

길 수 있는 회복할 수 없는 손해를 피하기 위하여 금박성을 이유로 한 잠정조치(interim measures)가 바람직함가에 대한 견해를 당해 계약국에게 전달할 수 있다.¹⁷⁵⁾ 이 경우 잠정조치는 통보의 본안에 관한 최종 판단이나 제시와 권고에 영향을 주지 않는다.

(3) 제의와 권고

위원회는 통보를 심의한 후 당사국과 청원자에게 제의와 권고(suggestions and recommendations)를 할 수 있다.¹⁷⁶⁾ 위원들은 개별의견을 요약하여 위원회의 의견에 덧붙일 수 있다.¹⁷⁷⁾ 당사국은 위원회의 제의와 권고에 따르기 위해 취한 행동을 적절한 때에 위원회에 알려야 한다.¹⁷⁸⁾ 위원회는 UN 총회에 제출하는 연례 보고서에 이러한 통보의 개요와 적절한 경우 당사국의 설명과 설명 그리고 위원회의 명시적인 제의와 권고의 개요를 포함시켜야 한다.¹⁷⁹⁾

라. 식민지 등에 관한 자문기능

협약상의 개인통보의 권리는 협약이 체결되기 전부터 식민지 등에 사는 주민들에게 주어진 국제연합, 그 전문기구 또는 다른 국제기구에 대한 청원권에 영향을 주지 않는다.¹⁸⁰⁾ 나아가서 협약은 식민지 등의 독립에 관한 UN 총회의 결의 제1514(XV)호(1960년)가 적용되는 신탁통치, 비자치영역과 식민지 경우 위원회에 특별한 기능을 부여하고 있다. 즉, 위원회는 관련 국제연합소속기관에 접수된 청원의 사본이나 입법적·사법적·행정적 또는 기타 조치에 관한 보고서의 사본을 받고 이에 관해 명시적인 의견이나 권고를 할 수 있다.¹⁸¹⁾

식민지에 관하여 위원회에 제의와 같은 보조적 권한을 준 특별절차가 특별한 경우에 대하여는 많은 의문이 제기되었다. 무엇보다도 제15조에 따라 받은 정보는 주로 문제되는 지역의 독립에 관한 것이고 그 지역의 인종문제에 관한

175) 규칙 제94조 (3).
176) 협약 제14조 7항 (b).
177) 규칙 제95조 (3).
178) 규칙 제95조 (5).
179) 협약 제14조 8항, 제15조 3항.
180) 협약 제15조 1항.
181) 협약 제15조 2항.

정보는 매우 적었다.¹⁸²⁾ 또한 대부분 보고서가 너무 늦게 받아 효율적 행동을 할 수 없었고, 어떤 행동이 취해진 경우에도 추가적 정보를 요구하거나 다른 UN 기구가 이미 취한 결정을 형식적으로 승인하는 데에 그쳤다.¹⁸³⁾ 위원회의 이러한 기능은 1990년 이래 사실상 정지되었다.¹⁸⁴⁾

4. 인종차별방지절차—조기경보조치와 긴급절차

최근 인종과 종족갈등이 늘어감에 따라 인종차별철폐위원회는 새로운 절차를 마련하여 협약위반을 방지하고 보다 효과적으로 대응하기 위하여 1993년에 인종차별방지에 관한 의제 아래 조기경보조치(early-warning measures)와 긴급절차(urgent procedures)를 마련하기로 하였다.¹⁸⁵⁾

조기경보조치는 현재의 문제가 장차 충돌로 번지지 않도록 하기 위한 것으로 인종간의 관용(racial tolerance)을 강화하고 평화를 다지기 위한 구조를 발전하고 지원하는 신평구축조치를 포함한다. 조기경보의 기준으로는 모든 형태의 인종차별을 규정하고 범죄로 하는 직렬한 입법의 부재, 집행절차의 부각 결한 시행, 개인, 집단이나 단체, 특히 선거직 또는 기타 공직자에 의한 인종적 증오와 폭력, 인종주의적 선전 또는 인종불관용의 호소가 갈수록 악화되는 유형의 존재, 사회경제저수에 나타난 심각한 인종차별 양식, 소수인의 땅에서 벌어지는 인종차별이나 침해에 따른 난민이나 유민(displaced persons)의 격증 등이 있다.

긴급절차는 협약의 심각한 위반을 방지하거나 그 규모와 빈도를 줄이기 위하여 즉각적인 관심을 요구하는 문제에 대응하기 위한 것이다. 이 절차를 개시하기 위한 기준은 심각하고 대규모이거나 지속적인 인종차별유형이나 보다는 큰 인종차별의 위험이 있는 심각한 상황을 포함한다.

이러한 절차는 알제리, 보스니아-헤르체고비나, 부룬디, 크로아티아, 사이

182) 자세한 연구로는 Lerner, 앞의 책, pp. 121-130; *The First Twenty Years*, pp. 42-50 참조.
183) Partsch, 앞의 글, pp. 347, 367. 식민지와 인종차별문제에 UN 인권위원회의 활동과 관련 절차에 대하여는 Alston, 앞의 글, p. 143 이하 참조.
184) Banton, 앞의 책, p. 158.
185) CERD Report, A/48/18 (1994), annex III. Prevention of racial discrimination, including early warning and urgent procedures: working paper adopted by the CERD, 125. 그러나 이러한 제도는 아직 위원회의 규칙에 담기지 않았다. A/52/18(1997), para. 17.

프러스, 라이베리아, 멕시코, 파푸아 뉴기니, 러시아, 루만다, 르완다, 마케도니아, 유고슬라비아 공화국, 이스라엘, 콩고 등에서의 상황을 협약의 의무에 비추어 검토하는 데 이용되었다.¹⁸⁶⁾ 이러한 방지절차의 중요성에도 불구하고 위원회의 현재 구조는 이를 효율적으로 운영하기에 적합하지 않다고 지적되고 있다.¹⁸⁷⁾

5. 인종차별위원회와 국가인권기구

인종차별철폐위원회는 협약상의 감시절차 이외에도 인종차별에 대항하기 위한 국내절차의 마련에도 관심을 기울이고 있다. 특히 1983년 인종주의와 인종차별과 싸우기 위한 제2차 세계회의 행동강령은 이에 관한 진정을 쉽고 신속하게 처리하기 위한 국내절차를 만들어 널리 알리고 피해자구제와 법적 구조를 제공하며 손해배상청구권을 규정하여야 한다고 요청하고 있다. 또한 UN 총회는 비슷한 맥락에서 인권보장과 추진을 위해 적절한 국가인권기구를 설립할 것을 권고한 바 있다.¹⁸⁸⁾ 이러한 국제사회의 움직임에 따라 인종차별철폐 위원회도 협약의 목적달성과 이행을 촉진하기 위해 이러한 국가기구를 관련 국제기준에 맞게 설치할 것을 권고하였다.¹⁸⁹⁾ 더욱이 인종주의와 인종차별에 맞서기 위하여 국제연합 총회는 결의 제47/77호(1992)에서 사무총장으로 하여금 인종차별철폐에 관한 모범 국내법안을 만들도록 하였는데 이 법안 역시 인종차별문제를 다룰 독립적인 국가위원회를 둘 것을 강조하고 특히 청원을 수리(受理)하고 조사권한과 제소권한을 포함한 포괄적인 기능을 수행하도록 하였다.¹⁹⁰⁾

186) 위원회의 결정제도는 같은 문서, paras. 18-19; Banton, 앞의 책, pp. 161-168 참조.
187) Banton, 앞의 책, pp. 309-310.
188) Principles relating to the status and functioning of national institutions for protection and promotion of human rights ("Paris Principles"), 총회 결의 제48/134호(1992. 12. 20); "인권보장 및 증진을 위한 국민인권기구의 지위와 역할에 관한 원칙," 민주사회를 위한 변론, 동권 제21호(1998. 6. 7), p. 30. 또한 UN Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (1995); 브라이언 버딘, "인권담당 국민기구는 왜 필요인가," 제간 사관, 1996, 겨울, p. 197.
189) 협약이행을 촉진할 국가기구의 설립에 관한 일반 권고 제17호(42차 회기, 1993).
190) United Nations, *Model National Legislation for the Guidance of Governments on the Enactment of Further Legislation against Racial Discrimination: Third Decade to Combat Racism and Racial Discrimination (1993-2003)* (HR/PUB/96/2, 1992), pp. 7-8.

한국정부는 이러한 권고에 따라 독립한 국가인권위원회를 설립할 것을 고려하고 있다고 보고한 바 있는데,¹⁹¹⁾ 이 글을 쓰고 있는 현재 인권위원회의 설치를 중심으로 한 법무부의 '인권법시안'(1998. 9)을 놓고 활발한 논의가 전개되고 있다. 이러한 인권위원회가 만들어지면 인종차별문제에 관하여도 일정한 기여를 할 것으로 기대된다.

6. 맺 음 말

지금까지 인종차별철폐협약의 효율적 집행을 위한 인종차별철폐위원회의 조직과 기능을 협약상의 절차와 새로운 발전을 중심으로 협약집행구조의 밑거름을 그려 보았다. 위원회의 협약이행감시활동과 관련하여 주목하여야 하는 것은 보고서의 심의를 돕기 위해 작성지침이나 기타의 권고를 하고 또한 통보를 심의하면서 관련 협약 규정을 해석하고 구체적인 제안과 권고하는 과정을 통하여 인종차별을 없애기 위한 보다 상세한 기준을 만드는 데 위원회가 커다란 몫을 한다는 점이다.¹⁹²⁾

인종차별문제에 관하여 협약의 규정이 인권선언이나 다른 인권협약의 규정보다 자세하기는 하지만 여전히 일반추상적인 것에 비추어 더욱 자세한 기준을 마련할 것이 요청된다. 이러한 협약 해석을 통한 기준설정엔 협약이 위원회에 맡긴 권한의 성질을 볼 때 엄밀하게는 유권적이지는 않지만¹⁹³⁾ 위원회가 협약의 이행을 감시하는 기능을 수행하면서 협약 규정을 해석하고 적용하는 것은 당연하다. 또한 실제 계약국들은 이러한 해석을 비중 있게 다루지 않을 수 없다. 이렇게 위원회의 구체적인 기준은 계약국의 협약적용에 있어서 중요한 지침이 될 것이고 협약이행을 확보하기 수단이 제약된 상황에서 주요한 협약 규정의 해석을 통하여 보다 구체적인 인권기준을 세우는 것은 간접적이지만 협약상의 일반규범을 실제 이행하는 데에 있어서 커다란 도움이 될 것임은 명백하다.

191) CERD/C SR.1159(1996), para. 33; CERD/C/333/Add.1(1998), para. 17.
192) Partsch, 앞의 글, pp. 358, 364.
193) 협약 제22조 참조. Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 A.J.I.L. 283, 285 (1985).

인종차별을 없애기 위한 위원회의 활동이 과연 효율적이었는가에 대한 평가는 이 글의 범위를 넘으나¹⁹⁴⁾ 지금까지 내려진 객관적인 평가를 보면 전체적으로 긍정적이다. 위원회가 비록 남아프리카의 인종분규와 같은 문제를 해결할 수 있는 직접적인 수단을 가지고 있지는 않으나 일반적으로 계약국들의 인종차별문제에 대한 인식을 높이고 계약국 보고서의 질을 향상시키며 무엇보다도 제 4조의 형사입법의무에 관한 위원회의 감시기능으로 반 이상의 계약국이 차별방지 관련 입법을 하도록 하고 차별문제를 다루는 국가기구의 설립을 촉진하였다. 이는 높은 평가를 받는다.¹⁹⁵⁾ 이에 대하여 통보절차가 아직까지 활발히 이용되고 있지 않음에 따라 보고서의 검토가 여전히 핵심적인 감시수단이 되고 있고 다른 인권기구의 활동에 비해 활발하지 못하다는 비판도 제기되고 있다.¹⁹⁶⁾

그러나 위원회는 인종차별을 위한 전담기구가 아니며 이에 대한 평가는 협약과 같거나 비슷한 목적에 봉사하는 다른 국제인권기구 및 국가인권기구와의 맥락에서 가능할 것이다. 예컨대 인종주의와 인종차별과 싸우기 위한 두 차례의 세계회의가 열리고¹⁹⁷⁾ UN 총회는 '인종주의와 인종차별과 투쟁하기 위한 세 번째 10개년 행동계획'을 세웠다.¹⁹⁸⁾ UN 인권위원회는 지속적으로 이 문제에 관심을 가지고 활동하였는데 특히 최근에는 인종주의, 인종차별, 외국인혐오와 관련된 불관용의 현대형태를 의제로 채택하고 특별보고관을 임명하였고¹⁹⁹⁾ 이주민의 인권에 관한 실무집단을 만들기도 하였다.²⁰⁰⁾ 다른 인권협약상의 국제기구와의 협력을 위한 의장단회의는 1997년 현재 4차례 열렸다.²⁰¹⁾

194) 이러한 효율성 평가기준으로는 예컨대 Dana D. Fischer, Reporting under the Covenant on Civil and Political Rights: The First Five Years of the Human Rights Committee, 76 A.J.I.L. 142(1982).

195) 예컨대 Lerner, 앞의 책, p. vi; The First Twenty Years, pp. 51-52, 55-56; Partsch, 앞의 글, pp. 342, 364-365; Banton, 앞의 책, pp. 167, 306-311.

196) Banton, 앞의 책, p. 42.

197) A/CONF.92/40(1978); A/CONF.119/26(1983). 또한 E/1989/48(1988); Banton, 앞의 책, pp. 28-34 참조.

198) 결의 제49/146호(1994.12.23). A/48/496(1993). Appendix B도 참조.

199) 예컨대 Report by Mr. Gitié-Ahanbarzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1997/73, E/CN.4/1998/79(1998) 참조.

200) 인권위원회 결의 제1997/15호(1997.4.3). 유럽여사의 노력에 관하여는 Banton, 앞의 책, p. 33 참조.

201) A/52/18(1997), paras. 15.

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그 밖에 협약이 규정하는 사항과 관련하여 위원회는 옛 유고슬라비아와 르완다 등지에서 인종 또는 종족갈등으로 야기된 온갖 만행(暴行), 집단학살죄, 인도에 반한 죄, 전쟁범죄 등의 처벌을 위해 일반적 관할권을 가지는 국제법원의 설립을 요구한 바 있다.²⁰²⁾ 이와 같이 위원회의 활동은 협약이 지향하는 목적을 효율적으로 달성하기 위해 벌어지는 다양한 활동과 기구들과의 협력을 통해 어떻게 상호 보완하고 있는가의 측면에서 이해되어야 할 것이다.

협약집행절차가 오늘의 구조를 갖게 된 것은 협약목적의 효율적 달성과 국가주권 사이의 타협 때문이며 위원회 역시 보다 많은 나라가 협약에 가입하도록 그 활동에 있어서 온건한 태도를 취한 것이 사실이다.²⁰³⁾ 그러나 냉전을 벗어난²⁰⁴⁾ 국제사회에 등장하는 새로운 도전, 예를 들어 종족갈등, 세계화로 인한 이주민이나 외국인노동자에 대한 차별, 인터넷상의 인종증오의 선동²⁰⁵⁾ 등과 같은 문제에 대항하기 위하여 위원회가 협약의 잠재력을 개발하고 새로운 효율적인 절차를 마련하기 위해 애를 쓰고 있음을 주목하여야 한다. 뿐만 아니라 협약의 목적을 실현하려는 데에는 위원회의 활동도 중요하지만 무엇보다도 협약을 제대로 지키려는 계약국의 의지와 행동이 중요하다. 이는 점진적으로 수 있다. 또한 협약이 부과하는 여러 의무를 삶의 한 내용으로 실현시키려는 시민사회단체들의 의지와 끊임없는 노력이 있어야 한다. 이러한 점에서 식민지의 뼈아픈 경험이 있는 한국사회와 정부는 국내법규와 관행을 협약의 국제기준에 비추어 고치고 새로 만들어 가는 데 보다 적극적인 노력을 기울여 인종차별이 없는 사회라는 전범(典範)을 만들어가야 한다.²⁰⁶⁾

202) 인도에 반한 범죄를 소추하기 위한 국제법원의 설립에 관한 일반 권고 제18호(제44차 회기, 1994); 국제형사법원 규정, A/CONF.183/9(17 Jul. 1998), 37 I.L.M. 999(1998).

203) Banton, 앞의 책, p. 303 참조.

204) 냉전이 협약이행에 가져온 영향은 Banton, 앞의 책, pp. 123-141, 142 참조.

205) 예컨대 E/CN.4/1998/79(1998), paras. 49-52; Lisa A. Crooms, Indivisible Rights and Intersectional Identities or, "What Do Women's Human Rights Have to Do with the Race Convention?," 40 Howard L.J. 619(1997).

206) 앞의 책 2조 1항 (c).

International Human Rights Law Group

US Racial Discrimination Program

NGO Shadow Reports under ICERD

Guidelines on preparing non-governmental shadow reports for the review of the US government under the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

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EXECUTIVE SUMMARY

Governments of countries that have ratified UN international human rights treaties are obligated to submit periodic reports to the UN committees that monitor the implementation of those treaties. The purpose of State Parties submitting these reports is to document the steps that they have taken to comply with treaty obligations.¹ To supplement government reports, non-governmental organizations (NGOs)² often submit separate "shadow reports".

Shadow reports help to supplement official government reports and provide NGOs with a valuable opportunity to participate effectively in the international treaty monitoring process. They contribute in concrete and strategic ways to the capacity of the UN expert committees to more accurately assess the steps taken by governments to comply with international human rights standards. Shadow reports are also useful tools for NGOs in their domestic advocacy efforts to raise awareness about human rights issues and to influence domestic policy-makers.

The information contained in this guide is intended to help NGOs prepare shadow reports for the UN Committee for the Elimination of Racial Discrimination (CERD) which is the monitoring body for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Specifically, this guide focuses on preparations for CERD's periodic review of the US government. This guide provides

- A brief introduction to ICERD
- Suggestions on how to structure and organize the content of a shadow report;
- information on submitting the shadow report to the monitoring committee;
- strategies for using the report to further promote human rights protections and advocacy efforts at home;
- a list of sources for further information;
- and extracts from an NGO shadow report under ICERD.

Although this guide focuses on CERD, it is hoped that it will be useful to NGOs also seeking to submit reports to other UN treaty monitoring bodies.

This guide was prepared by the International Human Rights Law Group ("Law Group") with assistance from the law firm of Steptoe & Johnson, LLP. This report includes information from a wide variety of sources and the Law Group welcomes your suggestions and feedback, as well as details of your experience preparing shadow reports.

¹ "State Parties" refers to governments of internationally recognized countries, and not to sub-regions within these countries. With regards to the United States, for example, the "State Party" is the US federal government, and not individual state governments such as New York, Illinois, California etc.

² NGOs is a broad term and includes advocacy organizations, community organizations, youth groups etc.

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Guidelines on preparing non-governmental shadow reports for the forthcoming review of the US government under the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

I. INTRODUCTION

The purpose of this guide is to assist NGOs in the preparation of shadow reports under the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD). These reports play a critical role in the effective implementation of UN treaties and the full protection of all peoples' rights under those treaties. In particular, they ensure that the UN monitoring bodies have access to accurate and appropriate information documenting a government's human rights record both from a governmental and non-governmental perspective.

