been made in the past. It was therefore not appropriate to link them to allegations of violations of the Convention by a State party, regardless of whether such claims were founded. At the same time, the last part of the paragraph, regarding elaboration of an additional protocol to the Convention, should be deleted.

32. **Mr. Kjaerum** said that the basic problem was to reinforce the existing legal framework so that it enabled Committee members to make visits to countries that they suspected of having violated certain provisions of the Convention. The resulting pressure on States parties was in line with the current trend of ensuring the effective implementation of international human rights instruments. That momentum should be encouraged.

33. The Convention against Torture now had an additional protocol that enabled the Committee against Torture to carry out visits when it considered them to be necessary. Drawing up an analogous protocol to the Convention on the Elimination of the Racial Discrimination might inspire other treaty bodies to do the same. However, since it was not necessary at that stage to reach consensus on the matter of an additional protocol to the Convention, Committee members could easily confine themselves, as Mr. Sicilianos had suggested, to mentioning the various possible options for carrying out such visits.

34. **Mr. Amir** said that the proposals made by Mr. Sicilianos and Mr. de Gouttes responded perfectly to the request of the Intergovernmental Working Group. He proposed that a compromise text should be drawn up on the basis of the respective proposals of those two Committee members.

35. **Mr. Thornberry** said that the aim of the visiting procedure was to foster dialogue with States parties and to assist them in implementing the Convention. An appropriate sentence associating visits with that aim could be inserted in the text.

36. The proposal to adopt an additional protocol to the Convention gave rise to a problem because it implied that the Committee was not currently authorized to carry out visits to States parties.

The meeting was suspended at 5.40 p.m. and resumed at 5.50 p.m.

37. **Mr. Thornberry** proposed that, in the first sentence, the passage saying that the decision to make a visit was taken on the basis of reliable information indicating violations of the Convention by the State party, should be deleted. He also proposed that the last sentence should be modified to say that the Committee considered that visits could be carried out in the framework of early warning measures and urgent action procedures, or under a future additional protocol to the Convention, a binding legal instrument, which would set forth the conditions for such visits, including the financial aspects.

38. **Mr. Pillai** said that the proposal failed to resolve the problem of knowing on the basis of what specific information the Committee would consider a visit appropriate, a very important question that the Intergovernmental Working Group would surely raise. Furthermore, declaring that such visits would be carried out when the Committee deemed them necessary did not provide a response to the legitimate questions that the States parties concerned would inevitably raise with regard to the circumstances and the conditions under which the visits would be made.

39. **Mr. Tang** said that the first part of Mr. Thornberry's proposal implied that it would not be possible for a States party to refuse a visit. The Committee was not authorized to take such decisions unilaterally.

40. **The Chairperson** proposed that the Committee should pursue its examination of the text at a subsequent meeting, once Mr. Thornberry and Mr. de Gouttes had drafted a new proposal acceptable to all.

Examination of document CERD/C/65/Misc.17/Rev.2 (distributed at the meeting in English only)

Conclusions concerning article 5

Paragraphs 1 and 2

41. **Ms. January-Bardill** proposed that the word "some" should be inserted before "States" in the second line of the first paragraph and in the first line of the second paragraph.

42. *Paragraphs 1 and 2, as amended, were adopted.*

Conclusions concerning article 6

Paragraphs 1 to 4

43. **Ms. January-Bardill** proposed that the word "some" should be inserted before "States" in the second line of the first paragraph.

44. **Mr. de Gouttes**, supported by **Mr. Thornberry**, proposed that, in the second line of the third paragraph, the word "most" should be replaced by "many" and, in the last line of the third paragraph, after the word "systems", the phrase "and insufficient awareness of their rights by the victims" should be inserted.

45. Following an exchange of views in which **Mr. Sicilianos**, **Mr. Pillai**, **Mr. Kjaerum**, **Mr. Boyd** and **Mr. Valencia Rodríguez** participated, it was decided to add, after the words "too demanding" in the second line, the following sentence "States are invited to regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent or national or ethnic origin".

46. *Paragraphs 1 to 4, as amended, were adopted.*

The meeting rose at 6.05 p.m.