

III.3 THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance having met in Durban, South Africa, in September 2001, noted with grave concern “that despite the efforts of the international community, the principal objections of the three Decades to Combat Racism and Racial Discrimination have not been attained and that countless human beings continue to the present day to be victims of racism, racial discrimination, xenophobia and related intolerance”. Moreover, grave forms of racism, anti-Semitism, Islam phobia and violence against persons of African descent, indigenous populations, migrants, and Roma and Sinti exist worldwide. In its Final Declaration the Conference stated “that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices”.

The Programme of Action calls upon the different actors such as, for instance, governments, political parties, the United Nations and other international organizations, NGOs, the youth, the private sector and the media, to take appropriate measures to combat racism on the different levels, regional, national and international. The Programme of Action contains numerous suggestions for the strengthening of national and international mechanisms for the protection of racial discrimination. It urges States which have not yet done so, to consider ratifying or acceding to the international and national human rights instruments which combat racism, racial discrimination, xenophobia and related intolerance, in particular to accede to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as a matter of urgency, in view to universal ratification by the year 2005 (see document 3).

The Committee on the Elimination of Racial Discrimination

This Committee of 18 experts monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in 1965 and entered into force on 4 January 1969. The members of the Committee are elected by States parties (as of 11 January 2010: 173; for details see annex VI.3) from amongst their nationals, “who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems”.

Normally, the Committee meets twice a year for three weeks per session, in February and August in Geneva (between 1984 and 1986 the Committee met in alternation in Geneva and in New York in order to better communicate with those States parties having diplomatic representation in New York but not in Geneva). Since 1987 all sessions were held in Geneva although the Committee expressed its wish to meet in New York again. In 2008, the Committee decided to request the General Assembly to approve one additional week of meeting time per session as of 2010.

Under Article 8, para. 6, States parties are responsible for the expenses of the

members of the Committee. However, a number of sessions had to be cancelled because some States parties had not met their financial obligations under the Convention. In 1994, those difficulties could be solved; the activities are now financed through the regular budget of the UN.

The Committee is exercising four functions: examinations of reports, deployment of preventive procedures (early warning measures; urgent action procedures), reviews in case of overdue reports, and the issuance of opinions on individual communications. The Committee must report annually to the General Assembly on its activities and may make suggestions and recommendations based on its examination of the reports provided by the States parties which are reviewed by the Committee (Article 9, para. 2).

Article 9, Para. 1: States Reports

Each State party has to submit every two years a report on the legislative, judicial, administrative and other measures which it has adopted to give effect to the provisions of the Convention (see chart 10). To-day, the Committee requests detailed reports only in five-year-terms and requires that a short report every two years informs about the recent developments in the country given. In August 2004, the Committee appointed a Coordinator mandated to monitor the follow-up by States parties to the observations and recommendations of the Committee (guidelines appeared on 2 March 2006). CERD examines an average between eight and 11 reports per session.

Nevertheless, little is done by the States parties to secure the timely submission of reports. In its 2008 Report to the General Assembly, the Committee mentioned 20 States parties with reports overdue by at least 10 years and 30 States parties with reports overdue by at least five years (see pp. 103-104). The Committee requested the UN Secretary-General to continue sending reminders automatically to those States parties whose reports are overdue.

In order to accelerate the consideration of the States reports the Committee applies since 1989 a new procedure: for every State report a rapporteur is nominated. Following the model of the Human Rights Committee, a general comment proposed by the country rapporteur of the Committee is made on the States reports since 1991. This comment highlights those aspects which are relevant to the fulfillment of the obligations arising under the Convention, and also those where shortcomings or deficiencies are apparent. In addition, a procedure for the consideration of States reports which are overdue was introduced by consensus. It allows to review older reports submitted by the State party as basis for a renewed discussion in the case when States reports are overdue by five years or more. The States concerned are informed in advance. This procedure was practiced for the first time on the 40th session in 1991. A few years later, the Committee decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of the implementation of the Convention. The Committee agreed to consider not only all information submitted by the State party to other organs of the UN but also relevant information from other sources, including from NGOs, whether it is an initial or periodic report that is overdue by five years or more.

Articles 11–13: Inter-State Complaints

The Committee is also authorized to review any complaint by one State party against another State party claiming that the latter is not giving effect to the provisions of the Convention. However, no such complaint has yet been made even though the procedure comprises an Ad hoc Conciliation Commission with a view to an amicable solution of the matter. As in case of the Human Rights Committee it can be assumed that States parties are reluctant to make use of this procedure in order to avoid complaints against themselves.