UN Human rights treaties such as ICERD and the International Covenant on Civil and Political Rights (ICCPR) obligate ratifying State Parties to submit reports to the UN bodies which monitor implementation of these treaties. These reports are intended to detail steps the State Parties have taken, and plan to take, to implement and safeguard the rights contained in the treaties. Not surprisingly, State Parties tend not to be entirely forthcoming with details of possible or alleged violations of these treaty obligations. In response to the need to provide UN treaty monitoring bodies with alternative sources of information concerning state compliance, the practice of shadow reporting has evolved.

The term "shadow report" refers to reports created by NGOs that parallel, analyze, and supplement the report created by the government. An underlying purpose of preparing a shadow report is to strengthen the work of NGOs by providing a concrete tool for:

- (1) assessing and describing a government's record in fulfilling its obligations to promote and protect human rights;
- (2) monitoring governmental actions to honor commitments made at world and regional conferences;
- (3) building political pressure through publicity and education;
- (4) and providing examples of "Best Practices" for NGOs to share with the domestic and international community.

The UN treaty reporting process functions only as well as the information which it receives, and the role that NGOs play in educating and raising the awareness of UN treaty bodies and treaty experts is critical. NGOs working at the national and local levels are urged to consider this exchange of information as an integral part of their mandates.

II. WHAT IS ICERD?

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations in December 1965 and went into force in 1969. Like the other treaties of the United Nations, ICERD is rooted in the Universal Declaration on Human Rights which was adopted by the UN in 1948 and covers the range of fundamental civil, political, economic, social and cultural human rights. ICERD provides a framework in which to assess the extent to which a government is upholding the right to equality and the right to freedom from racial discrimination.

ICERD obligates states to review policies and legislation for racial discrimination in both *purpose and effect (regardless of intent)*. This aspect of ICERD is particularly useful in addressing the issue of the racially disparate impacts of policies and legislation. The definition of racial discrimination in ICERD is as follows:

any distinction, exclusion, restriction or preference based on race, color, 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 of public life. (Article 1.1)

Significantly, ICERD allows for and, in some cases, requires positive measures such as affirmative action in order to redress racial inequalities (Article 1.4).

The treaty monitoring body established under ICERD is called the Committee for the Elimination of Racial Discrimination (CERD). Since 1972, with authority under Article 8, CERD has issued twenty-seven General Recommendations as a means of clarifying the objectives and scope of ICERD.¹

A. Reservations, Understandings, and Declarations

When ratifying and sometimes signing ICERD, governments can make Reservations, Understandings and Declarations. In making a Reservation, a government makes a statement which redefines its obligations under specific treaty provisions. A reservation cannot be accepted if it is expressly prohibited by the treaty or is incompatible with the object or purpose of the treaty. With an Understanding, a government provides its interpretation of an ambiguous provision within a treaty, so saying that it accepts the treaty only with that understanding. With a Declaration, a government defines its intent as to how it will implement the treaty. The US Declaration, for example, states that ICERD is non self-executing which means that is not accepted as part of US domestic law and individuals are not allowed to take cases to US courts under the treaty. Unlike a Reservation, a Declaration should not alter a government's obligations under the treaty.

The US government has made one declaration, one understanding and three reservations. They are attached to these guidelines in Appendix 2.

¹ For example, General Recommendation 25 (March 2000) addresses the importance of taking into account gender factors or issues which may be inter-linked with racial discrimination.

III. THE STATE PARTY REPORTING PROCESS

Once a government ratifies a human rights treaty, it becomes a State Party to the treaty. One of its obligations is to submit periodic reports on treaty compliance and to send representatives to answer questions during the CERD review of its report. CERD is comprised of 18 independent experts who are first nominated by States Parties from a list of persons of high moral standing and competence from all regions of the world. The experts are then elected by secret ballot.²

Although CERD welcomes information from NGOs, ICERD makes no explicit provision for NGO input. The reports submitted by NGOs are given the name "shadow reports." Despite the lack of a specific provision for NGO reports, CERD is not only accessible to NGOs and eager to receive their information, but it also encourages participation by NGOs in the preparation of the official national government reports. CERD welcomes NGO participation as an opportunity for exchange between government and civil society. The process also helps in identifying and addressing areas of concern and obstacles to implementation of ICERD. States Parties have come to expect questions from CERD on whether social justice groups and NGOs generally have been consulted or involved in the CERD preparation of the report and whether, and in what ways, the report reflects the input of these groups. NGOs should assess for themselves the potential benefits, limitations or pitfalls to direct cooperation with their national government in the preparation of official reports. For example, NGOs should consider to what extent they have the time and it is worthwhile to provide detailed information to the government, and consider the extent to which the most useful contributions NGOs can make to a government report are brief suggestions on what issues the government should address. It should be kept in mind that governments are not eager to present a report to CERD or other UN Committees which will be an admission of numerous human rights violations. Therefore, while NGOs might take much time to submit information to a government, and in turn the government will tell CERD it consulted with NGOs, the concerns of NGOs may not be fully reflected in the government's final report.

A. State Party reporting requirements

States Parties are required under Article 9(1) of ICERD to send a formal, written report on the steps the national government has taken, and proposes to take, to comply with the obligations in the treaty. State Parties are obligated to submit such a report within one year after ratification of the Convention. State Parties are subsequently expected to submit a comprehensive report every four years, with brief interim reports every two years. Additionally, CERD may request supplemental reports. If a State Party fails to submit a report within a period of five years, CERD has the discretion to review the State Party, in the absence of a State Party report and without the presence of government representatives. The US ratified ICERD in 1994 and submitted its first report to CERD in September 2000.

States Parties are also required to send representatives to CERD meetings where the Committee asks questions and makes comments on the sufficiency of the steps the government has taken to implement ICERD. The Committee will also make recommendations regarding the areas government should focus on and make improvements. These areas might

² The Law Group's Executive Director, Gay McDougall, is a member of CERD. Experts serve four year terms. CERD, articles 8(1), 8(2), 8(5)(a).

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include: education and training programs for all citizens; the compilation of statistics; or ensuring equal access to the judiciary. A summary of this "constructive dialogue" between CERD and the State Party is published by the UN. This summary, including the specific concerns and recommendations, is generally known as the "Concluding Observations" and should be made available to NGOs by the State Party. Another source for obtaining the Concluding Observations is the UN High Commission on Human Rights website (see section VII). NGOs might find it helpful, given that the US has not been reviewed by CERD before, to look at the Concluding Observations of other CERD country reviews in order to get a sense of how CERD analyzes issues and the types of recommendations it generally makes to governments. NGOs should also review the Concluding Observations of other UN Committees which have reviewed the US government (the Committee Against Torture and the Human Rights Committee), incorporating relevant comments into the ICERD shadow report.

B. Objectives of State Party reporting

Reporting is premised on two assumptions. First, every government — no matter how well intentioned — is an actual or potential violator of human rights. As a result, regular international accountability is in the best interests of the State itself, of its citizens, its residents and of the international community.³ Second, several States have implemented successful programs, often referred to as "best practices", that should be shared with the global community. Among the objectives of reporting are:

- Achieving a comprehensive review of local and national legislation, administrative rules, procedures, and practices;
- ensuring that State Parties regularly monitor the actual situation with respect to each provision of the Convention, so that they are aware of the extent to which all citizens enjoy all rights guaranteed by ICERD;
- highlighting the best practices in various jurisdictions, so that others may learn from and implement similar programs;
- providing State Parties with the basis on which to further develop clearly stated and targeted policies, which incorporate priorities consistent with the provisions of the Convention;
- permitting local agencies and the public to scrutinize national government policies and encouraging the involvement of various sectors of society in the formulation and review of these policies;
- providing a benchmark against which State Parties and CERD can evaluate the extent to which progress has been made towards the realization of the obligations established under ICERD;
- enabling State Parties themselves to develop a better understanding of the problems and shortcomings encountered in the progressive realization of ICERD's aims;

³ Philip Alston, "The Purposes of Reporting," *Manual on Human Rights Reporting*. UN Centre for Human Rights and UN Institute for Training and Research, HR/PUB/91/1, p. 13.

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- and enabling CERD and the State Parties as a whole to exchange information, develop a better understanding of the common problems faced by States, and a fuller appreciation of the types of measures which might be taken to promote effective realization of ICERD's obligations. This enables CERD to identify the most appropriate means by which the international community might assist State Parties.

C. The shadow report

Treaty committees like CERD need independent information from which to formulate their questions and identify the areas where State Parties are not fully complying with their obligations. They have called on NGOs to help supply that information. Many NGOs have found that creating shadow reports concerning particular issues or human rights violations on which they work, and which fall within the scope of the treaty, are also useful tools for educating the public, building coalitions, strengthening their own methods for holding the government accountable for rights violations, and influencing policy or law reform.

IV. THE MAKING OF A SHADOW REPORT

A. Preliminary issues to consider

(1) Usefulness

NGOs should begin by considering both the domestic and international usefulness of creating a shadow report as it relates to their agenda, mandates, and resources. For example, they should evaluate the strategic uses of such a report in: (1) identifying sources of information; (2) coalition building; and (3) working with the national government. The usefulness of creating a shadow report can be evaluated by its function in providing additional information to CERD which is absent from the national government's report. It is also useful in an ongoing way to monitor national responses, to conduct domestic media and education campaigns, and to critique the national and state government's stands on racial discrimination.

(2) Focus

There is no right or wrong approach to writing a shadow report. The decision as to what type of shadow report should be submitted is an important strategic point for NGOs to consider. Below are a few recommendations and suggestions regarding shadow reports for the CERD review of the US. They are intended merely as guidance.

It is important for NGOs to keep in mind that the Committee has limited time and ability to read the information it receives. It is suggested that reports do not exceed 10 – 15 pages in length, although appendices may be used if copies of laws or additional documentation are useful to support the work. Particularly if NGOs choose to write a longer report, it is recommended to have a brief Executive Summary (perhaps two pages) which highlights the key issues in the

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report and summarizes the recommendations.⁴ Of course, the available time and resources available to an NGO will play a deciding role in determining the length and focus of a report.

(a) Federal/state reports

Implementation of ICERD is the responsibility of the US federal government. In an Understanding to ICERD, the US government states that it will implement the provisions of ICERD in all areas where it has jurisdiction, and that state and local governments will implement the Convention where the matters involved are within their jurisdiction. It is important to realize that even where some powers are devolved to the states, NGOs can still hold the federal government accountable for the actions of states which may be violating ICERD.

Given this Understanding, the US Government has focused its first report on the federal level and has not provided detailed information on the laws, policies and practices of different US states. This being the case, it will be very useful for the Committee to have documentation regarding compliance of different states with ICERD and what steps the federal government should take to better ensure that states are in compliance. It is also appropriate for NGOs to make recommendations regarding specific state action which should be taken towards implementing ICERD.

Given the federal/state structure of US governance, examples of options for shadow reports on the US include the following:

- A report which looks at a range of issues or focuses on one issue (e.g. education), concentrating on federal law and policy;
- A single-issue report which aims to address an issue at both federal and state level, looking at a number of states around the country as well as the overall federal legislative and policy picture;
- A report which looks at one issue or a range of issues as experienced in different states (perhaps three or four);
- A state report which looks at one issue or a range of issues focusing on one state.

(b) Choosing the issue(s)/theme

One of the initial steps in preparing a report is to decide what are the key racial discrimination issues that NGOs would like to draw to CERD's attention. The provisions of ICERD are applicable to a myriad of issues including: hate crimes, criminal justice, worker rights, affirmative action, healthcare policy, voter rights, hate speeches, housing discrimination, employment discrimination, and environmental justice. NGOs should

⁴ Given that shadow reports invariably serve multiple purposes, suggested restrictions on page lengths should not impede the preparation of a report. In addition to an Executive Summary, providing clear headings and a table of contents which makes it easy for CERD experts to locate information regarding what may be a particular area of interest to them, are good ways to make a report more useful to CERD.

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remember that ICERD addresses the need for governments to regularly review policy for both purpose and effect; to have adequate legislation to provide equal protection of human rights; to ensure that all people receive equality before the law; and to implement programs of affirmative action where necessary to guarantee human rights and fundamental freedoms.

(3) *Alliances*

Given the size of the US, and also its federal/state structure, there is potentially much information to be submitted to CERD, addressing a range of issues and also perspectives. Many NGOs will consider making a submission to CERD and it is suggested that like-minded NGOs consider preparing a joint shadow report. Choosing themes or issues in common with other NGOs (social justice organizations, human rights groups, civil rights groups, community organizations etc.) will facilitate the creation of information-gathering alliances and/or enhance solidarity among existing coalitions. Working together with other NGOs will also advance the production and distribution of the shadow report. Given the diversity among various kinds of NGOs their mandates, and activities, entities preparing joint or collaborative reports should anticipate discussions concerning divisions of labor, editorial decision-making, and resource-sharing.

4. *Structure of shadow report*

The following is a possible organizational structure for the information for a shadow report which focuses on one US state:

Table of Contents

Executive Summary (one page)

- Welcome the US government report.
- Why you're writing the submission on that particular state and how it links to the federal situation (e.g. in the instance of affirmative action, it exists at both the state and federal levels and the California situation, while not identical to the approach of other states, does implicate the Convention and does provide the Committee with some insight into affirmative action issues at the state level.)
- Political/social context for submission (e.g. Rudolph Giuliani has a reputation for coming down hard on crime, but this is actually a sensitive subject with communities of color expressing concern that the anti-crime strategy has been rooted in racial discrimination and abuses of human rights). This section sets the mood of communities, usually in contrast to the government's analysis of the state of race relations.
- Outline key issues/areas of concern raised in the submission (without providing detail)
- List recommendations

Introduction

- Welcome the US government report

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- Contextualize the submission: a much more detailed explanation for why this submission, including why you've written on that state and how it relates to the Federal situation.
- Political/social context for submission, including appropriate general statistics such as the population percentages of different racial/ethnic communities in the state.
- Broad overview of primary issue(s) being addressed in submission, perhaps one paragraph on each issue (e.g. criminal justice, immigration etc.)

Main Body of Submission (see below)

Recommendations (see below)

Conclusion: A few paragraphs that draw attention to main overarching point (i.e. the US government needs to have a comprehensive rather than piece-meal strategy to tackling race equality and must demonstrate greater leadership to the state governments). Thank CERD for its consideration of the NGO submission.

Appendix: A paragraph describing each contributing NGO to the shadow report.

Appendix: Additional documentation.

B. Creating the main body

(1) Choose the issue(s)/theme

See Section 2

(2) Describe the situation

Presentation and analysis are critical aspects of the shadow reporting process, statistical data and case studies greatly enhance the report. The UN refers to such information as "indicators" and they are helpful in assessing and formulating a response to the human rights situations being presented in the report. Some basic principles for developing indicators include:

- the need to break down and categorize—*disaggregate*—data by variables such as ethnicity, gender, age, region (especially urban/rural), language, religion, or other minority factors, including refugee and internal displacement.
- the need for case studies – testimonies and narratives that "tell the story" in its most human terms.

The importance of accessible, objective, and comprehensive sources for this information is clear. NGOs should investigate a range of sources of information, such as reports from academic or independent institutions, government studies, censuses, local agencies, and national and international NGOs.

NGOs should compile key statistics and choose two or three case studies to illustrate the human rights aspect of their report's issue(s) or theme(s). Where possible, include information on people of color across groupings and identities. Case studies should be brief (a paragraph

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or two) and it should be clear from the accompanying analysis that the story (if it talks about an individual case) is representative of an entire constituency's experience, rather than an isolated incident.

(3) Identify the key article(s) of ICERD

Given the focus of ICERD, it is important to provide a clear explanation of the how the issue you are presenting is one specifically of racial discrimination and to link the issue to the specific ICERD articles. Emphasize the relevant provisions of ICERD and, where appropriate, describe the rights (see in particular articles 2 and 5) being violated as a consequence of governmental action or failure to act.

(4) Identify current laws and the government's implementation record

Broadly sketch — to the best of your knowledge and where relevant — the federal and state laws and regulations that apply to the situations described in your report. Identify any specific institutions or authorities charged with combating racial discrimination in your identified area and include your understanding of how the U.S. Constitution applies to your described situation(s).

Once the laws have been identified, then identify who needs to be trained or made aware of them: judges, police, prosecutors, advocates, school administrators, teachers, etc., show how these laws would apply to the case studies in your report. Explain to what extent the communities you work with, and who are represented in the case studies, have benefited from the laws at the national and local levels. Best practices should also be highlighted here.

(5) Identify obstacles to achieving full implementation of ICERD

In reference to the issues or themes you have chosen to focus on, discuss the obstacles that communities face in achieving the rights or protections at the local, national and international level. Include obstacles faced in the private sphere – i.e., family, business, private schools or churches. Examine the entire range of factors affecting people of color's lives, including such things as lack of access to education, information, or resources. Note *specific* obstacles, such as people of color not being able to afford a lawyer, or having little access to power brokers. Discuss whether existing legislation and policy addresses the situation described in your report. If relevant, refer to the U.S. government report to CERD, particularly if your report directly challenges the government's position or assertion.

Also detail the ways that social attitudes, cultural expectations, media representations, and things such as usual business practices can be discriminatory. For example, do employers tend to believe certain racial/ethnic groups are incapable of performing certain jobs? Do medical professionals tend to believe certain racial/ethnic group's nutrition or health are less important than that of the general population?

Further, identify how the inability of communities to enjoy equality in the area you are reporting on affects their ability to enjoy other rights in other areas, or places them at risk of other rights violations. For example, look at the way the lack of education affects employment choices and economic status, among other things, of people of color.

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(6) Recommendations

Identify what steps should be taken by the federal and state governments to address the obstacles to achieving racial equality and to redress the situation presented in your report.⁵ Include not only legislative action, but also education and public awareness campaigns, funding of programs, and other types of affirmative steps. For example, if your issue or theme is environmental justice, you might recommend training programs and the involvement of community groups in that training. Also identify some key indicators for holding your national government accountable and explain how you would want CERD to measure their success over time.

Draft specific actions to be taken by the US federal government, or by state governments, that will address the obstacles identified. Recommendations should be concrete and linked to a time line. For example, "government should improve services for refugees of all ethnic groups," would not be concrete. A better way to formulate this would be, "government should: (a) collect accurate data on the needs of people of color in (the specific report area); (b) coordinate with local groups on an assessment of needs for different ethnic groups; (c) review current laws to ensure that they address the needs of refugees of all ethnic groups (in the specific report area); (d) train relevant personnel to ensure that policies and laws are implemented fairly; and (e) provide grants, without justifiable discrimination, to groups that provide services to refugees.

(7) Information Checklist

Check to make sure that the main body of your shadow report contains the following features:

- A reference to the appropriate article(s) of ICERD (this could be a numerical and abbreviated reference in the main body of the text, with a full copy of the primary articles of the Convention in an appendix);
- References to national, constitutional, and state laws relevant to the report;
- Indicators such as statistical data and case studies;
- Identification of key actors responsible for implementing necessary laws and directly responsible for violating the right to freedom from discrimination and the right to equality;
- Supporting documentation for allegations of human rights violations;
- Strategies for change.

6. General points to consider

- It is important to ensure that the submission is written in easily accessible language, bearing in mind that submissions serve the purpose not only of providing information to CERD but also for policy makers and activists alike. It is very important to keep in mind that CERD members suffer from information overload. Therefore, the easier a document is to read, both in terms of content and format (i.e. use lots of headings and a reasonable size font) the better. Terminology should always be consistent and, where

⁵ This refers also to private actors which receive government support and/or which are able to carry out racially discriminatory actions as a result of the government's failure to act.

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necessary, explained early in the text (i.e. why using the term "people of color" and to whom this refers).

