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

Contribution submitted by the Committee on the elimination of racial discrimination to the questionnaire prepared by the Office of the United Nations High Commissioner for Human Rights, pursuant to decision PC.1/10 of the Preparatory Committee of the Durban Review Conference at its first session (A/62/375)

1. The present replies were drafted by the Committee on the Elimination of Racial Discrimination (hereafter CERD or "the Committee") during its seventy-second session held from 18 February to 7 March 2008, following receipt of the questionnaire sent by the Office of the High Commissioner for Human Rights pursuant to Decision PC. 1/10 of the Preparatory Committee of the Durban Review Conference at its first session (A/62/375).

2. CERD welcomes the opportunity thereby offered to contribute to the preparatory process of the Durban Review Conference. It wishes to recall, however, that since the creation of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (hereafter IGWG or "Working Group"), it has had regular interaction with the Working Group and has in the course of this interaction extensively conveyed its views on most issues raised in the questionnaire. In particular, CERD wishes to draw the attention of the Preparatory Committee to the two following studies submitted by CERD in 2004 and 2007 respectively to the IGWG:

(a) 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 (E/CN.4/2004/WG.21/10 and Add.1).

(b) Study of the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through recommendations or the update of its monitoring procedures (A/HRC/4/WG.3/7).

3. CERD requests that these two studies, together with the replies to the questionnaire below and its General Recommendations 28, 29, 30 and 31 adopted after the Durban Conference, be submitted to the Preparatory Committee as well as to participants of the Durban Review Conference for their consideration.

I- Replies to Questions 1 and 4: Assessment of the implementation of the Durban Declaration and Programme of Action (hereafter DDPA) and of the effectiveness of the existing Durban follow-up mechanisms and other relevant United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance and suggestions in order to enhance them.

4. The Committee notes the acknowledgement in paragraph 79 of the Durban Declaration that "the obstacles to overcoming racial discrimination and achieving racial equality mainly lie in the lack of political will, weak legislation and lack of implementation strategies and concrete action by States". The Committee fully agrees with this observation and stresses further that, as is the case with all international normative standards, ICERD is very useful and effective for States that genuinely wish to abide by it. ICERD has helped to improve the situation in many countries. Where it has failed, it may be because the necessary political will is lacking in the States concerned.

5. Furthermore, the Committee regrets the limited understanding by many States parties regarding the meaning and scope of the definition of the concept of racial discrimination as provided in article 1 of the Convention (see developments in replies to questions 2 and 3 in this regard), which may lead some States to deny or minimize the extent of racial discrimination in their territory.

6. CERD regrets that despite its own recommendations and the recommendations of the IGWG at its various sessions, insufficient progress has been made in relation to the recommendations made in paragraph 75 of the Durban Programme of Action regarding the following issues:

(1) Universal Ratification of ICERD

7. While the goal of universal ratification of ICERD by 31 December 2005 has not been achieved, the number of States parties to the Convention has gone from 158 to 173 between August 2001 and March 2008.

(2) Declarations under Article 14 of ICERD regarding communications by individuals and groups of individuals

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

(3) States compliance with reporting obligations to CERD

9. Delays in reporting remains a major obstacle to the Committee's work and the effective implementation of the Convention. As at 27 March 2008, 84 out of 173 States parties were late in the submission of two or more reports¹.

10. The 28 following States parties are at least 10 years late in the submission of their reports:

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

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

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

11. The 28 following States parties are at least five years late in the submission of their reports:

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

Romania	Sixteenth periodic report due since 2001
Sudan	Twelfth periodic report due since 2002
Bangladesh	Twelfth periodic report due since 2002
Eritrea	Initial report due since 2002
Kenya	Initial report due since 2002
Belize	Initial report due since 2002
Benin	Initial report due since 2002
Japan	Third periodic report due since 2003
China	Tenth periodic report due since 2003
Algeria	Fifteenth periodic report due since 2003
Sri Lanka	Tenth periodic report due since 2003

(4) Reservations

12. Despite the call made in paragraph 75 of the Durban Programme of Action to States to withdraw reservations contrary to the object and purpose of the Convention, and to consider withdrawing other reservations, little progress has been achieved in this regard, though a few States have informed CERD that they are in the process of reviewing their reservations.

(5) Implementation of recommendations included in concluding observations of CERD

13. The Committee considers that in order for the struggle against racial discrimination to advance, it is very important that States parties act upon the recommendations which are addressed to them in concluding observations with a view to assisting them in the effective implementation of the Convention. While welcoming the information provided by some States in their periodic reports on the progress made in following up on its recommendations, CERD regrets the continuing failure of a large number of States to act upon its concluding observations. The importance of national institutions in the monitoring of the implementation by States of CERD recommendations cannot be stressed enough (see in this regard the recommendation made in paragraph 15 below).