Article 14: Individual Communication Procedure

Individuals or groups of people who claim that their rights, as set out in the Convention, are being violated, may since 1984 – as laid down in Article 14 of the Convention – write to the Committee, asking that their complaint be considered (see chart 11 and document 4). They must first have exhausted all available domestic remedies.

However, the Committee cannot receive a communication if it concerns a State which, although a party to the Convention, does not recognize the competence of the Committee to do so. Only 53 of the 173 States that had ratified or acceded to the Convention by 15 August 2008 recognize the competence of the Committee to receive and consider communications under Article 14. They are:

Algeria	Malta
Andorra	Mexico
Argentina	Monaco
Australia	Montenegro
Austria	Morocco
Azerbaijan	Netherlands
Belgium	Norway
Bolivia	Peru
Brazil	Poland
Bulgaria	Portugal
Chile	Republic of Korea
Costa Rica	Romania
Cyprus	Russian Federation
Czech Republic	San Marino
Denmark	Senegal
Ecuador	Serbia
Finland	Slovakia
France	Slovenia
Georgia	South Africa
Germany	Spain
Hungary	Sweden
Iceland	Switzerland
Ireland	The former Yugoslav Republic of
Italy	Macedonia
Kazakhstan	Ukraine
Liechtenstein	Uruguay
Luxembourg	Venezuela

The proceedings before the Committee are entirely confidential; anonymous communications will not be accepted. When the Committee decides that an individual communication is admissible, it transmits the communication to the State party concerned, but the identity of the petitioner is not revealed without his or her expressed consent. Within three months, the State party concerned submits to the Committee written explanations or statements as it considers appropriate having regard to the allegations made (see chart 11).

After completing consideration of a communication, the Committee drafts its opinion which is communicated to the petitioner and to the State party concerned. If the Committee finds a violation of the Convention, the State party should revise its law and/or practice in the light of the Committee's opinion. The Committee invites the State party to inform it in due course of the measures it has taken in connection with the suggestions and recommendations of the Committee. In 2005, the Committee adopted a new rule of its rules of procedure which allows it to designate one or several Special Rapporteurs for follow-up on opinions in order to ascertain the measures taken by States parties in the light of the Committee's suggestions and recommendations.

Since 1984, individual complaints which are treated in closed sessions can be submitted. Until August 2008, the Committee received 40 communications. On 25 communications the Committee adopted its opinion (in 10 cases, the Committee found a violation of the provisions of the Convention); the Committee declared 13 communications inadmissible.

Thematic debates

In order to specify the extent of its responsibilities, the Committee held a number of thematic debates on issues related to the application and interpretation of the provisions of the Convention, including in particular on issues related to

- discrimination against Roma (2000)
- descent-based discrimination (2002)
- non-citizens and racial discrimination (2004)
- prevention of genocide (2005)
- special measures / affirmative action (2008)

The outcome of these thematic debates is reflected in the Committee's general comments 27, 29, and 30.

The Role of NGOs

Only in the 1990s, the Committee has started to receive any information from NGOs commenting upon State reports. In 1993, the Anti-Racism Information Service (ARIS) was founded which collects information from various sources and feeds it to Committee members; they sometimes meet with NGO representatives before a State report is considered. The Committee maintains weaker links with NGOs than the other UN treaty bodies. In 2003, the position was reaffirmed that NGOs can only provide information to State reports on a personal level and in informal meetings to members of the Committee. But the

Committee as a whole can also hold informal meetings with NGOs on issues of major importance for the implementation of the Convention.

In 2007, the Committee amended rule 40 of its rules of procedure which now offers the possibility for NHRIs which are accredited to take part in the deliberations of the Human Rights Council to address the Committee on issues related to the dialogue with a State party on a report, if the State party agrees.

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15 reports submitted by States parties are considered by the Committee in chapter III. Decisions and opinions of the Committee under Article 14 of the Convention can be found in annex III.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee on the Elimination of Racial Discrimination. Seventieth session (19 February 2007). Seventy-first session (30 July - 17 August 2007). New York: UN, 2009, 167 (GAOR, Sixty-second Session, Supplement No. 18 (A/62/18)).

Chapter III contains the Concluding Remarks of 15 reports submitted by States parties. Chapter VI deals with individual complaints; commentaries on particular cases (communications no. 36, 37 and 40) are listed in annex V.

VANDENHOLE, Wouter: Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies. Antwerp / Oxford: Intersentia, 2005, XIII, 293.

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E-Resources

General:

<http://www2.ohchr.org/english/bodies/cerd/index.htm>

General Comments:

<http://www2.ohchr.org/english/bodies/cerd/comments.htm>

States reports:

<http://www2.ohchr.org/english/bodies/cerd/sessions.htm>