- All paragraphs should be numbered for easy reference.
- The information should, where appropriate and possible, cut across gender and different racial/ethnic minority groups.
- Brief is better...if you think the point can be made and the recommendation which follows supported in a very short space, keep it short. Just because an issue only takes one page to explain does not mean it will be considered any less important than a lengthy one. Certainly for CERD members, a short, concise argument will seem more approachable and the better choice on which to spend their limited time.

V. RELEASING THE SHADOW REPORT

A. Sending the Shadow Report to CERD

The shadow report should be sent to CERD. Although, there is no official deadline for the report, the more time members of CERD have to review the report, the more effective it may be. *The best time to submit shadow reports is early January for the March session, and early June for the August session. At the time of writing these guidelines, the US Government is expected to be reviewed in August 2001.*

Send shadow reports to CERD at the following address: The United Nations Committee on the Elimination of All Forms of Racial Discrimination, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, 8-14 Avenue de la Paix, 1211 Geneva Switzerland 10. The cover letter should be addressed to the "Chair of CERD". Tel: +41 22-917-9222; Fax: +41 22-917-9006.

B Attending the CERD meeting

In addition to submitting the shadow report to CERD, NGOs should consider sending one or more representatives to the CERD session when the U.S. is scheduled for review. NGOs will have the opportunity to observe the work of CERD, and monitor the presentation and responses of the national government representative. There is no formal process for lobbying CERD experts and NGOs are not permitted to make interventions during the CERD review of a government. NGOs may, however, informally lobby the Committee experts prior to the session and during the lunch break to help shape the questions posed to the national government representatives. For participating NGOs, this reporting process can be very useful for domestic advocacy — particularly in challenging the national government to uphold promises and to explain statements made to CERD. NGOs also have the opportunity to provide the international community with more precise information as well as highlight best practices in their part of the country.

As far in advance as possible, NGOs should consult with organizations which have UN ECOSOC consultative status (e.g. the International Human Rights Law Group) to find out how

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to obtain UN passes for the session.⁶ Such NGOs can also provide guidance on how to approach CERD's international experts for complete participation in the session.

C. Releasing the shadow report to the public

The shadow report may be used to:

- Highlight best practices;
- Lobby for domestic legislation or policy reform at state and federal levels;
- Educate domestic media and the public;
- Contribute to political platforms;
- Promote dialogue with political candidates or national government representatives;
- And clarify local agencies' and NGOs' priorities for rights enforcement and social change in general.

Among the strategies to consider in releasing the shadow report is the timing — how and where the report should be released to maximize its exposure is critical. For example, an excellent time to release the report would be simultaneous with the occurrence of any national, regional, or international conferences or meetings (attended by national government and/or NGOs representatives) at which the report could be presented. Also, NGOs should investigate what networks or sources can be tapped for publication and distribution of the report. There is also the question of who should receive the report first — the national government, the press and the public, or specific individuals, organizations, or agencies. All of these possibilities merit consideration.

D. Following up on the shadow report

As part of their shadow report strategy, NGOs will want to consider possible follow-up activities once the report has been prepared, submitted, and released to the public. Some of the questions to consider when devising your overall strategy include: Will the national government make an official report on CERD's findings to the public? Do you want to make a calendar to monitor the national government's progress? Should you plan a debate with the national, state, or local government about the differences in the official and shadow reports? Would a public evaluation be more fruitful if presentations were limited to NGOs and other actors in civil

⁶ ECOSOC refers to the Economic and Social Council, which is responsible for the coordinating, rationalizing and, to some extent, programming the activities of the United Nations, its autonomous organs and the specialized agencies in all of these sectors. NGOs with consultative status may send observers to public meetings of the Council and its subsidiary bodies and may submit written statements relevant to the Council's work. They may also consult with the United Nations Secretariat on matters of mutual concern. NGOs wishing to work regularly with UN mechanisms are encouraged to apply for ECOSOC consultative status. See section VII, Useful Information Sources.

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society? Bear in mind that one of the advantages of preparing a shadow report is that it can then be used for a wide variety of purposes over an extended period of time.

Also consider, at the state level in particular, that the World Conference Against Racism will be taking place in Durban South Africa from 31 August to 7 September, which immediately follows CERD's August session. This might provide a very good opportunity to hold, for example, a public meeting with state officials to discuss CERD's concluding observations and the recommendations within NGO shadow reports. Discussions might examine how to monitor your state's compliance with ICERD or, as some cities have done, the possibilities for incorporating ICERD into city ordinances.

VI. Conclusion

The overall goal of the shadow report is to achieve greater government accountability for and protection of all people's human rights under domestic and treaty laws. The process of preparing the report should contribute to and strengthen existing initiatives and coalitions. The discussion of CERD and its concluding observations can never be predicted and NGOs should be aware that not all of their issues will necessarily be addressed by CERD. Also, the preparation and submission of NGO shadow reports require considerable time, planning, effort, and resources. Nevertheless, the impact shadow reports can have in making ICERD more effective and more relevant for all; on influencing policy-makers in the US; and on raising awareness about racism as a violation of human rights, often make shadow reporting a worthwhile endeavor.

VII. Useful Information Sources

-UN Office for the High Commissioner for Human Rights website
<http://www.unhchr.ch>

-Copies of UN treaties:
<http://www.unhchr.ch/html/intlinst.htm>

-CERD documents (including general recommendations, concluding observations etc)
<http://www.unhchr.ch/tbs/doc.nsf>

-US Government Report
http://www.state.gov/www/global/human_rights/cerd_report/cerd_index.html

- Information on obtaining ECOSOC consultative status
<http://www.un.org/esa/coordination/ngo/>

or contact

United Nations, NGO Section, DESA, 1 UN Plaza/DC 1 – 1480, New York, NY 10017
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NGO Shadow Reports under ICERD

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Appendix 1

NGO Shadow Report: a sample

Below is an extract from a joint report submitted to CERD by UK NGOs in the summer of 2000. This was a fairly lengthy report, which covered a range of issues across the United Kingdom. Since the Education section does not actually include case studies, case studies from elsewhere in the report are included at the end of this appendix.

Article 5 (e) (v)

The right to education and training.

Education

1. With reference to the government's White Paper on Education, the National Union of Teachers (NUT) states:
"It is crucially important that the Government's education policies do not take a 'colour blind' approach to education. Issues of racism and race equality, ethnic, cultural and religious identity should be central to the government's educational strategy."⁷
2. Race equality issues must be addressed in every aspect of the education system. This means that all education authorities should be looking not only at issues such as school exclusions, but should also assess other areas for racial discrimination, such as school admissions and selection procedures.

National Curriculum

3. We would also argue the need for incorporation within the national curriculum of key issues relating to the pre-colonial, colonial and post-colonial histories (including human rights abuses) of non-Western societies, as part of the core syllabus. With regards to the School Curriculum and the Assessment Authority, we understand that it has not yet consulted with the Gypsy Council, which states that there is still a significant lack of accurate history of the Roma people available to all education establishments. The government report states that there are "amendments to the National Curriculum aimed at valuing cultural diversity and preventing racism" (para 326). The government should be asked to provide details of these amendments to the Committee, for its review.
4. Multi-cultural curricula and resources should be integrated into every education institution, be it in a mainly or totally white, rural area or a more ethnically diverse urban one.

School exclusions

The Committee on Economic, Social and Cultural Rights in 1997 expressed its concern over the extent of permanent school exclusions (approximately 13,000) and the disproportionate number of African-Caribbean children who are excluded.⁸

"The Committee recommends that uniform defined criteria be formulated for school exclusions, and that the State party report on what government programmes, if any, exist

⁷ The Runnymede Trust, 'Race Policy in Education', Briefing paper No.1, July 1998.

⁸ United Nations Economic and Social Council, 04/12/97, Op. Cit. Section D, paragraph 19.

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to facilitate the insertion of excluded young people into alternative training or apprenticeship programmes".⁹

5. It is welcome that in its report, the Government recognises the serious problem of disproportionate school exclusions for ethnic minority communities (para 329 – 332). The government, however, makes no reference in its strategy for tackling exclusions to the specific needs of ethnic minority pupils, to reforms of the exclusion appeals procedure and to vocational schemes for excluded children. Educationists suggest that "in adopting a colour blind approach, the government will experience reductions in exclusion for all groups, but the rate for ethnic minority pupils will remain high".¹⁰
6. According to the Working Group against Racism in Children's Resources, in the decade between 1980 and 1990, there was only a 20% improvement towards parity for African-Caribbean pupils. The Working Group attributes this very slow rate of improvement to the fact that reduction policies for school exclusions are not race-sensitive. Racially discriminatory school exclusions seriously restrict the education and employment opportunities for ethnic minority communities. NGOs are skeptical of government strategies to tackle school exclusions affecting ethnic minority communities. As the table below shows, at the end of the academic year 1998 "Black-Caribbean" students continued to make up a high proportion of excluded students, comprising 6.2% of the total, despite only being 1.5% of the total student population.
7. Anecdotal evidence suggest that the appeals procedures for school exclusions are complex and difficult for parents, particularly those with English as a second language and little understanding of the how the system works. Parents should be able to have the assistance of free and independent advocates during these appeals. It is important when analysing racial discrimination in school exclusions to take into consideration the views of the young people involved. Their stories often provide valuable insight into the failures of the system.

	Number of pupils	Percentage of total pupils	Number of permanent exclusions	Percentage of permanent exclusions
TOTAL	6638603	N/A	12076	N/A
White	5878534	88.6	10132	83.9
Black African	99127	1.5	753	6.2
Black Caribbean	68774	1.0	198	1.6
Black other	49595	.7	282	2.3
Indian	164951	2.5	106	.9
Pakistan	166354	2.5	209	1.7
Bangladeshi	62905	.9	58	.5
Chinese	23494	.4	11	.1

⁹ United Nations Economic and Social Council, 04/12/97, Op. Cit. Section D, paragraph 31.

¹⁰ The Runnymede Trust, *Examining school exclusions and the race factor*, Briefing Paper, December 1999, p. 2.

¹¹ Annual Schools' Census (1999) as duplicated in The Runnymede Trust, *Examining school exclusions and the race factor*, Briefing Paper, December 1999, p. 2.

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Roma/Gypsy/Traveller children

8. The government report acknowledges the special needs of Roma/Gypsy/Traveller children (para 344-345). The Gypsy Council recognises that there is a particular problem of school admissions with respect to Gypsy, Roma and Traveller children. The education of children within this community is seriously affected by the fact that families are constantly moved or evicted. The government does not outline in its report what work is being done to assess the impact of local encampment policies on children's access to quality education.
9. The government notes that as a result of special education programmes and direct funding, the percentage of Gypsy children in school rose at the primary level but problems still remain in secondary level (para 345). According to the Gypsy Council, the figure for Gypsy children in secondary school is still very low at twenty percent. Some schools simply refuse to take on Gypsy/Roma children. The Government should report on what it intends to do about these refusals.

Racial harassment in schools

10. Racist harassment and bullying in schools are serious impediments to equal opportunities in education. It is essential that anti-bullying policies include a specific category of "racist bullying", and that there is a distinct strategy for tackling it. This was, in fact, recommended by the Stephen Lawrence Inquiry.¹² Policies should be implemented with effective training and support from senior staff. Peer counseling should be used, with children being looked upon as partners in the process of resolving conflict, alongside education institutions actively participating in the anti-harassment multi-agency panels. Of course, it is acknowledged that there are other reasons for bullying and harassment in school other than racism, and all these should be addressed.

Recommendations:

- ♦ More sophisticated ethnic monitoring systems should be set up to audit for institutional racism within the education system (admissions, curriculum, exclusions etc). Initiatives to counter any discrimination should be designed and implemented in consultation with the ethnic minority parents and children.
- ♦ The government should provide the Committee with any information on what programmes or initiatives are in place or being considered to meet the developmental needs of permanently excluded children.
- ♦ The government should provide the Committee with any information on what initiatives are in place to re-integrate children who have been permanently excluded from school into mainstream education facilities.
- ♦ The government should have a strategy for involving ethnic minority children who have been excluded from school in designing programmes to address the issue of racism in school exclusion procedures and outcomes.

¹² The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, chapter 47 (recommendations), P's. 334-335.

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- ◆ The government should address the gaps in the National Curriculum in order that a more accurate, inclusive and relevant education is provided to all children. .
- ◆ The government should review the provisions for the education of Gypsy/Roma/Traveller children, and work with the relevant organisations to ensure that any specialist staffing levels are fully funded and adequate to the work that is needed.
- ◆ There needs to be a more defined strategy by the government to address the failure of the education system to meet the needs of children particularly vulnerable to exclusions, refusals to admit, and children for whom English is not their first language.
- ◆ It should be mandatory for all education institutions to have explicit and transparent student exclusion procedures and exclusion appeals procedures. Parents and children going through such procedures should be provided with free independent advocates to assist them
- ◆ A national system for monitoring racist harassment and bullying in schools should be implemented in order to ascertain how wide-spread the problem is, and what preventative measures can then be introduced. National data on incidents of racist harassment and bullying in schools should be published. Teachers should be trained on how to handle these incidents of racist bullying and harassment in school, particularly with regards to victim support and every educational institution should have fully developed policies on dealing with the more serious or chronic incidences.

Case studies: Examples from NGO shadow report (UK)

In using case studies, it should be clear from accompanying analysis that the stories (if they describe an individual case) are representative of an entire constituency's experience, rather than an isolated incident. Usually three case studies are enough to prove the points being made.

Case studies: Deaths in Custody

Alton Manning

Birmingham Racial Attacks Monitoring Unit (BRAMU) and INQUEST have for five years been supporting the family of Alton Manning. Alton's death raises very serious questions about the nature of force and restraint to which prisoners are subjected. He died whilst being restrained in Blakenhurst prison in 1995. In 1997 an inquest jury unanimously agreed that he had been unlawfully killed. The Department of Public Prosecutions refused to prosecute any of the prison officers and the family judicially reviewed that decision. On 17 May 2000, the Lord Chief Justice ruled that the decision not to prosecute was unsustainable in law.¹³ The decision is now under review. Alton Manning's family is demanding an independent public inquiry into his death and the way it was investigated.

¹³ The Guardian Newspaper (Sarah Hall), 18 May 2000, p.6.

NGO Shadow Reports under ICERD

Zahid Mubarek

On 23 March 2000, Zahid Mubarek was the victim of a racist attack in his prison cell at Feltham Young Offenders Institution, 12 hours before he was due to be released. He died five days later in hospital with massive head injuries. His cellmate has been charged with his murder. Martin Narey, director general of the Prison Service, issued an immediate apology to Zahid's family for failing in his duty to protect their son.¹⁴

Roger Sylvester

Roger Sylvester was thirty years old when he died in police custody in January 1999 (one month before the Lawrence Inquiry published its report). Roger died after being restrained by eight police officers outside his home. He sustained numerous injuries and was later in a coma on a life-support system. Seven days later, Roger was dead. The police have confirmed that he was not under arrest, nor had he been violent. Whilst handcuffed he was placed naked, on a cold floor in St. Ann's Hospital, still being restrained. The police were alone with him when he collapsed.¹⁵

¹⁴ CARF56. Campaign Against Racism and Fascism. June/July 2000. p.3.

¹⁵ Source: Roger Sylvester Justice Campaign Newsletter, July 1999

Appendix 2

ICERD

Reservations, Understandings, Declarations

United States of America

Upon signature:

"The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America."

Upon ratification:

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

(2) That the Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in article 1 to fields of 'public life' reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.

(3) That with reference to article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

II. The Senate's advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention:


That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfilment of this Convention.


III. The Senate's advice and consent is subject to the following declaration:
That the United States declares that the provisions of the Convention are not self-executing."

The International Convention on the Elimination of All Forms of Racial Discrimination:

A Guide for NGOs

BY ATSUKO TANAKA WITH YOSHINOBU NAGAMINE

 International Movement Against All Forms of Discrimination and Racism (IMADR)

 Minority Rights Group International

**THE INTERNATIONAL CONVENTION ON
THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION:
A GUIDE FOR NGOS**

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**MINORITY RIGHTS GROUP
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**INTERNATIONAL MOVEMENT AGAINST ALL FORMS
OF DISCRIMINATION AND RACISM (IMADR)**

IMADR is an international non-profit, non-governmental human rights organization devoted to eliminating all forms of discrimination around the world. Forging international solidarity among discriminated-against minorities and advancing the international regime of human rights. Founded in 1988 by one of Japan's largest minorities, the Burakumin, IMADR has grown to be a global network of concerned citizens and minority groups with regional committees in Asia, North America, Latin America and Europe. IMADR engages in projects in the following five programme areas: elimination of racism and racial discrimination; international protection of minority rights; empowerment of the victims of multiple discrimination; facilitation of indigenous peoples' development. IMADR is in consultative status with the United Nations Economic and Social Council (ECOSOC).

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Glossary

CERD — the Committee on the Elimination of Racial Discrimination is an expert body responsible for monitoring the implementation of the provisions of ICERD by the states parties.

Concluding Observations — these provide collective opinions and assessments of CERD on the presentation of a state party's report. The Concluding Observations have the format of: introduction, factors and difficulties impeding the implementation of the Convention, positive aspects, principal subjects of concern, and suggestions and recommendations.

Early-warning measures — these were introduced to CERD's regular agenda in 1994. They aim to prevent existing problems from escalating into conflicts and can include confidence-building measures to identify and support whatever strengthens and reinforces racial tolerance, particularly to prevent a resumption of any previous conflicts.

GA — the General Assembly is the United Nations (UN)'s main deliberative organ which is composed of representatives of all member states, each of which has one vote. CERD reports annually, through the Secretary-General, to the GA on its activities, as well as on the suggestions (Concluding Observations) and General Recommendations it adopts based on the examination of the reports and information received from the states parties.

General Recommendations — these are produced by CERD to provide interpretation on the content of ICERD articles, and can be issued on thematic topics. Although they are not legally binding, General Recommendations carry considerable weight and are meant to guide state parties as to their obligations under the Convention.

ICERD — the International Convention on the Elimination of All Forms of Racial Discrimination is one of the six major human rights treaties adopted by the UN, and the first to have established a monitoring mechanism. ICERD is the most comprehensive international legal instrument addressing racial discrimination, which is defined as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or eth-

nic 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 of public life (Article 1.1). It has 156 states parties (as at September 2000).

NGOs — non-governmental organizations are independent, non-commercial organizations, not established by or beholden to government or inter-governmental bodies. Their mandates can be international or domestic, and their aims and activities can cover a range of public interest areas (e.g. human rights, environmental protection). NGOs aim to bring about positive change in their areas of focus.

NGOs in consultative status with the Economic and Social Council (ECOSOC) — benefits of consultative status include: easy access to information resources throughout the UN and participation in various UN bodies, as well as major inter-governmental conferences. An increasing number of NGOs contribute to the work of the UN by providing useful information and expertise, and by offering input into the drafting of new international standards.

Review procedure — this was introduced to CERD's regular agenda in 1991 in order to review the implementation of the Convention in cases where a state's report is significantly overdue, by using the previous state's reports and taking other relevant information into account.

States parties — states which have ratified or acceded to a Convention

Urgent procedures — these were introduced to CERD's regular agenda in 1994, and respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Under those procedures, CERD examines a situation without any periodic report from the state party concerned.

Preface

In 1998 the UN celebrated the 50th anniversary of the adoption of the Universal Declaration of Human Rights. That anniversary provided an historic and opportune moment to relaunch worldwide campaigning efforts for the fulfilment of the objectives of the UN's Third Decade to Combat Racism and Racial Discrimination (1993—2003) and of the revised Programme of Action for the Decade.

In this regard, the UN General Assembly decided at its 52nd session in 1997 to convene the third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance no later than the year 2001.