(6) Steps taken by CERD to enhance its effectiveness and further suggestions in this regard

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

15. Since the creation of its early warning and urgent action procedure in 1993, the Committee has adopted numerous decisions under this procedure and made recommendations to States parties to the Convention as well as, through the Secretary-General, to the Security Council for action to prevent serious violations of the Convention, in particular those that could lead to ethnic conflict and violence. At its 71st session held in August 2007, CERD revised its early

warning and urgent action procedure guidelines (see new guidelines in annex III, A/62/18). According to the new guidelines, the Committee shall act under its early warning and urgent action procedure when it deems it necessary to address serious violations of the Convention in an urgent manner. The Committee is guided by the indicators set out in its guidelines which clarify the criteria upon which it bases its review of country situations under this procedure.

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

(a) An inquiry procedure established in line with similar procedures under other international instruments relating to discrimination²: The Committee proposes the adoption of an optional protocol which would provide, inter alia, for an inquiry procedure regarding grave or systematic violations by a State party of rights set forth in the Convention. Such a procedure would provide an opportunity to address structural causes of violations of the Convention, including in cases where one or several of the indicators of patterns of systematic and massive racial discrimination identified by the Committee in 2005 in its follow-up decision to its declaration on the prevention of genocide apply.³

(b) Follow-up visits by the Coordinator on follow-up: At its fourth session, the Intergovernmental Working Group identified procedural gaps and stressed the "need for CERD to be able to undertake country visits [as well as the] need to formalize the procedure of follow-up to the recommendations addressed to States parties by CERD in its concluding observations as well as in opinions on individual communications"⁴. Bearing in mind the support expressed by the IGWG, the development of the follow-up procedure of the Committee between 2004 and 2007, as well as the positive assessment of the follow-up visit undertaken by the Coordinator on follow-up in June 2006 to one State party, the Committee suggests that the practice of follow-up visits be further developed and that the framework for such visits be further elaborated upon, including through an optional protocol to the Convention.

(c) The obligation for States to establish, designate or maintain national mechanisms working towards the prevention of racial discrimination and the promotion of equality that will operate in cooperation with the Committee so as to strengthen effectiveness of its monitoring role: CERD strongly believes that the implementation and monitoring of the Convention, as well as the implementation of and follow-up to its concluding observations, strongly benefit from the activities of such national mechanisms. The Committee therefore suggests the inclusion in an

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

³ See for the text of the indicators, report of the Committee on the Elimination of Racial Discrimination to the General Assembly, Sixtieth Session, Supplement No 18 (A/60/18), para. 20.

⁴ See E/CN.4/2006/18, para. 78.

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

II. Replies to Question 5: What are the steps that should be taken by Governments to ratify and/or implement ICERD and give proper consideration to the recommendations of CERD?

Ratification of ICERD

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

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

Article 14 ICERD

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

20. As stated in paragraph 53 of CERD's 2007 study, owing to the relatively small number of declarations, coupled with a lack of awareness of the mechanism in those States which have made the declaration, the potential of the procedure has not been fully exploited. The development of the Committee's jurisprudence has been further impeded by a significant number of the communications before the Committee being declared inadmissible for a failure to exhaust domestic remedies. Those States parties which have made the declaration under article 14 should increase the awareness of the mechanism amongst the people in their territory and ensure that the procedural aspects are understood and adhered to.

21. At the brainstorming meeting on reform of the treaty bodies ("Malbun II" meeting) held from 14 to 16 July in Liechtenstein, the Committee made a proposal concerning the establishment of a single body to deal with individual communications.⁵ The CERD proposal could be operationalized by the means of an optional protocol attached to the relevant treaties. The establishment of a single body dealing with the examination of individual complaints submitted

⁵ Report of the Committee on the Elimination of Racial Discrimination to the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18), para. 503.

to all relevant treaty bodies has the potential to reinforce the effectiveness, coherence, visibility and accessibility of the United Nations human rights treaty body system, without amending the existing treaties.

Consideration to withdrawal of reservations

22. Where a State has entered reservations to any of the treaties to which it is a party, treaty bodies, including CERD, request information⁶ on:

- (i) The nature and scope of such reservations;
- (ii) The reason why such reservations were considered to be necessary and have been maintained;
- (iii) The precise effect of each reservation in terms of national law and policy;
- (iv) In the spirit of the World Conference on Human Rights and other similar conferences which encouraged States to consider reviewing any reservation with a view to withdrawing it,⁷ any plans to limit the effect of reservations and ultimately withdraw them within a specific time frame.