Among the many national and international organizations to take such opportunities for renewed action, have been the International Movement Against All Forms of Discrimination and Racism (IMADR), an international NGO committed to the fight against racial discrimination and racism, and Minority Rights Group International (MRG), an international NGO working for the promotion and protection of the rights of minorities and cooperation between communities.

In November 1998, IMADR, recognizing the importance of interaction between the international level and local realities, launched the International Campaign for the Elimination of Racism and Racial Discrimination 2001 (ICR 2001) for the effective implementation of the programme of action and the successful convening of the World Conference Against Racism.

In the framework of the ICR 2001, IMADR is attempting to establish a forum where NGOs, especially national NGOs, can share their experience and acquire further knowledge of instruments in the struggle against discrimination, in particular the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Since 1998, MRG has devised and initiated the implementation of a programme of action around the World Conference and its preparatory events, which aims to gain visibility and promote action on issues related to discrimination, exclusion and disadvantage suffered by minorities worldwide.

MRG's work focuses on principles of participation and ownership of the proceedings of the World Conference against Racism by disadvantaged minority communities, and on long-term sustainable work towards the implementation of the provisions of ICERD — especially as they relate to exclusion, including economic exclusion, and marginalization of minorities and indigenous peoples. MRG aims to develop a programme of action towards greater visibility and effectiveness of international and national mechanisms for the implementation of ICERD.

It is in order to pursue these goals — and in the framework of increasing cooperation between IMADR, MRG and other NGOs — that the need has been identified to develop tools for activists, for access to and use of international and national standards and mechanisms for the protection of rights. This manual aims to explain and analyse the work of the UN Committee on the Elimination of Racial Discrimination (CERD), and aid NGOs and other activists who want to campaign and advocate around issues of discrimination.

Some NGOs may doubt the usefulness of a manual that encourages the use of UN bodies as an instrument. They may have been disillusioned by lengthy processes, and the apparent absence of any impact on the situation of the people they are concerned with, and thus prefer to avoid the complexities of the UN mechanisms.

The involvement of CERD is certainly not the only way to change patterns of discrimination; it has the potential, however, to be instrumental in influencing governments' policies and practices. The Committee is also an important means to build up international awareness and pressure, and to draw attention to problems that groups and individuals are facing. Knowledge of the Convention and the work of the Committee can be a powerful tool for NGOs in their advocacy and campaigning activities.

The purpose of this manual is twofold: first, we attempt to explain, while striving to avoid legal jargon, what the main provisions of the Convention are, and throw light on the working procedure of CERD; second, we suggest what roles NGOs can play, including in the work of CERD, and how NGOs can use the Convention as an

effective tool for the fight against discrimination and racism.

Official UN documents and opinions of experts of the Committee relating to the work of NGOs will be mentioned throughout the manual. The experience of NGOs with CERD will be also illustrated in the form of case studies.

Given the diversity of NGOs worldwide, this manual cannot provide comprehensive guidance on all possible measures and avenues which may be open to all NGOs. Each NGO has its own policies, mandates, styles and resources; the social and political environments in which NGOs act differ greatly. Suggestions and recommendations put forward in this manual are meant to be a starting point for further considerations and action; it will be up to the individual NGOs to develop these further and to elaborate their own strategies.

IMADR and MRG hope that this manual will be of use to all who struggle against discrimination and racism in any part of the world.

*International Movement Against All Forms
of Discrimination and Racism*

Minority Rights Group International

November 2000

Part 1—ICERD and its monitoring body

1. History

For many years, the struggle against racial discrimination was closely linked with anti-colonialism. In the struggle for political independence, peoples under colonial domination accused the colonial powers of practising racial discrimination.

The term racial discrimination was mainly associated with white people's discrimination against black people. This explains why the word race is still used in connection with skin colour, although we may consider its use obsolete or scientifically incorrect.

In the 1950s, 1960s and 1970s, with countries in the South becoming members of the UN, the UN developed significant political and legal norms through several instruments such as the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Declaration on the Elimination of All Forms of Racial Discrimination (1963). However, we have to recall that the rationale of the majority behind the adoption of these declarations was to put an end to discriminatory practices in other states and the idea that discrimination could also exist on the domestic scene was ignored.

With the introduction of *apartheid* as an institutionalized policy and practice in Southern Africa, its almost unanimous condemnation by states led to an important leap forward in the fight against discrimination. This was the belief that the racist practices of one state can be a legitimate concern of others, thus curtailing the principle of national sovereignty. It is in this historical context that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted in 1965 by the General Assembly (GA) with its clear reference to *apartheid* in Article 3.

In the case of an official racist regime such as *apartheid*, it was easy to reach consensus among states to condemn it. This enabled the latter to provide the UN with an important instrument to combat discrimination within states. However, in the 1970s and 1980s, states were no longer eager to rely on ICERD as they did not want to expose themselves to criticism from other states, NGOs or even their own citizens.

Today, however, we perceive a renaissance of ICERD, and it may gain much more importance in the future: discrimination is strongly intertwined with issues such as economic marginalization, financial crises, immigration, refugee flows, trafficking of people, etc. Human rights violations in a country may easily become a serious concern for others; a massive flow of refugees, for example, can be the consequence of a government's discriminatory policy against a particular ethnic group or of ethnic cleansing. In such cases, other states might have a legitimate interest in drawing the attention of the international community to that state's poor human rights record. Here, CERD may act as an important warning system.

The involvement of a good number of NGOs in the fight against discrimination may also contribute to a more effective implementation of ICERD. As will be discussed later, NGOs can persuade governments to comply more closely with ICERD's standards and/or publicize the work of CERD.

2. What is ICERD?

ICERD is considered to be the only international legal instrument specifically addressing comprehensive issues of racial discrimination. It established an expert body of 18 independent experts responsible for monitoring the implementation of the Convention's provisions. One of the important aspects of ICERD is its coverage of rights not only of individuals but also of collectives, as indicated, for example, in Article 2 (a): each State Party undertakes to engage in no act or practice of racial discrimination against persons, *groups of persons* or institutions [...] (italics added). This is particularly significant for minority groups and indigenous peoples whose collective rights are often subject to discrimination.¹

Upon ratification of or accession to ICERD, each state party assumes an obligation to submit reports periodically to CERD, or upon CERD's request, on the measures it has taken to implement the Convention. (Details on the state reporting procedures are provided later in this manual.)

In order to assist states parties in the implementation of their obligations under the Convention, CERD produces a series of suggestions and general recommendations (known as General Recommendations), provided for in

Article 9.2 of ICERD and based on the examination of states parties reports. General Recommendations are usually made when the Committee is unable to find sufficient information on ICERD's specific articles which is useful to the Committee in establishing the facts of a report and in summarizing their views. These General Recommendations enable states parties and the Committee to have a better understanding of the types of issues and problems encountered by states when trying to translate the legal formulations contained in ICERD into practice. General Recommendations may also help NGOs to comprehend the meaning and implication of various provisions of the Convention. However, they are not legally binding on states parties. In addition to General Recommendations, General Guidelines Regarding the Forms and Contents of Reports to be Submitted by States Parties under Article 9, para. 1, of ICERD, adopted by CERD, serve the purpose of effectively implementing the requirements of the Convention.

The Convention is divided into two parts: the first, headed by a preamble, sets forth the states parties legal obligations; and the second describes the composition of the Committee which monitors the implementation of the Convention by the states parties, and its methods. In the following section, the first part (Articles 1—7) is summarized, with comments and other background information, on the basis of General Recommendations adopted by CERD.² The second part will be dealt with in Part I, section 3 of this manual, which discusses the evolution and innovations of CERD's methods. The full texts of all the General Recommendations as well as of ICERD are provided among the Annexes to this manual.

Article 1—The definition of racial discrimination

Article 1, para. 1, defines the concept of 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 of public life (emphasis added).

ICERD's definition is noteworthy particularly in terms of its non-discrimination grounds which go far beyond the context of colonialism and white domination which was the original concern of the Convention, and include, in addition to race and colour, such other grounds as descent and national or ethnic origin. Hence racial

discrimination as defined in ICERD covers a wide range of deeply-rooted discriminations, including those against various minority groups and indigenous peoples. For example, although India maintains the position that ICERD is not applicable to caste discrimination but only to discrimination based on race, the Committee has adopted the opinion that the term descent in Article 1.1 does not solely refer to race and that the Scheduled Castes fall within the ambit of the Convention.³

The Committee points out in its General Recommendation XXIV (55) that some States Parties decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such. However, the Committee is of the view that:

the application of different and non-objective criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.

It is CERD's opinion that identification of individuals as being members of a particular racial or ethnic group shall, if no justification exists to the contrary, be based upon self-identification by the individuals concerned.⁴ In this connection, the Committee considers the ethnic characteristics of the population to be of particular importance in examining states reports, and thus requests states parties to provide information on peoples first languages as indicative of ethnic differences, together with any information about race, colour, descent, national and ethnic origins, resulting from social surveys or censuses.⁵ The inclusion of information on the situation of women is also considered important for the Committee in order to examine whether racial discrimination impacts differently upon women and men.⁶

ICERD Articles 1.2 and 1.3, respectively, allow a state party to make distinctions, exclusions, restrictions or preferences between citizens and non-citizens, and to interpret the Convention as not affecting laws on citizenship, nationality or naturalization provided that they do not discriminate against any particular nationality. However, CERD takes the position that the Convention is generally applicable to discrimination against immigrants or foreigners as well. This interpretation has been developed as a consequence of the practice in many countries, notably European, in which the criteria of distinction between citizens and non-citizens appears to follow ethnic patterns and are inherently discriminatory in their effect. Accordingly, in a General Recommendation

tion, the Committee requests that states parties report fully on legislation on foreigners and its implementation.⁷ The Committee is also of the view that the Convention must not be interpreted as reducing the rights and freedoms for everyone recognized in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (ICCPR). This affirmation is also in line with the GA's resolution 40/144 of 13 December 1985, which recognizes that the protection of human rights should also be ensured for non-citizens. The exception of Article 1.2 rather applies to positions and situations where the distinction between citizens and non-citizens is functional, such as in case of granting certain political rights and access to certain public offices.

It should be noted that the Convention covers acts whose results might unintentionally lead to discrimination, as reflected in Article 1.1 which refers to purpose or effect of nullifying or impairing (italics added). An example is Switzerland's recently abolished three-circle immigration policy, which classified foreigners on the basis of their national origin. The Government argued, when the initial report of Switzerland was considered by CERD in March 1998, that its immigration policy was in no way intended to be racially discriminatory.⁸ However, the Committee considered the concept and effect of this policy to be stigmatizing and discriminatory, and contrary to the principles and the provisions of the Convention.⁹ CERD reaffirmed this point in its General Recommendation XIV (42) when it stated that a distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms.

Moreover, in view of achieving not only *de jure* racial equality but also *de facto* equality, Article 1.4 of the Convention allows for special measures such as affirmative action (or positive discrimination) for the benefit of racially or ethnically disadvantaged groups or individuals. They are considered legitimate on the condition that:

such measures do not lead to the maintenance of separate rights for different groups and that they shall cease after the objectives for which they were taken have been achieved.

An action is judged contrary to the Convention, however, when it has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin¹⁰ (see also Article 2.2 of ICERD).

Article 2 —The obligation to eliminate discrimination and promote understanding

Under Article 2.1, states parties have the obligation not only to ensure that all public authorities and public institutions, national and local, do not engage in any practice of racial discrimination, but also to take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws or regulations which in effect create or maintain racial discrimination. Moreover, they are obliged to prohibit and bring to an end racial discrimination by any individuals or organizations. They should also encourage inclusive multi-racial organizations.

In terms of its Article 2.1, therefore, the Convention makes it clear that the prohibition of racial discrimination applies not only to the public sector, but also to individuals and groups or organizations in, for example, matters of education and training, employment, health services, housing and participation in cultural activities. It is often noted, however, that many states have not yet taken sufficient action to prohibit discrimination in these fields.

Further, in Article 2.2, the Convention again addresses special [...] measures which should be taken in the social, economic, cultural and other fields, when the circumstances so warrant, to ensure the adequate development and protection of certain disadvantaged racial groups or individuals belonging to them.

Under Article 2, it is important that states parties report in detail on existing policies and practices, the functions of public institutions and authorities, and relevant laws and the scope of the legislation in force. Equally important is the description of any special programmes adopted and projects initiated in the reporting states, and how they affect the goal of achieving racial equality among all segments of the population.

Recognizing that:

the fulfillment of these obligations very much depends on national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations of the Convention,

the Committee emphasizes in one of its General Recommendations the importance of intensive training for law enforcement officials to ensure that they respect as well as protect human dignity.¹¹

Article 3 —Racial segregation and apartheid

Article 3, which refers to *apartheid*, may initially have been directed exclusively at Southern Africa. However, the Committee makes it clear that this Article prohibits all forms of racial segregation in all countries, with or without any initiative or direct involvement by the public authorities.¹²

The Committee observes that:

*while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.*¹³

Article 4 —Racist propaganda, organizations and activities

The Committee emphasized repeatedly, and notably in General Recommendations, the paramount importance of Article 4, which contains provisions that are of a mandatory character.¹⁴ According to this Article and relevant General Recommendations, states parties have obligations to adopt legislation to penalize the following acts: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial discrimination; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; (iv) incitement to such acts, and (v) provision of any assistance, including financial, to racist activities. Furthermore, organizations, as well as their activities and propaganda, which promote, foster or incite racial discrimination, must be declared illegal and be prohibited. Belonging to such organizations as well as participating in such activities is in itself also a criminal offence. Article 4 (c) underlines the obligations binding the public authorities at all administrative levels, including the municipal level.

Full compliance with Article 4 is particularly complicated in many countries, where governments may consider this provision to unduly restrict freedom of expression and freedom of association. However, the Committee holds that the rights to freedom of opinion, expression and association, are not absolute, but subject to certain limitations. In its General Recommendation XV (42), the

Committee expresses the opinion 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, given the saving clause that the obligations of Article 4 should be fulfilled with due regard to the principles embodied in the Universal Declaration of Human Rights (Article 19) and the rights expressly set forth in Article 5 of this Convention (first sentence of Article 4), which is to be understood as a reference to freedom of expression and freedom of association. Further, the Committee draws the attention of states Parties to Article 20 of the International Covenant on Civil and Political Rights, which requires states to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Nevertheless, a number of countries, mainly from the West, made interpretative declarations upon ratification of the Convention emphasizing the with due regard clause. Such a declaration is used by a state to communicate its view and interpretation of this clause. This is to be distinguished from a reservation in international law with which a state, when signing or rat-

Relevant case — conviction of Jersild, a Danish journalist¹⁵

This case illustrates the tensions that exist between the provisions of Article 4 and the right to freedom of expression. Jersild, a Danish journalist, was held criminally liable by the Danish courts under Article 266 (b) of the Penal Code,¹⁶ which had been introduced in Denmark to implement Article 4 of ICERD, in conjunction with Article 23 of the Penal Code.¹⁷ In a television programme, the journalist had interviewed three members of a racist group, 'the Greenjackets', and was accused of aiding and abetting them by allowing and even encouraging highly offensive and racist statements against foreigners and black people. The Danish courts held that the journalist's actions resulted in the publication of racist statements made by a small number of people. Freedom of expression was not, in the opinion of the courts, a justifiable ground for acquittal in light of the interest in protecting against racial discrimination.

In the examination of Denmark's report in 1990, several members of CERD claimed to be highly satisfied with the results of the case, stating that it was 'the clearest statement yet, in any country, that the right to protection against racial discrimination took precedence over the right to freedom of expression'.¹⁸

Jersild brought the case to the European Court of Human Rights, which decided that the journalist's right to freedom of expression guaranteed under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated. The Court also stated that Denmark's obligations under this European Convention had to be reconciled with its obligations under ICERD.¹⁹

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ifying an international convention or treaty, withholds assent to one or more of its provisions.

Technological developments relating to the mass media, especially the internet, constitute a new challenge in relation to the states parties implementation of Article 4. States parties should ensure that media agencies, both public and private, which bear responsibility, should observe and enforce the relevant standards. Among the means to deal with this new issue is a suggested code of conduct for internet users and service providers.²⁰

Article 5 — Equality in the enjoyment of rights

Under Article 5 of the Convention, states parties must guarantee:

- that all groups and individuals — regardless of race, colour or national or ethnic origin — can equally enjoy the right to equal treatment before the tribunals and all other bodies concerned with the administration of justice;
- the right to security of person and protection against violence or bodily harm, whether inflicted by government officials or by any private individual or group;
- a whole series of political and civil rights;
- an important list of economic, social and cultural rights;
- and quite significantly the right of access to any place or service intended for use by the general public, including those privately owned, such as transport, hotels, restaurants, cafés, theatres and parks.

The states parties are expected to report about the non-discriminatory implementation of each of these rights and freedoms.

According to CERD's General Recommendation XX (48), the Convention obliges states parties to prohibit and eliminate racial discrimination in the enjoyment of the human rights listed in Article 5, on the assumption that these rights exist and are recognized in the countries concerned. In other words, this Article does not of itself *proclaim* and *protect* civil, political, economic, social or cultural rights.

The Committee also acknowledges that states may impose restrictions upon rights listed in this Article such as the right to participate in elections, to vote and to stand for election, which may only be given to citizens. In such cases however, states must ensure that the restriction is compatible with Article 1 of the Convention, both in purpose and effect.

Article 6 — Judicial recourse and compensation

Too often victims of human rights violations are ignored and their claims for reparation and redress are not taken seriously. Upon ratification of or accession to ICERD, states parties undertake to provide *effective* protection and remedies against acts of racial discrimination through the competent national tribunals and other States institutions. All persons under the jurisdiction of the state party, nationals as well as non-nationals, have the right to seek and receive from such tribunals *just* and *adequate* reparation or satisfaction for material and moral damages suffered as a result of such discrimination.

It should also be underlined that the phase national tribunals and other states institutions allows states parties a certain degree of flexibility in terms of the measures to be taken for implementation of this Article. The range of these measures includes mechanisms of conciliation or mediation, establishment of administrative organs for investigation, action of a competent ministry or the Attorney-General, or the ombudsperson, according to the state's specific legal and administrative system. Sanctions may also vary in degree; including conciliatory meetings of the parties concerned, verbal or written reprimands, or the imposition of fines or prison penalties.

In accordance with the general guidelines for reporting under ICERD, under Article 6 the Committee seeks from states parties, *inter alia*, information on any existing court cases with regard to this Article, and on the practice of other state organs in implementing this provision.

Article 7 — Education and information

With a view to combating racial prejudice and to promoting friendship, tolerance and understanding among nations and ethnic groups, states parties affirm under Article 7 of the Convention that they shall take immediate and effective action in the fields of culture, education, information and teaching.

Education referred to in this Article is not limited to school education but also includes training, most importantly of teachers and other professionals such as law enforcement officials. The Committee's General Recommendation XIII (42) calls upon states parties:

to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented.

In its General Recommendation XVII (42), the Committee also recommends that states parties set up national institutions to serve the following purposes, among others: a) to promote respect for human rights and the exercise thereof, free from any discrimination, as expressly stated in Article 5 of ICERD; b) to examine official policies towards the protection against racial discrimination; c) to monitor laws so that they comply with the provisions of ICERD; d) to educate the public as to the obligations which the states parties assume under ICERD.

Furthermore, CERD pays close attention to questions such as whether states parties inform public opinion about human rights in general, and ICERD and CERD in particular, and whether ICERD has been translated into and published in the local languages.²¹

Generally, the Committee finds that states do not pay sufficient attention to the implementation of Article 7 and considers the information submitted under Article 7 as general and perfunctory.

3. ICERD's monitoring body: the Committee on the Elimination of Racial Discrimination (CERD)

From the very beginning it was clear that the Convention would only be effective if there was an independent body for monitoring the implementation of the states obligations as indicated by ICERD. To this end, CERD was established; this set a precedent: five main UN human rights treaty bodies with comparable constitutions and functions were later created, namely, the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Committee on Economic, Social and Cultural Rights (CESCR)²² and the Committee on the Rights of the Child (CRC).

A. Nature of CERD

CERD is composed of 18 experts of high moral standing and acknowledged impartiality, who serve in a personal capacity (Article 8.1 of ICERD). The members are elected for a term of four years at a meeting of states parties (Articles 8.4 and 5a), and elections take place for half of the members at two-year intervals (Article 8.5a). In the election of the Committee members, consideration has to be given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal system

(Article 8.1). At present, CERD includes a high number of diplomats or former diplomats among its members compared to other treaty bodies. This can be attributed to the perception by many states in earlier years that ICERD was a foreign policy instrument rather than a document with domestic implications. While this perception has changed, the practice of nominating and electing foreign policy experts to CERD has persisted.

Under the Convention, the Committee shall establish its own rules of procedure and receive no directives from outside (Article 10). Indeed, CERD is an autonomous body, which is a common feature of all the treaty bodies except the CESCR. Nevertheless, strong organizational links with the UN exist:

- CERD was established under a Convention drafted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (in 1999 the Sub-Commission was renamed the Sub-Commission on the Promotion and Protection of Human Rights), and adopted — through the Commission on Human Rights and the Economic and Social Council — by the GA.
- The meetings of the Committee are, at present, held twice a year (March and August) for three to four weeks²³ at the United Nations Office in Geneva. Further, the Committee is serviced by the Secretariat of the United Nations (Office of the High Commissioner for Human Rights).
- Also significantly, CERD annually reports on its activities to the GA through the Secretary-General (Article 9.2).

B. Working procedures

CERD periodically reviews the legal, judicial, administrative and other steps taken by individual states parties under ICERD to fulfil their obligations to combat racial discrimination. The Convention provides a number of instruments to evaluate the states efforts and the overall situation. Its current mandate does not, however, include the possibility of CERD members investigating the situation by means of a field visit, although the Committee may send one or more of its members at the invitation of the country concerned for purposes of a close dialogue on the spot.²⁴

a) Reporting system (Article 9)²⁵

Under Article 9 of ICERD, and following a decision taken by the Committee at its 38th session in 1990,²⁶ each

state party is obliged to submit: (a) an **initial report** within one year after the entry into force of the Convention for the state concerned, to provide comprehensive information on existing legislative, judicial, administrative or other measures which give effect to the provisions of ICERD; (b) thereafter, further **comprehensive reports** every four years that are expected to contain any new developments that took place after the submission of the previous report, information that CERD specifically requested, and answers to questions that were not fully dealt with from its previous reports; and **brief updating reports** in the intervening two-year periods, to literally briefly update the information contained in the comprehensive report; and (c) **special reports** whenever the Committee so requests, which are, for example, submitted by states parties whose situations are being considered by CERD in accordance with early warning measures and urgent procedures.

According to the *Manual on Human Rights Reporting*,²⁷ the Committee expects that the initial and comprehensive reports will include information on: i) states parties compliance with the obligation assumed under Article 1 of the Convention, ii) the ethnic characteristics of the country and iii) the text of the relevant laws, judicial decisions and regulations which relate to Articles 1 to 7 of the Convention.

The Committee's obligation under Article 9.2 to report annually to the GA on its examination of the reports it receives is the centrepiece of its work. Article 9, however, is very broadly phrased and therefore provides the Committee with room to introduce innovations in its application. Thus, at a very early stage of CERD's existence it was decided that the examination of states parties reports would be carried out in the presence of the states parties so as to facilitate a constructive dialogue. This led to states parties sending a delegation of government officials to CERD's meetings when their report is scheduled for examination. The basic document that is the subject of the Committee's examination is the state report.

Following the end of the Cold War, procedural innovations were introduced to the examination of the reports of states parties:

- The designation of **Country Rapporteurs** — as a result of informal consultations, members of the Committee take it upon themselves to prepare the examination of a states party's report through its close and detailed study on the basis of relevant and credible information. The Country Rapporteur plays a leading role in both the examination of the report and

in the preparation of the concluding observations. Meanwhile, the other members of the Committee remain free to provide their own input. There is no pre-sessional working group at CERD, like that established by some of the other treaty bodies to draw up lists of issues on the states parties whose reports are due for consideration at the following sessions of respective committees. Nevertheless, a Country Rapporteur may — albeit rarely — prepare a list of issues in advance for circulation to the reporting state as well as to the other members of the Committee.

- The use of **other sources of information**. It is taken for granted that the report officially submitted by a state party is the main and principal source of information, but for a long time it remained highly controversial as to whether members of the Committee could also rely on other sources of information. It became gradually accepted that other UN materials, such as reports of Special Rapporteurs of the UN Commission on Human Rights and reports and comments of specialized agencies, could be taken into account. In more recent years, information from regional institutions such as the European Commission against Racism and Intolerance (ECRI) and also from NGOs have been taken into account and often explicitly referred to in the discussions, although some members of the Committee continue to show reservations regarding this practice.
- The drawing up of **Concluding Observations**. While in the past, individual members would express some *personal* opinions and assessments at the concluding stage of the examination of a state party's report, the Committee as a collective body refrained from doing so. This has changed; the Country Rapporteur, with the assistance of the Secretariat, prepares a first draft of Concluding Observations, which consist of a review of positive developments, issues of concern, and concrete suggestions and recommendations. The first draft is informally circulated among the members for their comments. The Country Rapporteur later submits a second draft, which is discussed and amended in formal (public) meetings, and finally adopted by the Committee for transmission to the state party concerned, to become a public document and to be included in the annual report of the Committee. A state party may submit its comments on the concluding observations for inclusion in the Committee's annual report to the GA (Article 9.2 of ICERD). The Concluding Observations are an important monitoring device and an effective tool for follow-up work.

With regard to the content of states reports, the Committee has noted some misconceptions on the part of states parties:

- Some states parties perceive that, since their governments believe that racial discrimination does not exist within their territories, they are not obliged to submit periodic reports. The Committee is of the opinion that discrimination is a phenomenon that is actually or potentially prevalent in all countries, and thus all the states parties have an obligation to be vigilant, and to report on the measures taken to prevent or to combat racial discrimination.
- Some states reports give the impression that if the Convention has become part of the legal order of the country, no further legislative action is necessary. However, the Convention not only requires that legislation prohibits certain acts, but also calls for action in the judiciary and administration, as well as in the fields of culture, education and information. Similarly, a state party does not fulfil its obligations under the Convention simply by condemning racial discrimination in the Constitution of the country.²⁸
- In certain cases reports fail to include the text of anti-discrimination laws, and relevant case law and practice.

To assist states parties in their preparation of reports, CERD has provided them with general guidelines.²⁹

b) Inter-state complaints (Articles 11–13)

All the states parties to the Convention recognize the competence of CERD to receive and act on a complaint by one of them that another is not giving effect to the provisions of the Convention (Article 11.1). However, no state party has yet resorted to this procedure, which provides — unless the matter is settled in another way — for the appointment of an *ad hoc* conciliation commission (Article 12). States are extremely reluctant to use this procedure because it is complicated and time-consuming. If states wish to raise cases of alleged violations or shortcomings in other states, they prefer to use the political fora of the UN, such as the Commission on Human Rights or the GA. To date, no state has ever used the inter-state procedures under any of the UN human rights treaties.

c) Individual communications (Article 14)

This procedure for communications allows individuals or groups of individuals to submit their claims as victims of

a violation of the Convention directly to CERD, provided that the state(s) concerned has (have) made a declaration to recognize CERD's competence under Article 14. It came into operation in 1982 when the 10th of such declarations was made by a state party. The individual or group must have exhausted all local remedies. (Further details of the process, and advice on how to file a complaint, can be found in Part II, section 2 of this manual.)

The Convention further provides in its Article 14.2 that any state party which makes a declaration as provided for in para. 1 of the same Article may establish or indicate a national body competent to receive petitions from individuals or groups of individuals who claim to be victims of violations of any of the rights set forth in ICERD, and who have exhausted other locally available remedies. Only if petitioners fail to obtain satisfaction from the body indicated may they bring the matter to the Committee's attention. Luxembourg and South Africa are as yet (as at 1 January 2000) the only states parties to have designated a standing committee in accordance with Article 14.2.

With regard to the individual communications procedures within the UN human rights mechanisms, Article 14 of ICERD and the practice of the Committee present some special features, which may distinguish this procedure from similar procedures under other human rights instruments. For example, Article 14 allows not only individuals claiming to be victims of a violation but also groups of individuals to file communications. Moreover, the communication is not prevented from being considered while under another procedure of international investigation; and the Committee makes suggestions and recommendations rather than merely expressing views.

This procedure should not, however, be confused with the jurisdiction of a court. A judgment of a court is legally binding but suggestions and recommendations of the Committee do not carry the same legal weight. Nevertheless, these suggestions and recommendations are generally considered as authoritative pronouncements of a competent quasi-judicial body and raise the expectation that they are being respected and complied with by the states parties concerned. In this connection, it is important that the media and the general public become aware of cases brought to, and the opinions expressed by, the Committee.

C. Further innovative procedures

Technically, the Committee has been facing a constant problem that disrupts its work and makes it difficult to carry out its mandate: that is the failure of quite a few

Relevant case - L.K. v. The Netherlands

The following is the summary of communication no. 4/1991 (L.K. v. The Netherlands) — one of the cases submitted in accordance with Article 14, the opinion adopted by the Committee, and the follow-up action taken by the state party:

L.K., a Moroccan citizen residing in Utrecht, the Netherlands, wished to visit a house for which a lease had been offered to him and his family, but a group of people had gathered in front of the house, shouting, 'no more foreigners', and some of them threatened to set fire to the house if L.K. moved in. A petition was then signed by 28 residents saying that the house could not be offered to L.K.

L.K. filed a complaint claiming he had been a victim of racial discrimination. Most of the signatories of the petition were questioned, but a few months later, the prosecutor at the District Court of Utrecht informed L.K. that the matter had not been registered as a criminal case with his office because it was not certain if a criminal offence had taken place.

L.K.'s counsel then turned to the Appeal Court of Amsterdam asking for an order that a prosecution be filed against the signatories of the petition. This request was refused on public interest grounds, holding that the petition was neither a document of deliberately insulting nature, nor inciting racial discrimination.

L.K. filed a complaint to CERD, on the grounds, among others, that the remarks and statements of the residents were racially discriminatory in nature, that the police did not act expeditiously and effectively in the investigation of the case, and that the Court of Appeal had prolonged the proceedings and had relied on incomplete evidence.

CERD at its 42nd session in March 1993 decided that the acts of the residents were discriminatory, that the investigation by the police and prosecution was incomplete, and that when threats inciting racial violence are made, especially in public and by a group of people, it is incumbent upon the state to investigate with diligence and expediency. Furthermore, the police and prosecution did not offer effective protection and remedies within the meaning of Article 6 of the Convention.

CERD thus recommended that the state party review its policy and procedure concerning acts of racial violence, and that it provide the applicant with relief commensurate with the moral damage he had suffered.

In its 13th periodic report to the Committee,³⁰ the Netherlands Government provided extensive information on new, stricter anti-discrimination guidelines for the police and the public prosecutions department, adding that, in issuing these new guidelines, it had also complied with the relevant recommendations of the Committee in the L.K. case. Moreover, the Government stated that, in consultation with the applicant's counsel and the applicant, it had provided reasonable compensation.³¹

states parties to submit periodic reports — or their delay. Various reasons are cited, such as the lack of personnel competent in human rights reporting, and the burden of work in meeting international reporting obligations under an increasing number of human rights instruments.

In order to cope with this problem, the Committee decided at its 39th session in 1991 that it would review the implementation of the Convention in cases where a state report is significantly overdue, even in the absence of an up-to-date report, by using the previous state reports as a basis and taking into account other relevant information (this is known as a **review procedure**). This measure provides the Committee with a more effective control of the reporting process, since it does not simply have to rely on the state to review the implementation of the Convention. A letter is sent to a state party whose report is overdue by five years, informing it that the review will take place, and later the exact date is communicated; state representatives are invited to attend the meeting. This is intended to encourage dialogue between the state party and the Committee despite the absence of a report, to ensure a minimum level of review of all the states parties. In a good number of instances this procedure prompted states parties to expedite the submission of overdue reports and enabled the Committee to resume the dialogue with these states.

Another innovative procedure was introduced at the 45th session of the Committee in 1994, when it decided that preventive measures should be part of its regular agenda. Those measures include **early-warning measures** and **urgent procedures**. Annual reports of the Committee provide the following explanations about these preventive measures:

Early-warning measures are to be directed at preventing existing problems from escalating into conflicts and can also include confidence-building measures to identify and support whatever strengthens and reinforces racial tolerance, particularly to prevent a resumption of a previous conflict. Criteria for early-warning measures could, for example, include the following situations: lack of an adequate legislative basis for defining and prohibiting all forms of racial discrimination, as provided for in the Convention; inadequate implementation or enforcement mechanisms, including the lack of recourse procedures; presence of pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials;

a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial or encroachment on the lands of minority communities.

Urgent procedures are to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Criteria for initiating an urgent procedure could include, for example, the presence of a serious, massive or persistent pattern of racial discrimination; or a situation that is serious where there is a risk of further racial discrimination.

Under these procedures the Committee examines a situation without any periodic report from the state party concerned.

In the past CERD considered the cases of the conflicts in the former Yugoslavia and in the Great Lakes Region in Africa. A number of other urgent situations were taken up under the urgent procedures, including Australia's amendment of its Native Title Act that was considered to be racially discriminatory against indigenous peoples in Australia.

NB: The early-warning measures and urgent procedures may only be implemented by members of CERD. NGOs seeking to have such measures implemented may do so by contacting a CERD member and requesting him or her to do so. Follow-up by an NGO to any action taken is also to be done through a CERD member or members.

The most recent significant development in the work of CERD was in August 2000, when CERD organized a two-day discussion on a thematic issue — discrimination against Roma — which was the first of its kind in the Committee's 30-year-long history. This initial thematic discussion of CERD was a landmark in many ways. First, it led to the production of a General Recommendation³² outlining a number of measures that governments of relevant states parties to ICERD should take to improve the situation of the Roma. In this respect attention should be drawn to the fact that production of a General Recommendation usually begins with the submission of a draft by a member, and that it is not a result of a discussion. Second, in view of maximizing its access to the existing research, information and experience, CERD has invited to the thematic discussion regional institutions as well as other UN bodies and agencies, in particular experts from the Sub-Commis-

sion on the Promotion and Protection of Human Rights and the Commission on Human Rights Special Rapporteur on Contemporary Forms of Racism. The Committee has also received and taken due account of detailed information, as well as first-hand accounts and insight from NGOs, in particular the groups concerned, i.e. Roma organizations, by holding an informal meeting using its official meeting time and inviting their written submissions.

While the thematic discussion was an innovation in CERD's work, it was not innovative in the UN treaty monitoring mechanisms as a whole. Several other treaty monitoring bodies had already held thematic sessions for a number of years, and successfully developed methods of involving NGOs in meaningful ways in those thematic discussions.

With the success of its initial thematic session on discrimination against Roma, it is expected that the CERD practice of holding thematic sessions will also be institutionalized in the future and that it will become an effective part of the work undertaken by the Committee.

D. Impact of ICERD on states

Since the entry into force of ICERD, changes in various countries have been attributed to the positive impact of the Convention. These include:

- amendments to national constitutions to include provisions prohibiting racial discrimination;
- systematic reviewing of existing laws and regulations leading to the amendment of those which tend to perpetuate racial discrimination, or the passing of new laws to satisfy the requirements of the Convention;
- making incitement to acts of racial discrimination and racial violence a punishable offence;
- legal guarantees and enforcement procedures against discrimination relating to the security of persons, political rights, employment, housing, education, or access to areas and facilities intended for use by the general public;
- educational programmes aimed at promoting good relations and tolerance between racial and ethnic groups;
- creation of institutions and agencies to deal with problems of racial discrimination and to protect the interests of indigenous groups; and,
- governments seeking technical assistance from the UN in such matters as anti-discrimination legislation and remedies to victims.

Part 2 — The contribution of NGOs to CERD's work

Within the Economic and Social Council (ECOSOC) and its subsidiary organs such as the Commission on Human Rights, NGOs can obtain consultative status which means that they can become an integral part of the working procedure of those bodies.³³ However, most of the UN treaty bodies, CERD included, are not UN organs in the formal sense. Despite having strong links with the UN, which provides them with Secretariat services, they have been created by the treaties themselves and the rules on consultative status do not apply to them. Consequently, no formal relationship exists between CERD and NGOs.

While this relationship is informal, the importance of NGOs contributions has been acknowledged by CERD. Increasingly, members of CERD make public use of information they have received or gathered from non-governmental sources in their consideration of the states reports. Although the flow of information that reaches members is not systematically collected, channeled or analysed, the Anti-Racism Information Service (ARIS)³⁴ — an NGO based in Geneva — has undertaken the task of connecting human rights groups with members of CERD and of assisting the latter in their search for relevant information. What members of CERD need is a more complete picture of the situation than is provided in the official report of a state party. In other words, NGOs should look into questions such as: are there any gaps in the official report; are there misrepresentations; are the assumptions, the analyses and the emphases correct?

Besides providing the Committee with information, NGOs, especially those active at a national level, can also disseminate information on ICERD or its reporting process among their members and the general public in a country. NGOs can take up issues that are of particular importance to them and appraise specific comments made by the Committee members on matters regarding a state's compliance (or non-compliance) with ICERD. Where a government may be slow in implementing recommended changes in its law, policy and practice, NGOs can be of service to the public in influencing such changes.

1. Reporting procedure

When an NGO provides information to CERD, it is important, in the interest of the Committee and the

NGO, that the information is submitted in the most effective manner. As practice has shown, a simple submission of random cases or articles to the Committee does not normally have a great impact. It may also happen that the abundance of information can be a problem. A well-developed strategy is necessary.

The best option is to produce a supplementary report — also called shadow, counter or alternative report. There are two ways of approaching such a report; the first is to draw up a comprehensive report that considers each point of the state report and offers supplementary or contradicting information. This requires a lot of time and resources, but it seems to be the most effective way to provide information and has a high probability of getting the Committee's attention. The second approach, for those NGOs which are not capable of bringing together the necessary resources, and/or whose activities are limited in certain fields or areas, would be to target specific issues of concern — such as those affecting particular groups, or specific fields such as education, employment or working conditions.

Concerning the production of a report, we have collected some useful advice by consulting CERD members and by soliciting the experience of other NGOs.

A. Steps to be taken prior to CERD's consideration of the state report

When is a state report due? — As explained earlier in this manual, an initial report is due one year after the Convention's entry into force for the state party concerned, and periodic reports are due every two years afterwards. Information as to when a state report is or was due may be obtained from the government concerned. Alternatively, NGOs can contact the CERD Secretariat, or consult the Treaty Body Database on the website of the Office of the High Commissioner for Human Rights (www.unhchr.ch).