Article 20 of the Convention provides criteria for admissibility and validity of reservations. While relying on this provision as a starting point, the Committee has adopted a flexible and pragmatic approach regarding reservations. The Committee regularly requests further information or formulates substantive recommendations on issues covered by reservations, while inviting States to consider the scope, or even the withdrawal of their reservations. In some cases, the Committee has had to adopt a critical position regarding the compatibility of reservations of a general character with the provisions, or even with the object and purpose of the Convention.

Compliance with reporting obligations

23. All States parties to ICERD should endeavour to report regularly to CERD and when drafting their reports, should follow the guidelines adopted by the Committee in 2007 (CERD/C/2007/1).

Steps to be taken by States regarding the implementation of ICERD and of CERD's recommendations

24. States should comply with the requirements of the follow-up procedure. In this regard, CERD wishes in particular to draw attention to its guidelines on Follow-up (see annex VI, A/61/18).

⁶ See the Harmonised Guidelines on the Common Core Document, HRI/GEN/2/Rev.4, pp.10-11, para. 40).

⁷ See A/CONF.157/23, Part II, paras. 5 and 46.

III. Replies to Question 2 and 3: assess contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance, as well as initiatives in this regard with a view to eliminating them; identify concrete measures and initiatives for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related intolerance in order to foster the effective implementation of the DDPA; identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related

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

26. In its concluding observations as well as in various general recommendations, the Committee has clarified further the meaning of the grounds of race, colour, descent or national or ethnic origin, thus emphasizing that the concept of racial discrimination is much broader than perceived by many States that argue that there is no racial discrimination on their territory.

27. In order to assist States in understanding the scope of discrimination covered by ICERD, the Committee has adopted three important general recommendations⁸ since 2001 on contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance and requests their submission for consideration to the Durban Review Conference:

- (a) General Recommendation 29 on descent-based discrimination;
- (b) General Recommendation 30 on discrimination against non-citizens;
- (c) General Recommendation 31 on the prevention of racial discrimination in the functioning and administration of the criminal justice system.

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

- (a) General Recommendation 23 on the Rights of Indigenous Peoples and;
- (b) General Recommendation 27 on discrimination against Roma.⁹

29. Double or multiple discrimination is a continuing source of concern for CERD as it increasingly affects some individuals and groups. In this regard, CERD wishes to recall its General Recommendation 25 on gender-related racial discrimination¹⁰ in which it drew States

⁸ See HRI/GEN/1/Rev.8 for the text of these general recommendations.

⁹ Ibid.

¹⁰ Ibid.

parties attention to double discrimination on the grounds of gender on the one hand, and race, colour, descent, national or ethnic origin on the other hand.

30. CERD has also addressed other forms of double discrimination. While noting that other treaty bodies may have explicit competence to address religious discrimination, CERD has had numerous occasions to address double discrimination on the ground of race and religion and has stressed the 'intersectionality' of racial and religious discrimination and recommended that religious discrimination, including that against immigrant religious minorities be likewise prohibited.¹¹ Furthermore, it has reminded States that they should "ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent or national or ethnic origin, in accordance with article 5 (d) of the Convention."¹²

31. The Committee also wishes to draw particular attention to the statement adopted during its first session after the 9/11 events (sixtieth session, held in March 2002), "on Racial Discrimination and Measures to Combat Terrorism" in which it emphasized that "measures to combat terrorism ... are to be considered legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law." It also urged States to ensure that any such measures "do not discriminate **in purpose or effect** on grounds of race, colour, descent or national or ethnic origin" and "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."¹³

32. Since the adoption of this statement and when monitoring States' compliance with article 5, the Committee has systematically paid particular regard to the potentially discriminatory effects of legislation and practices to combat terrorism. The Committee has requested from States parties that they provide information on the effect which national legislation to combat terrorism has had on the implementation of the Convention, particularly on identity, entry and residence checks of foreigners, the right of asylum and extradition.¹⁴ When examining periodic reports, the Committee has expressed its concern about reported cases of "Islamophobia" following the 11 September attacks. Furthermore, while taking note that the criminal legislation of some States includes offences where religious motives are an aggravating factor, it has regretted that incitement to racially motivated religious hatred is not outlawed. The Committee has

¹¹ Report of the Committee on the Elimination of Racial Discrimination to the General Assembly, fifty-eighth Session, Supplement No 18 (A/58/18), para. 539.

¹² Ibid., para. 428.

¹³ Report of the Committee on the Elimination of Racial Discrimination to the General Assembly, fifty-Seventh Session, Supplement No 18 (A/57/18), (Chapter XI) (C).

¹⁴ A/58/18, para. 319. See also CERD/C/60/CO/9 (2002) § 15 in relation to "racial profiling".

recommended that States give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities¹⁵.

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

¹⁵ A/58/18, para. 540.