Has the report been already sent? — Contact the government authority that is in charge of preparing an official report to CERD (very often the Ministry of Foreign Affairs) to find out whether the state report has already been sent or when the government plans to submit it to the Committee. If the report is still being prepared,

NGOs might negotiate with the appropriate authority to become involved in the drafting process. Some governments may be willing and even keen to consult national NGOs in order to avoid being criticized for an incomplete state report. In other states, any contacts with the government may be impossible. Whatever the outcome of any such consultations with the government, NGOs are well advised to keep their independence.

Illustration — The Finnish League for Human Rights

The Finnish League for Human Rights (FLHR) has been involved in the preparatory process of Finland's state reports for all the UN human rights treaty bodies, including CERD. While it is not suggested that the Finnish practice should be a model, it is a good example of successful cooperation between a government and NGOs. According to Mr Martin Scheinin, former chairperson of the FLHR and currently a member of the UN Human Rights Committee:³⁵

'Although NGOs find reason to criticize the existence of human rights problems in Finland, there is a relatively well functioning dialogue between the government and civil society actors, including NGOs. One dimension of this dialogue is the existence of a government-appointed Advisory Board for International Human Rights Affairs that discusses Finland's reports to the various treaty bodies at a draft stage. More than half of the members of the Advisory Board have been proposed by NGOs or are independent academic experts. In these discussions, NGOs may influence the final version of the report.'

In recent years, this method of NGO involvement has been supplemented or even replaced with the practice of arranging a public hearing at a rather early stage of drafting a government report. In these hearings, a broader range of NGOs than those represented in the Advisory Board may present their opinions about what problems should be raised in the government report. [...]

It is the responsibility of the government to write and submit the report. Although many NGOs do not want to participate in the actual writing of the report they do wish to present their criticism to those government officials that compile the reports.'

If the report has already been produced, a copy is generally available from the government. If NGOs have difficulties in obtaining it, CERD's Secretariat can indicate the document number for a copy to be ordered from the documentation desk at the UN Office in Geneva (see Useful addresses at the back of this manual). Documents of this kind are also available on the website of the UN Office of the High Commissioner for Human Rights (www.unhchr.ch).

When the report has reached the Committee, after editing and translation into the official languages by the UN Secretariat, the country concerned will be put on the list of pending reports. At the session immediately following the reception of the report, the Committee will normally decide which countries on the list will be examined at the next session and who will be assigned as Country Rapporteurs. (If the Committee receives the report during a session, such a decision may be taken at the same session.)

In view of the workload of the Committee, a report will normally be examined two or three sessions after it is put on the waiting list. However, the Committee usually gives priority to initial reports, reports submitted after long delays and reports from countries where there are important developments.³⁶ It is advisable for NGOs to establish a schedule for the production of a supplementary report or other relevant information, once the dates of the examination of the report are fixed.

NGOs can make contacts with

... the Country Rapporteur — It is highly recommended that NGOs which plan to provide information to CERD contact the Country Rapporteur for the country concerned. The name of the Country Rapporteur can be obtained from the CERD Secretariat, in addition to their contact information, if an expert has consented to make it available to the public. Otherwise, communicate with the Country Rapporteur via the Secretariat.

NGOs may indicate to the Country Rapporteur their intention to submit a supplementary report and/or ask for advice about the content and format of the report, and about when and where it should be sent. In some cases, inviting the Country Rapporteur to the country concerned to attend a briefing of national NGOs can be considered, especially if the latter cannot be in Geneva during the consideration of the state report. Some former Country Rapporteurs have told us about the usefulness of such briefings.

... other NGOs — It may often be more effective to produce a supplementary report in collaboration with other NGOs. By doing so, NGOs can avoid duplicating their work and use their knowledge, materials and resources in an effective way. Moreover, members of CERD are less likely to read all of the NGO reports if they receive too many. Separate reports dealing with the same issues may even confuse experts in comprehending actual situations. Such an approach can take two forms: NGOs can either produce a joint report under the name of a coalition, or

they can coordinate their work for the preparation of individual reports. It may sometimes be difficult to establish a coalition, especially because NGOs might have diverse and sometimes conflicting positions, or may prefer to have their own positions clearly presented rather than having to consider certain concessions. But despite these inconveniences, we believe there is much to be gained from such an approach because of the greater impact the report will have on CERD members.

Also, since NGOs with an established international reputation have often been recognized for the credibility of the information they provide to various UN bodies, some form of affiliation with such NGOs may enhance the status and credibility of domestic NGOs.

International NGOs experienced in the work of CERD, such as ARIS, can also be of great help to national NGOs for such purposes as access to the UN; lobbying and identifying Committee members who might be interested in the issues of their concern; collecting documents; and, in the absence of the NGOs representatives in Geneva, handing out the supplementary report directly to members of the Committee.

Mundo Afro, a Uruguayan NGO which submitted a supplementary report to CERD in August 1999, for the first time, informed us of their positive experience with international NGOs: they had received assistance from IMADR and ARIS in preparing their report as to its format, language and argumentation; in contacting the Country Rapporteur for Uruguay; in sending two of their representatives to Geneva who circulated copies of the supplementary report among members of CERD; and in organizing an informal briefing session.

... the government — It may be useful if domestic NGOs not only discuss the preparation of the report with the government concerned, but also let the government's delegation know what questions NGOs will recommend members of the Committee to ask during the consideration of the report. It often happens that the delegation may not have the data or the competent staff available and that the answers will be deferred to the next time a report of the country will be examined (i.e. two years later at the earliest); such delays can be prevented by providing the government with advance information.

... parliamentarians — This may be especially useful in states where the government is very sensitive to concerns raised by the legislature, and indirect lobbying through parliamentarians may be considered.

... the media — The media can be a valuable partner in informing the public about the consideration of the report. In cases where there is a correspondent or a local branch of the national media of the country concerned in Geneva or nearby, contacts may be established with both the headquarters in the country and the correspondent — if possible in person. In cases where no such branch exists, it is still worth trying to encourage the national media to send a reporter to Geneva. Approaching international media that follow UN events is another way to enhance NGOs advocacy work in connection with CERD's consideration of a state report. In order that the issues of particular concern and/or significance can be covered properly, NGOs might consider briefing people responsible for the media about those issues, the scope and content of the Convention, and the procedures of the Committee.

How to write a supplementary report²⁷

Structure:

- **Front page:** An important purpose of a report is to attract the attention of the Committee members. The front page should give essential information regarding the country, and the name of the organization that has prepared the report.
- **Table of contents:** Again for the purpose of attracting the attention of Committee members, a detailed table of contents should be included, not only to give Committee members a clear idea about the content of the report, but also to enable them to refer directly to the particular points they are interested in.
- **Introduction:** We have to assume that Committee members will encounter names of NGOs which they may not know and the introduction should therefore contain a short description of the mandate and nature of the NGOs. The introduction should also contain a summary of the main points.

Illustration — The preface of the report of the Swiss NGO Forum Against Racism starts with:

"The "Forum against Racism" is a coalition and network of more than eighty anti-racism organisations and numerous individual members in the whole of Switzerland. It was founded in the autumn of 1991 after a series of attacks against accommodations of asylum seekers. The forum wants to promote the exchange of information between its members and the public and try to exercise its influence at the national and the international level."²⁸

- **Main part of the report:** As indicated above and as Committee members recommend, it is preferable to treat the various issues in accordance with the sequence of the Articles of ICERD. Or NGO reports in their introduction and throughout the text should at least clearly express that the issues raised do fall within the scope of a specific Article or Articles of ICERD. This is because the Committee is a monitoring body, and is thus concerned with the state party's implementation of the provisions set forth in ICERD. With this approach, the contentions in the state report can either be rectified or commented upon under the individual paragraphs. This approach, however, does not rule out a general introductory statement relating to issues and developments of major importance.

Under each item, there should be a short description of the issue, and gaps or shortcomings in the state report should be pointed out. The supplementary report may also include questions that the Committee may raise. Do not forget that the decision to take NGO advice into account is entirely up to the Committee members, so an imperative tone should be avoided.

Sources:

A wide range of types of information can be considered in order to illustrate the NGO's own analysis of acts or practices of racial discrimination, such as:

- statistics (information on how, when, where and by whom they have been collected);
- results of academic research (*ditto*);
- official documents issued by government authorities;
- specific cases reported by reliable newspapers; and,
- court cases.

Specific cases are also generally appreciated by Committee members as good illustrations of the issues raised in supplementary reports. For example, the supplementary report on Nepal submitted by the South Asia Human Rights Documentation Centre (SAHRDC) to CERD in August 1998 presents a case in order to highlight the impunity with which the Nepali police have been operating in a region of Nepal. It is always useful to keep in mind that all the information provided needs to be cross-referenced to its source (with dates), so that its reliability may be subject to independent scrutiny. Allegations should never be made without firm evidence in support. Reliable sources said ... may be good enough in journalism but not in our case; any source referred to in a report should be precise, truthful and authentic.

Illustration — European Roma Rights Center

The supplementary report submitted by the European Roma Rights Center (ERRC) with regard to Italy's implementation of ICERD in March 1999, refers to many official documents of both the Government of Italy and international or regional institutions which substantiate the ERRC's contentions. The following is an extract from their report with reference to Article 2 of the Convention:

'Discussion Article 2

To date, the Government has not complied with its obligations to "prohibit and bring to an end, by all appropriate means, including legislation [...] racial discrimination [...]" (Article 2(1)(d)). On the one hand, legislation prohibiting racial discrimination per se appears to provide for inadequate remedies and has not been widely publicized. On the other, the Government has not acted to ensure that what legislation does exist is effectively implemented in practice.

The European Commission against Racism and Intolerance has recently concluded that, "In Italy there is no general legislation to counter racial or ethnic discrimination." Apart from 1993 amendments to the criminal code (which address the dissemination of racist speech and racially-motivated violence), Italian law affords "little ammunition against racial discrimination or other outward forms of intolerance". Immigration legislation adopted in July 1998 appears to provide limited protection against racial discrimination. However, the scope of the protection afforded therein is unclear and the remedies provided are inadequate.

Although the Government ratified the Framework Convention for the Protection of National Minorities in November 1997, Italy still does not have a minorities' law. Moreover, it now appears that, if and when a law securing the rights of minorities is ultimately passed, it will not apply to Roma. Thus, draft legislation on the linguistic and cultural rights of minorities, currently pending in the Senate, was approved by the Chamber of Deputies in June 1998 only after Roma had been explicitly excluded from the proposed law's application.

Similarly, after the Government and others had praised draft immigration legislation for granting legal non-citizens the right to vote in local elections, this provision was deleted from the law before it was finally adopted.

The ambiguity and resulting inadequacy of Italy's legislative norms on racial discrimination are compounded by the failure to ensure their effective implementation. Thus, notwithstanding the general constitutional provision on equality (Article 3), "there is no case-law on the subject of racism". Furthermore, there appears to be no case-law concerning those few legislative prohibitions against non-violent acts of discrimination which do exist.

[...]

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As to the 1993 criminal law modifications, which apply to racially motivated violence and hate speech, at the March 1995 Committee (CERD) session, when the Government's eighth and ninth periodic reports were considered, the Italian delegation claimed that, "[a]s a direct effect of the new legislation [to combat racism and discrimination], the number of acts of intolerance, discrimination and racial violence had drastically decreased". However, the Government was unable to provide any information concerning the frequency or effectiveness of judicial remedies for racially-motivated violence, stating simply that "proceedings under the new legislation had not yet been concluded, with the result that final judgments were not yet available, although many decisions had been taken by the judiciary under the 1975 legislation". Unfortunately, the Government report submitted in 1998 provides no further elaboration on this point.

In short, several months of intensive research by ERRC have failed to uncover evidence which might contradict the 17 July 1998 finding of the United Nations Human Rights Committee Chairperson (Ms Chanet) that, in Italy, "little progress had been made in action to combat racism".

NB: The ERRC's report has substantial and useful footnotes sourcing its statements.

NGO reports may also refer to comments and concluding observations previously adopted by CERD, and to reports and comments of:

- national human rights institutions;
- UN human rights bodies and other treaty bodies;
- regional institutions (Council of Europe, Inter-American Human Rights Commission, Organization for Security and Cooperation in Europe [OSCE], etc.);
- specialized agencies (International Labour Organization [ILO], for example).

Language:

It is advisable to produce the report in English. French and/or Spanish versions will also be highly appreciated, and even recommended when the Country Rapporteur has one of these languages as their first language.

Length:

The submission of voluminous documents should be avoided. A former secretary of CERD suggests that a NGO report should have a maximum of 20 pages.

In case a supplementary report cannot be prepared—other types of NGO submissions

Although the submission of a supplementary report is most encouraged, this is very time-consuming, and many NGOs may find it impossible. In such cases, they may prepare submissions which address only selective Articles of the Convention outlining the state's violation of them. Submissions can also use newspaper articles (from reliable sources) with an explanatory note addressing the concern with reference to a relevant Article or Articles of ICERD. It is still preferable, however, for these submissions to closely follow the advice given above for supplementary reports.

How and when to hand in the report:

After having established direct contact with the Country Rapporteur, he or she may indicate when, where and how the report should be sent. As to the timing, some wish to receive it as early as possible, others a few weeks in advance. As far as other members of the Committee are concerned, it is sometimes problematic to submit the report to them because of their reservations in relying on NGO reports. Three options can be considered:

1. Eighteen copies, plus one extra for the Secretariat, may be sent to CERD's Secretariat which will forward them directly to the members of CERD. Put the report in separate envelopes addressed to each member of CERD.
2. A copy may be sent to ARIS before the session starts so that the report may be added to their list of documents. At the beginning of the Committee's session, the list will be circulated among members who can order copies of the desired documents.
3. If NGOs can attend the meeting, a copy may be handed to each member in person at the session as early as possible. Ask each member if they would like to see it but do not insist. Some experts despair at receiving supplementary reports as late as on the very day of the examination of the state report concerned.

B. While the report is examined

NGOs should preferably attend the meetings in which the report of the state party concerned is being examined. In that way, NGOs will have first hand information on the Committee members' comments and/or questions, and the state's answers.

If NGOs can send someone to the CERD session in Geneva, the following activities, among others, can be considered. (In order to find out the exact date of the examination of the state report, NGOs may seek early contact with either CERD's Secretariat, the government concerned or the permanent mission of the country to the UN.) NB: An identity pass is required for access to the UN building: send a letter to CERD's Secretariat well in advance indicating clearly the names of the NGO representatives who wish to attend.

Organize a briefing:

NGOs might try to arrange informal briefings for Committee members, lasting approximately one hour (normally during lunchtime), before the Committee examines the report of a state party. Such briefings can be used to explain issues and problems, and to answer any questions which members may raise. Arrangements can be made in consultation with, and with the assistance of, the secretary of CERD, ARIS and/or the Country Rapporteur. Many members of the Committee told us of the usefulness of such briefings.

Lobbying:

Unfortunately NGOs do not have the right to make statements during the session, but they can try to make informal contacts with members of the Committee outside the meeting hours, in addition to organizing a briefing as mentioned above. However, respect the busy schedule of each member who has to deal with more than 10 countries in three (or four) weeks.

Observation of the session — a short explanation for new visitors

CERD's meetings are normally held at the Conference Room XI (11) in the Palais des Nations — the United Nations Office in Geneva, Switzerland.³⁹ The tables are arranged in the form of a horseshoe and the seats on both sides are reserved for the 18 members of CERD. The president (or chairperson), whose task is to guide the discussion, heads the top of the horseshoe, which is on the left-hand side when entering the room. The delegation of the state concerned sits on the president's right, and on the left is the secretary who is responsible for technical matters. Press and representatives of other UN organs sit at the table in the centre. To observe the meeting, NGOs may take a seat at the audience corner, which is on the right-hand side of the entrance. The state reports of the session are available from the pigeonholes near the entrance. Press releases for each meeting are on the table in the cen-

tre. The entire discussion will be interpreted simultaneously into English, French and Spanish, and additionally into Arabic, Chinese or Russian when Committee members or the states' delegation speak those languages.

The schedule generally followed for the examination of a state report is as follows:

An afternoon meeting from 3 p.m. to 6 p.m.:

- opening speech by the chairperson and welcoming of the country's delegation;
- the head of the country's delegation introduces the state report and may add comments and supplementary information to the report;
- analytical comments and questions by the Country Rapporteur;
- comments and questions by other Committee members; and,
- the delegation may respond to these questions immediately if information is available, otherwise it will respond the following morning.

The following morning, meeting from 10 a.m. to 1 p.m.:

- answers from the delegation;
- additional comments/questions by Committee members, if they so wish;
- concluding remarks by the Country Rapporteur;
- final remarks by the delegation; and,
- closing of the meeting.

The Country Rapporteur drafts Concluding Observations; these are considered, towards the end of the session, by the Committee as a whole for adoption. These Concluding Observations represent the collective views of the Committee and, as will be explained below, are an important means for follow-up action.

How to follow the session from outside

NGOs that are unable to come to Geneva can still follow the meeting by consulting the press release, which is available on the website of the Office of the High Commissioner for Human Rights (www.unhchr.ch). A press release is issued for every meeting (a three-hour meeting either in the morning or afternoon is counted as one) on the following day. Press releases, as they are not official UN documents, are not handed out at the documentation desk of the UN Geneva Office. **Summary records** are the official descriptions of the Committee's work, these can be obtained from the same website or can be ordered from the UN documentation desk. The document number

of each summary record begins with CERD/C/SR., followed by the number of the meeting. These numbers can be found by looking up the concluding observations where they will be mentioned in the first paragraph. Please note that summary records are issued, at best, a few weeks later, and sometimes even months afterwards. They are issued in English and French, although in the first instance in only one of those languages.

C. After the session — follow-up

It is good to collect information about CERD's proceedings and to see concerns expressed by NGOs included in the Concluding Observations, but the real success of the involvement of an NGO largely depends on an effective follow-up process.

Examples of follow-ups:

- NGOs can inform the public through the media and/or their own periodicals about salient aspects of CERD's proceedings. Concluding Observations may be important not only for states but also for NGOs. Organizing workshops or similar meetings may be considered to discuss actions to be taken for the implementation of the recommendations contained in the Concluding Observations. Analysis of, and commentary on, the Concluding Observations might help people to understand the implications of the Committee's recommendations for the domestic situations. Translation of the Concluding Observations into national and/or other minorities languages is equally important.

Illustration — Mundo Afro's follow-up activities

After consideration of the Uruguayan report by CERD in August 1999, Mundo Afro obtained a copy of the Concluding Observations. The organization sent copies of their report to the press for publication, held press conferences and sent a letter to the Department of Foreign Affairs of Uruguay asking about the measures that would be taken in the light of CERD's Concluding Observations. Mundo Afro also organized seminars in association with other organizations to analyse the Concluding Observations and the possible action to be taken for their implementation. Within the framework of presidential elections in Uruguay (held in November 1999) members of Mundo Afro interviewed all candidates asking them about their position regarding the implementation of CERD's Concluding Observations. Moreover, Mundo Afro has participated in panels organized by university student bodies where copies of CERD's Concluding Observations were distributed. It is now working on a larger educational project focusing on CERD.

- Involvement of parliamentarians is particularly important in the follow-up process, as some of the recommendations can be implemented only if a certain law is enacted or amended, or other legislative or administrative measures are taken.
- NGOs may also approach relevant ministries/departments, local authorities, associations or unions in order to make them aware of the state's obligations in the Convention and CERD's recommendations to the state.
- With a view to putting pressure on a government to implement the Committee's recommendations, NGOs might also draw the attention of other UN fora — other treaty bodies, the Commission on Human Rights or its subsidiary organs — to those recommendations which have particular relevance to their respective mandates.
- Concluding Observations can also be used within other frameworks — regional and international — for example, the ERRC informed us that it refers to them wherever appropriate in its legal briefs to, for example, the European Court of Human Rights in Strasbourg.
- The follow-up, in particular on the recommendations contained in concluding observations, should be considered simultaneously as the first stage of the preparation of a next supplementary report.

Illustration — The following schedule of activities carried out by NGOs with regard to the consideration by the Human Rights Committee (the treaty body under the ICCPR) of the 4th periodic report of Japan may allow other NGOs to assess the time needed for each step:

1998: July: IMADR sent out questionnaires to 23 organizations in Japan which had submitted supplementary reports to the Human Rights Committee (HRC) in 1992 at the time of the Committee's consideration of Japan's 3rd periodic report.
 8 Sept.: Based on the answers to the questionnaires, a meeting was held to exchange information among organizations which planned to submit supplementary reports on Japan's 4th periodic report to the HRC. Eighteen organizations participated.
 22 Sept.: Meeting between Diet (Parliament) members, NGOs and representatives of various ministries and agencies — including Construction, Education, Foreign Affairs, Home Affairs, Justice, Labour, National Policy (Police) and Welfare.

cont...

....cont

29 Sept.: Meeting between three members of the HRC and NGO representatives. The two members from abroad were invited by the Japan Federation of the Bar Association.
 12 Oct.: The Japan-NGO Caucus — which consisted of the NGOs that had arrived in Geneva for lobbying — was established.
 13 Oct.: Ten Japan-based NGOs participated in the pre-session working group of the HRC which met with NGOs to receive information orally with regard to the six countries, including Japan, which were scheduled to be considered during the session immediately following the five-day pre-session working group. (NB: CERD has no corresponding procedure.)
 23 Oct.: Twelve NGOs organized a lunch-time briefing for HRC members. On the previous day, the same NGOs held a planning meeting for the briefing.
 23 Oct.: Press conference in Japan.
 26 Oct.: Amnesty International-International Secretariat organized a NGO meeting in Geneva.
 28-9 Oct.: (Four meetings): HRC considered Japan's 4th periodic report.
 6 Nov.: HRC adopted the Concluding Observations on Japan.
 Nov.: Translation of the Concluding Observations into Japanese.
 3 Dec.: Follow-up meeting among NGOs, members of the Diet and representatives of different ministries and agencies.
 In order to share information and to disseminate it as widely as possible, including among the mass media, a newsletter: *Watch! HRC* (vols 1-3) was published, giving information about the HRC and activities carried out by Japanese NGOs before, during and after the session of the HRC.
 1999: Dec.: Publication of a review on the consideration of the Japanese report and the Concluding Observations adopted by the HRC (in Japanese).

(Source: prepared by the IMADR Japan Committee specially for this manual.)

2. Individual communication procedure under Article 14 of ICERD

A. Persuading those states parties which have not done so to accept Article 14

The states parties which have made the declarations pursuant to Article 14 are listed in Annex II.C. Out of 156 states parties, just 32 have accepted the provisions under Article 14 (as of 11 October 2000). However, the stance of the UN General Assembly in its annual resolu-

tions on the work of CERD is without ambiguity, and:

Requests the States Parties to the Convention that have not yet done so to consider the possibility of making the declaration provided for in Article 14 of the Convention.

Similar requests have been made in resolutions of the UN Commission on Human Rights. CERD members also request that states make this declaration.

NGOs may try to persuade their respective governments to recognize CERD's competence under Article 14 by referring to the recommendations of the GA and the Commission on Human Rights.

B. Submit an individual communication (provided that your country has accepted Article 14)

The case law of the communication procedure of ICERD, shows that few communications have been submitted, and that not all communications were successful. The explanation can be found in the following facts:

- the number of states that have made the declaration under Article 14 is limited;
- few people, even among lawyers, are informed about the existence of ICERD;
- some communications are rejected at the first stage of the procedure on the grounds that not all available national remedies were resorted to (exhaustion of national remedies is one of the conditions under Article 14.2);
- the collection of facts is time-consuming; and,
- discrimination on the ground of race, colour, descent, or national or ethnic origin, is often difficult to prove in individual cases.

Thus, individuals or groups of individuals who want to file a communication are advised to get legal advice or seek the assistance of an experienced NGO or institution so as to provide a systematic account of alleged facts and of the relevant national law.

Note that the whole process of consideration of a communication normally takes around two years, which might be long but still less time-consuming than similar complaints procedures under other UN human rights instruments.

Before writing a communication, however, there are several points to take into consideration; among others, it

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must be verified whether a potential communication complies with the conditions set forth under Article 14 (see following sections). The consultation of the Rules of Procedure³³ established by CERD may also be useful for this purpose.

Who can file a communication?

Preparation of a communication:

- Those individuals or groups of individuals who are subject to the jurisdiction of a state party which has recognized the competence of the Committee under Article 14 can file a communication (Rule 91.a). Under this rule, non-nationals or non-residents of the state concerned can also submit a petition provided that they have been victims of discrimination in that state.
- A communication must not be anonymous (Rule 91.a).
- Normally, only the individual concerned or their relatives or designated representatives can submit a communication. However, in exceptional cases, the Committee may accept a communication submitted by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication themselves and the author of the communication justifies their acting on the victim's behalf (Rule 91.b).
- The Committee can only receive petitions from those claiming to be victims of a violation of any of the rights set forth in the Convention (Rule 81), meaning that a violation of human rights beyond the scope of ICERD cannot be considered by the Committee.

Exhaustion of domestic remedies:

- The individual must have exhausted all available domestic remedies, including, when applicable, the use of the national legal body established by paragraph 2 of Article 14. However, this shall not be the rule where the application of the remedies is unreasonably prolonged³⁴ (Rule 91.e). Furthermore, the Committee has established that this rule applies only to the extent that those remedies: i) are considered an adequate avenue of redress, and ii) have any prospect of success.³⁵ In other words, where domestic remedies are ineffective and *a priori* of no avail, the rule of exhaustion of these remedies does not apply.
- The Communication must normally be submitted within six months after all available domestic remedies have been exhausted (Rule 91.f).

How to write a communication:

The communication must be compatible with the provisions of the Convention (Rule 91.c) and must not contain abusive language.

The letter should include information on:

- the name, address, age and occupation of the author and verification of their identity;
- the name(s) of the state party or states parties against which the communication is directed;
- the object of the communication;
- the provision or provisions of the Convention alleged to have been violated;
- the facts of the claim;
- steps taken by the author to exhaust domestic remedies, including pertinent documents; and,
- the extent to which the same matter is being examined under another procedure of international investigation or settlement (Rule 84.1.a—g).

A model communication is to be found in Annexe III.

The communication has been sent — what will happen to it?

The examination of the communication shall be held in closed meetings (Rule 88).

Pre-admissibility stage:

- It may be that the information provided to the Committee is not sufficient to get a complete picture of the situation and more clarification or information may be asked for within an appropriate time limit (Rule 84.2).
- A communication may not be declared admissible unless the State Party has received the text of the communication and has been given an opportunity to furnish further information (Rule 92.3). If the deadline fixed by the Committee for the submission of such additional information is not kept by the State Party concerned, the Committee may decide that the communication is admissible in the light of the available information (Rule 92.6).

Consideration of communications on their merits:

- If all the formal requirements are met and the communication is admissible, it will be considered on its merits. The Committee shall transmit, confidentially, through the Secretary-General, the text of the com-

munication and other relevant information to the state party concerned, and inform the petitioner of the communication of its decision (Rule 94.1). In principle, the identity of the individual is not revealed unless they have given their express consent. The state party may be asked by the Committee to submit, within three months, written explanations or statements clarifying the case under consideration and the remedy, if any, that may have been taken by the state (Rule 94.2).

- In the course of its consideration, the Committee may further ask the state party to take interim measures to avoid possible irreparable damage to the person(s) who claim to be victim(s) of the alleged violation because of urgency (Rule 94.3). This does not prejudice either its final opinion on the merits of the communication, nor its eventual suggestions and recommendations.
- Furthermore, the Committee may invite the petitioner or their representatives and the representatives of the state party concerned to be present at the examination of the Communication in order to provide additional information (Rule 94.5). However, so far the Committee has never used oral hearings.
- After consideration of an admissible communication, the Committee will formulate its opinion. The opinion of the Committee, together with suggestions and recommendations the Committee may wish to make, will be forwarded, through the Secretary-General, to the petitioner and to the state party concerned (Rule 95.3).

The Committee includes in its annual report a summary

Illustration — Recommendations of the Committee with regard to communication no. 10/1997

(Ziad Ben Ahmed Habassi v. Denmark)

Communication no. 10/1997 concerns a Tunisian citizen with a permanent residence permit in Denmark, married to a Danish citizen, who was refused a loan by a Danish bank on the sole grounds of his non-Danish nationality. After consideration of the case, the Committee adopted the opinion³⁶ on 17 March 1999 in which it recommended that:

- the state party (Denmark) take measures to counteract racial discrimination in the loan market; and,
- the state party provide the applicant with reparation or satisfaction commensurate with any damage he has suffered.

of the communications examined and, where appropriate, a summary of the state party's explanations and statements regarding the action it has taken in conformity with the Committee's suggestions and recommendations (Rules 95 and 96). Also, the full texts of the Committee's decisions are reproduced in an annexe to its annual reports.

After the session — follow-up:

As in the case of the reporting procedure, it is important that NGOs monitor what follow-up is being done on the suggestions and recommendations of the Committee by the state party concerned.

3. Other activities NGOs may wish to consider

Within the framework of ICERD, NGOs might also undertake some of the following activities:

Information dissemination:

NGOs could:

- publicize documents related to ICERD;
- translate them into national or other minorities languages;
- approach local authorities; housing, health and education authorities; the police; training bodies and other agencies, and advise them on how to avoid discrimination;
- initiate public education campaigns to raise awareness of race issues, and encourage others to play their part in creating a just society;
- organize seminars and workshops for the general public as well as targeted groups of people about specific issues relevant to racial discrimination in the country; CERD members might be invited to provide their expertise in the field; and,
- advise and make presentations to governments on race issues, and keep members of the parliament, political parties, national bodies and the media informed.

Assistance in enforcing the law:

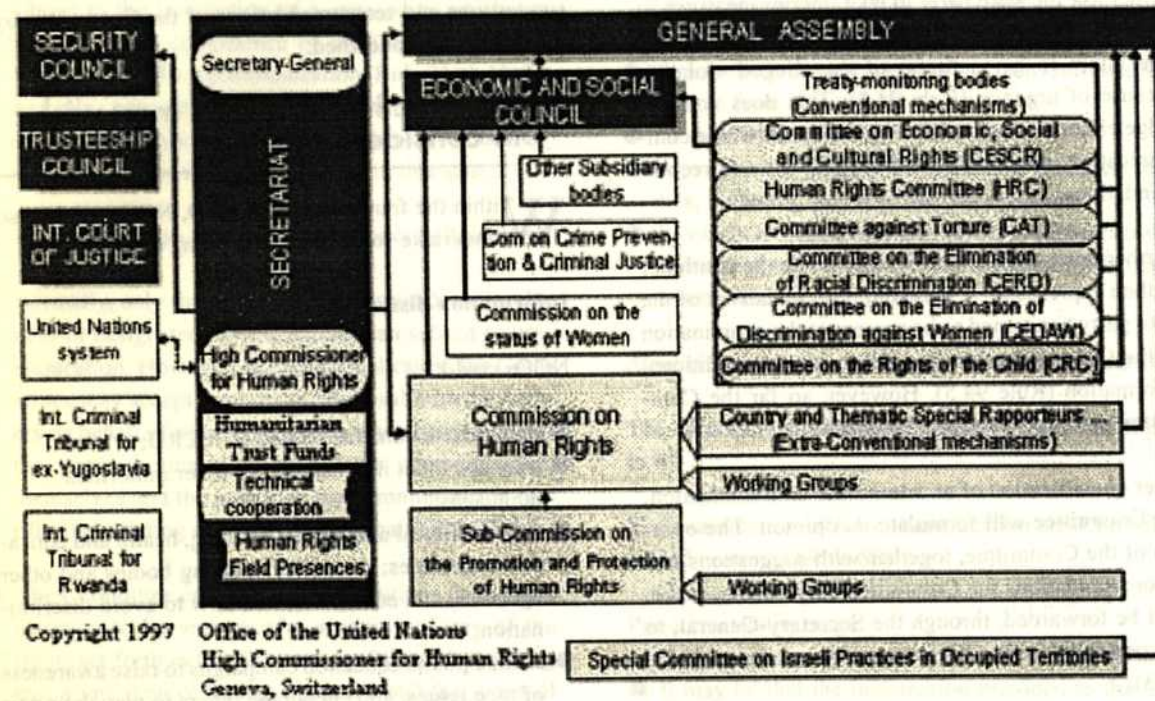
NGOs could:

- conduct investigations on companies and organizations where there are allegations of discriminatory practices; and,
- take legal action in cases involving racially discriminatory job advertisements.

Annexes

ANNEXE I: UN human rights organizational structure

(Source: United Nations Human Rights Organizational Structure, Office of the UN High Commissioner for Human Rights, Geneva, as available on <http://www.unhchr.ch/hrostr.htm>)



ANNEXE II: Status of the Convention

A. States parties to ICERD, as at 16 November 2000

Status: signatories* 80; parties 156

(Source: Multilateral Treaties Deposited with the Secretary-General, UN, New York.)

Afghanistan	Congo	India	Mozambique	Somalia
Albania	Costa Rica	Indonesia	Namibia	South Africa
Algeria	Côte d'Ivoire	Iran (Islamic Republic of)	Nepal	Spain
Antigua and Barbuda	Croatia	Iraq	Netherlands	Sri Lanka
Argentina	Cuba	Ireland (s)	New Zealand	Sudan
Armenia	Cyprus	Israel	Nicaragua	Suriname
Australia	Czech Republic	Italy	Niger	Swaziland
Austria	Democratic Republic of the Congo	Jamaica	Nigeria	Sweden
Azerbaijan	Denmark	Japan	Norway	Switzerland
Bahamas	Dominican Republic	Jordan	Pakistan	Syrian Arab Republic
Bahrain	Ecuador	Kazakhstan	Panama	Tajikistan
Bangladesh	Egypt	Kuwait	Papua New Guinea	the former Yugoslav Republic of Macedonia
Barbados	El Salvador	Kyrgyzstan	Peru	
Belarus	Estonia	Lao People's Democratic Republic	Philippines	Togo
Belgium	Ethiopia	Latvia	Poland	Tonga
Belize (s)	Fiji	Lebanon	Portugal	Trinidad and Tobago
Benin (s)	Finland	Lesotho (s)	Qatar	Tunisia
Bhutan (s)	France	Liberia	Republic of Korea	Turkey (s)
Bolivia	Gabon	Libyan Arab Jamahiriya	Republic of Moldova	Turkmenistan
Bosnia Herzegovina	Gambia	Liechtenstein	Romania	Uganda
Botswana	Georgia	Lithuania	Russian Federation	Ukraine
Brazil	Germany	Luxembourg	Rwanda	United Arab Emirates
Bulgaria	Ghana	Madagascar	Saint Lucia	United Kingdom
Burkina Faso	Greece	Malawi	Saint Vincent and the Grenadines	United Republic of Tanzania
Burundi	Grenada (s)	Maldives	Sao Tome and Principe (s)	United States of America
Cambodia	Guatemala	Mali	Saudi Arabia	Uruguay
Cameroon	Guinea	Malta	Senegal	Uzbekistan
Canada	Guinea-Bissau (s)	Mauritania	Seychelles	Venezuela
Cape Verde	Guyana	Mauritius	Sierra Leone	Viet Nam
Central African Republic	Haiti	Mexico	Slovakia	Yemen
Chad	Holy See	Monaco	Slovenia	Yugoslavia
Chile	Hungary	Mongolia	Solomon Islands	Zambia
China	Iceland	Morocco		Zimbabwe
Colombia				

*Those states which have signed but not yet acceded to the Convention are indicated with (s).

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ANNEXE II:

B. States parties' reservations (or declarations) to ICERD

(Source: Working paper submitted by Ms Fran oise Hampson to the 51st session of the Sub-Commission on the Promotion and Protection of Human Rights on reservations to human rights treaties, 28 June 1999, UN doc. E/CN.4/Sub.2/1999/28. This chart only exists in English; updated by IMADR on 31 December 1999.)

Article 2.1 (d) of the Vienna Convention on the Law of Treaties (1969) defines the term of reservation as a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. The full texts of all the reservations (and declarations) made by states parties to ICERD can be found in doc. ST/LEG/SER/E/18.

ARTICLE 1	ARTICLE 2	ARTICLE 3	ARTICLE 4	ARTICLE 5	ARTICLE 6
UK (1)	Fiji Monaco 2(1) Switzerland 2(1)(a) USA 2(1),2(1)c,2(1)d	Fiji USA	Antigua & Barbuda 4(a),(b),(c) Australia Austria 4(a),(b),(c) Bahamas 4(a),(b),(c) Barbados 4(a),(b),(c) Belgium 4(a),(b),(c) Fiji 4(a),(b),(c) France Italy 4(a),(b),(c) Japan 4(a),(b),(c) Malta 4(a),(b),(c) Monaco Nepal Papua New Guinea 4(a),(b),(c)	Fiji 5(c),5(d)(v),5(e)(v) Tonga 5(d)(v) UK 5(c) USA	Fiji France Italy Malta Tonga UK
ARTICLE 7	ARTICLE 15	ARTICLE 17	ARTICLE 18	ARTICLE 20	ARTICLE 22
USA	Fiji France Tonga UK	Afghanistan Belarus 17(1) Bulgaria 17(1) Hungary 17(1) Mongolia 17(1) Poland 17(1) Romania Russian Federation Ukraine 17(1) Viet Nam 17(1) Yemen 17(1)	Afghanistan Bulgaria 18(1) Hungary 18(1) Poland 18(1) Romania Russian Federation Viet Nam 18(1) Yemen 18(1)	Fiji Tonga UK	Afghanistan Bahrain China Cuba Egypt India Indonesia Iraq Israel Kuwait Lebanon Libyan Arab Jamahiriya Madagascar Morocco Mozambique Nepal Rwanda Saudi Arabia Spain Syria USA Viet Nam Yemen

ANNEXE II:

C. Individual complaints considered under the procedure governed by Article 14 of ICERD as at 11 October 2000

STATES*	DATE**	LIVING/ PENDING CASES		CONCLUDED CASES			TOTAL
		PRE-ADMISS	ADMISSIBLE	INADMISS	DISCONT.	VIEWS ^{(1), (2)}	
ALGERIA	12/09/89	-	-	-	-	-	-
AUSTRALIA	28/01/93	1	-	1 (No 7/1995) (No 12/1998)	-	0/2(No 8/1996) (No 6/1995)	4
BELGIUM	10/10/00	-	-	-	-	-	-
BULGARIA	12/05/93	-	-	-	-	-	-
CHILE	18/05/94	-	-	-	-	-	-
COSTA RICA	08/01/74	-	-	-	-	-	-
CYPRUS	30/12/93	-	-	-	-	-	-
CZECH REPUBLIC	11/10/00	-	-	-	-	-	-
DENMARK	11/10/85	-	-	1 (No 5/1994)	-	2(No 10/1997) (No 16/1999) 1(No 17/1999)	4
ECUADOR	18/03/77	-	-	-	-	-	-
FINLAND	16/11/94	-	-	-	-	-	-
FRANCE	16/08/82	-	-	-	-	0/1(No 2/1989)	1
HUNGARY	13/09/90	-	-	-	-	-	-
ICELAND	10/08/81	-	-	-	-	-	-
ITALY	05/05/78	-	-	-	-	-	-
LUXEMBOURG	22/07/96	-	-	-	-	-	-
MALTA	16/12/98	-	-	-	-	-	-
MACEDONIA	29/12/99	-	-	-	-	-	-
NETHERLANDS	10/12/71	1 (No 15/1998)	-	-	-	2(No 1/1994) (No 4/1991)0	3
NORWAY	23/01/76	-	-	-	-	1(No 3/1991)0	1
PERU	27/11/84	-	-	-	-	-	-
POLAND	01/12/98	-	-	-	-	-	-
PORTUGAL	24/03/00	-	-	-	-	-	-
REPUBLIC OF KOREA	05/03/97	-	-	-	-	-	-
RUSSIAN FEDERATION	01/10/91	-	-	-	-	-	-
SENEGAL	03/12/82	-	-	-	-	-	-
SLOVAKIA	17/03/95	-	2(No 11/1998)	-	-	-	2
SOUTH AFRICA	09/01/99	-	-	-	-	1(No 13/1998)0	-
SPAIN	13/01/98	-	-	-	-	-	-
SWEDEN	06/12/71	1(No 14/1998)	-	1(No 9/1997)	-	-	2
UKRAINE	28/07/92	-	-	-	-	-	-
URUGUAY	11/09/72	-	-	-	-	-	-
32	-	2	1	4	-	6/4	17

(1) Cases which disclose a violation (2) Cases which disclose no violation
* States parties which have accepted the competence of the Committee under Article 14 of the Convention ** Entry into force

ANNEXE III: Model format for communications/complaints

(Source: Human Rights Fact Sheet No. 7: Communications Procedures, UN, Geneva.)

Several bodies dealing with communications have developed a model format to facilitate their examination of reported violations of human rights and these have been made available to those wishing to report cases of alleged violations. It should, however, be noted that communications are considered even when they are not submitted in the form of the format.

Whatever the reporting format, the precise address of the body to which a reported case(s) is (are) sent for examination should appear at the very beginning of the communication so as to ensure its easy and immediate channeling to the addressee.

Model communication

Date

Communication to:

Secretariat
Committee on the Elimination of Racial Discrimination
c/o Office of the High Commissioner of Human Rights
Palais des Nations, 1211 Geneva 10, Switzerland

I. Information concerning the author of the communication

Name First name(s)

Nationality Profession

Date and place of birth

Present address

Address for exchange of confidential correspondence
(if other than present address)

- Submitting the communication as:
- (a) Victim of the violation or violations set forth below
 - (b) Appointed representative/legal counsel of the alleged victim(s)
 - (c) Other

If box (c) is marked, the author should explain:
(i) In what capacity he/she is acting on behalf of the victim(s)
(e.g. family relationship or other personal links with the alleged victim(s))

(ii) Why the victim(s) is (are) unable to submit the communication himself/herself (themselves)

An unrelated third party having no link to the victim(s) cannot submit a communication on his/her (their) behalf.

II. Information concerning the alleged victim(s) (if other than the author)

Name First name(s)

Nationality Profession

Date and place of birth

Present address or whereabouts

III. State concerned/Articles violated/domestic remedies

Name of the state party (country) to the International Convention on the Elimination of All Forms of Racial Discrimination against which the communication is directed

Articles of the International Convention on the Elimination of All Forms of Racial Discrimination allegedly violated

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies — recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions)

If domestic remedies have not been exhausted, explain why

IV. Other international procedures

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

V. Facts of the claim

Detailed description of the facts of the alleged violation or violations (including relevant dates)*

Author's signature

* Add as many pages as needed for this description.

ANNEXE IV: General Recommendations adopted by CERD

A. List of the General Recommendations

NUMBER	CONTENT	SESSION
I	States parties obligations (Art. 4)	5th session (1972)
II	States parties obligations (Art. 9)	5th session (1972)
III	Apartheid	6th session (1972)
IV	Demographic composition of the population	8th session (1973)
V	Art. 7 of the Convention	15th session (1977)
VI	Overdue reports	25th session (1982)
VII	Art. 4 of the Convention	32nd session (1985)
VIII	Art. 1.1 and 1.4, of the Convention	38th session (1990)
IX	Art. 8.1 of the Convention	38th session (1990)
X	Technical assistance	39th session (1991)
XI	Non-citizens	42nd session (1993)
XII	Successor states	42nd session (1993)
XIII	Training of law enforcement officials	42nd session (1993)
XIV	Art. 1.1 of the Convention	42nd session (1993)
XV	Organized violence based on ethnic origin (Art. 4)	42nd session (1993)
XVI	References to situations existing in other states	42nd session (1993)
XVII	Establishment of national institutions to facilitate the implementation of the Convention	42nd session (1993)
XVIII	Establishment of an international tribunal to prosecute crimes against humanity	44th session (1994)
XIX	Art. 3 of the Convention	47th session (1995)
XX	Non-discriminatory implementation of rights and freedoms (Art. 5)	48th session (1996)
XXI	Right to self-determination	48th session (1996)
XXII	Art. 5 and refugees and displaced persons	49th session (1996)
XXIII	Indigenous peoples	51st session (1997)
XXIV	Art. 1 of the Convention	55th session (1999)
XXV	Gender-related dimensions of racial discrimination	56th session (2000)
XXVI	Art. 6 of the Convention	56th session (2000)
XXVII	Discrimination against Roma	57th session (2000)

B. Full texts of the General Recommendations

According to Article 9, paragraph 2, of ICERD, the Committee may make suggestions and General Recommendations based on the examination of the reports and information received from the states parties. Such suggestions and General Recommendations shall be reported to the GA together with comments, if any, from states parties. The Committee has so far adopted 27 General Recommendations.

General Recommendation I (5th session, 1972)

On the basis of the consideration at its fifth session of reports submitted by States Parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee found that the legislation of a number of States Parties did not include the provisions envisaged in article 4 (a) and (b) of the Convention, the implementation of which (with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention) is obligatory under the Convention for all States Parties.

The Committee accordingly recommends that the States Parties whose legislation was deficient in this respect should consider, in accordance with their national legislative procedures, the question of supplementing their legislation with provisions conforming to the requirements of article 4 (a) and (b) of the Convention.

General Recommendation II (5th session, 1972)

The Committee has considered some reports from States Parties which expressed or implied the belief that the information mentioned in the Committee's communication of 28 January 1970 (CERD/C/R.12), need not be supplied by States Parties on whose territories racial discrimination does not exist.

However, inasmuch as, in accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, all States Parties undertake to submit reports on the measures that they have adopted and that give effect to the provisions of the Convention and, since all the categories of information listed in the Committee's communication of 28 January 1970 refer to obligations undertaken by the States Parties under the Convention, that communication is addressed to all States Parties without distinction, whether or

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not racial discrimination exists in their respective territories. The Committee welcomes the inclusion in the reports from all States Parties, which have not done so, of the necessary information in conformity with all the headings set out in the aforementioned communication of the Committee.

General Recommendation III (6th session, 1972)

The Committee has considered some reports from States Parties containing information about measures taken to implement resolutions of United Nations organs concerning relations with the racist regimes in southern Africa.

The Committee notes that, in the tenth paragraph of the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties have resolved, *inter alia*, to build an international community free from all forms of racial segregation and racial discrimination.

It notes also that, in article 3 of the Convention, States Parties particularly condemn racial segregation and apartheid.

Furthermore, the Committee notes that, in resolution 2784 (XXVI), section III, the General Assembly, immediately after taking note with appreciation of the Committee's second annual report and endorsing certain opinions and recommendations, submitted by it, proceeded to call upon all the trading partners of South Africa to abstain from any action that constitutes an encouragement to the continued violation of the principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination by South Africa and the illegal regime in Southern Rhodesia.

The Committee expresses the view that measures adopted on the national level to give effect to the provisions of the Convention are interrelated with measures taken on the international level to encourage respect everywhere for the principles of the Convention.

The Committee welcomes the inclusion in the reports submitted under article 9, paragraph 1, of the Convention, by any State Party which chooses to do so, of information regarding the status of its diplomatic, economic and other relations with the racist regimes in southern Africa.

General Recommendation IV (8th session, 1973)

The Committee on the Elimination of Racial Discrimination,

Having considered reports submitted by States Parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination at its seventh and eighth sessions,

Bearing in mind the need for the reports sent by States Parties to the Committee to be as informative as possible,

Invites States Parties to endeavour to include in their reports under article 9 relevant information on the demographic composition of the population referred to in the provisions of article 1 of the Convention.

General Recommendation V (15th session, 1977)

The Committee on the Elimination of Racial Discrimination,

Bearing in mind the provisions of articles 7 and 9 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced that combating prejudices which lead to racial discrimination, promoting understanding, tolerance and friendship among racial and ethnic groups, and propagating the principles and purposes of the Charter of the United Nations and of the human rights declarations and other relevant instruments adopted by the General Assembly of the United Nations, are important and effective means of eliminating racial discrimination,

Considering that the obligations under article 7 of the Convention, which are binding on all States Parties, must be fulfilled by them, including States which declare that racial discrimination is not practised on the territories under their jurisdiction, and that therefore all States Parties are required to include information on their implementation of the provisions of that article in the reports they submit in accordance with article 9, paragraph 1, of the Convention,

Noting with regret that few States Parties have included, in the reports they have submitted in accordance with article 9 of the Convention, information on the measures which they have adopted and which give effect to the provisions of article 7 of the Convention, and that that information has often been general and perfunctory,

Recalling that, in accordance with article 9, paragraph 1, of the Convention, the Committee may request further information from the States Parties,

1. Requests every State Party which has not already done so to include — in the next report it will submit in accordance with article 9 of the Convention, or in a special report before its next periodic report becomes due — adequate information on the measures which it has adopted and which give effect to the provisions of article 7 of the Convention;

2. Invites the attention of States Parties to the fact that, in accordance with article 7 of the Convention, the information to which the preceding paragraph refers should include information on the immediate and effective measures which they have adopted, in the fields of teaching, education, culture and information, with a view to:

- (a) Combating prejudices which lead to racial discrimination;
- (b) Promoting understanding, tolerance and friendship among nations and racial or ethnical groups;
- (c) Propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination as well as the International Convention on the Elimination of All Forms of Racial Discrimination.

General Recommendation VI (25th session, 1982)

The Committee on the Elimination of Racial Discrimination,

Recognizing the fact that an impressive number of States have ratified, or acceded to, the International Convention on the Elimination of All Forms of Racial Discrimination,

Bearing in mind, however, that ratification alone does not enable the control system set up by the Convention to function effectively,

Recalling that article 9 of the Convention obliges States Parties to submit initial and periodic reports on the measures that give effect to the provisions of the Convention,

Stating that at present no less than 89 reports are overdue from 62 States, that 42 of those reports are overdue from 15 States, each with two or more outstanding reports, and that four initial reports which were due between 1973 and 1978 have not been received,

Noting with regret that neither reminders sent through the Secretary-General to States Parties nor the inclusion of the relevant information in the annual reports to the General Assembly has had the desired effect, in all cases,

Invites the General Assembly:

- (a) to take note of the situation;
- (b) to use its authority in order to ensure that the Committee could more effectively fulfil its obligations under the Convention.

General Recommendation VII relating to the implementation of Article 4 of the Convention (32nd session, 1985)

The Committee on the Elimination of Racial Discrimination,

Having considered periodic reports of States Parties for a period of 16 years, and in over 100 cases sixth, seventh and eighth periodic reports of States Parties,

Recalling and reaffirming its General Recommendation I of 24 February 1972 and its decision 3 (VII) of 4 May 1973,

Noting with satisfaction that in a number of reports States Parties have provided information on specific cases dealing with the implementation of article 4 of the Convention with regard to acts of racial discrimination,

Noting, however, that in a number of States Parties the necessary legislation to implement article 4 of the Convention has not been enacted, and that many States Parties have not yet fulfilled all the requirements of article 4 (a) and (b) of the Convention,

Further recalling that, in accordance with the first paragraph of article 4, States Parties undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention,

Bearing in mind the preventive aspects of article 4 to deter racism and racial discrimination as well as activities aimed at their promotion or incitement,

1. Recommends that those States Parties whose legislation does not satisfy the provisions of article 4 (a) and (b) of the Convention take the necessary steps with a view to satisfying the mandatory requirements of that article;

2. Requests that those States Parties which have not yet done so inform the Committee more fully in their periodic reports of the manner and extent to which the provisions of article 4 (a) and (b) are effectively implemented and quote the relevant parts of the texts in their reports;

3. Further requests those States Parties which have not yet done so to endeavour to provide in their periodic reports more information concerning decisions taken by the competent national tribunals and other State institutions regarding acts of racial discrimination and in particular those offences dealt with in article 4 (a) and (b).

General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention (38th session, 1990)

The Committee on the Elimination of Racial Discrimination,

Having considered reports from States Parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups,

Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.

General Recommendation IX concerning the application of Article 8, paragraph 1, of the Convention (38th session, 1990)

The Committee on the Elimination of Racial Discrimination,

Considering that respect for the independence of the experts is essential to secure full observance of human rights and fundamental freedoms,

Recalling article 8, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination,

Alarmed by the tendency of the representatives of States, organizations and groups to put pressure upon experts, especially those serving as country rapporteurs,

Strongly recommends that they respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity.

General Recommendation X concerning technical assistance (39th session, 1991)

The Committee on the Elimination of Racial Discrimination,

Taking note of the recommendation of the third meeting of persons chairing the human rights treaty bodies, as endorsed by

the General Assembly at its forty-fifth session, to the effect that a series of seminars or workshops should be organized at the national level for the purpose of training those involved in the preparation of State Party reports.

Concerned over the continued failure of certain States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination to meet their reporting obligations under the Convention,

Believing that training courses and workshops organized on the national level might prove of immeasurable assistance to officials responsible for the preparation of such State Party reports,

1. *Requests* the Secretary-General to organize, in consultation with the States Parties concerned, appropriate national training courses and workshops for their reporting officials as soon as practicable;

2. *Recommends* that the services of the staff of the Centre for Human Rights as well as of the experts of the Committee on the Elimination of Racial Discrimination should be utilized, as appropriate, in the conduct of such training courses and workshops.

General Recommendation XI on non-citizens (42nd session, 1993)

1. Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination. Article 1, paragraph 2, exempts from this definition actions by a State Party which differentiate between citizens and non-citizens. Article 1, paragraph 3, qualifies article 1, paragraph 2, by declaring that, among non-citizens, States Parties may not discriminate against any particular nationality.

2. The Committee has noted that article 1, paragraph 2, has on occasion been interpreted as absolving States Parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that States Parties are under an obligation to report fully upon legislation on foreigners and its implementation.

3. The Committee further affirms that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

General Recommendation XII on successor States (42nd session, 1993)

The Committee on the Elimination of Racial Discrimination, Emphasizing the importance of universal participation of States in the International Convention on the Elimination of All Forms of Racial Discrimination,

Taking into account the emergence of successor States as a result of the dissolution of States,

1. *Encourages* successor States that have not yet done so to confirm to the Secretary-General, as depositary of the International Convention on the Elimination of All Forms of Racial Discrimination, that they continue to be bound by obligations under that Convention, if predecessor States were parties to it;

2. *Invites* successor States that have not yet done so to accede to the International Convention on the Elimination of All Forms of Racial Discrimination if predecessor States were not parties to it;

3. *Invites* successor States to consider the importance of making the declaration under article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications.

General Recommendation XIII on the training of law enforcement officials in the protection of human rights (42nd session, 1993)

1. In accordance with article 2, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination; further, States Parties have undertaken to guarantee the rights listed in article 5 of the Convention to everyone without distinction as to race, colour or national or ethnic origin.

2. The fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their State has entered into under the Convention. Law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.

3. In the implementation of article 7 of the Convention, the Committee calls upon States Parties to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented. They should also include respective information thereupon in their periodic reports.

General Recommendation XIV on Article 1, paragraph 1, of the Convention (42nd session, 1993)

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights. The Committee wishes to draw the attention of States Parties to certain features of the definition of racial discrimination in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination. It is of the opinion that the words based on do not bear any meaning different from on the grounds of in preambular paragraph 7. A distinction is contrary to the Convention if it has either the

purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States Parties by article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.

2. The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such 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. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

3. Article 1, paragraph 1, of the Convention also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in article 5.

General Recommendation XV on Article 4 of the Convention (42nd session, 1993)

1. When the International Convention on the Elimination of All Forms of Racial Discrimination was being adopted, article 4 was regarded as central to the struggle against racial discrimination. At that time, there was a widespread fear of the revival of authoritarian ideologies. The proscription of the dissemination of ideas of racial superiority, and of organized activity likely to incite persons to racial violence, was properly regarded as crucial. Since that time, the Committee has received evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference. As a result, implementation of article 4 is now of increased importance.

2. The Committee recalls its General Recommendation VII in which it explained that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States Parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response.

3. Article 4 (a) requires States Parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.

4. In the opinion of the Committee, 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. This right is embodied in article 19 of the Universal Declaration of Human Rights and is recalled in article 5 (d) (viii) of the International Convention on the Elimination of All Forms of Racial Discrimination. Its relevance to article 4 is noted in the article itself. The citizen's exercise of this right carries special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular impor-

ance. The Committee wishes, furthermore, to draw to the attention of States Parties article 20 of the International Covenant on Civil and Political Rights, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

5. Article 4 (a) also penalizes the financing of racist activities, which the Committee takes to include all the activities mentioned in paragraph 3 above, that is to say, activities deriving from ethnic as well as racial differences. The Committee calls upon States Parties to investigate whether their national law and its implementation meet this requirement.

6. 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 is of the opinion that article 4 (b) places a greater burden upon such States to be vigilant in proceeding against such organizations at the earliest moment. These organizations, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is, of itself, to be punished.

7. Article 4 (c) of the Convention outlines the obligations of public authorities. Public authorities at all administrative levels, including municipalities, are bound by this paragraph. The Committee holds that States Parties must ensure that they observe these obligations and report on this.

General Recommendation XVI concerning the application of Article 9 of the Convention (42nd session, 1993)

1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties have undertaken to submit, through the Secretary-General of the United Nations, for consideration by the Committee, reports on measures taken by them to give effect to the provisions of the Convention.

2. With respect to this obligation of the States Parties, the Committee has noted that, on some occasions, reports have made references to situations existing in other States.

3. For this reason, the Committee wishes to remind States Parties of the provisions of article 9 of the Convention concerning the content of their reports, while bearing in mind article 11, which is the only procedural means available to States for drawing to the attention of the Committee situations in which they consider that some other State is not giving effect to the provisions of the Convention.

General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (42nd session, 1993)

The Committee on the Elimination of Racial Discrimination,

Considering the practice of States Parties concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced of the necessity to encourage further the establish-

ment of national institutions to facilitate the implementation of the Convention,

Emphasizing the need to strengthen further the implementation of the Convention,

1. *Recommends* that States Parties establish national commissions or other appropriate bodies, taking into account, *mutatis mutandis*, the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992, to serve, *inter alia*, the following purposes:

- (a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- (b) To review government policy towards protection against racial discrimination;
- (c) To monitor legislative compliance with the provisions of the Convention;
- (d) To educate the public about the obligations of States Parties under the Convention;
- (e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination;

2. *Also recommends* that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State Party concerned.

General Recommendation XVIII on the establishment of an international tribunal to prosecute crimes against humanity (44th session, 1994)

The Committee on the Elimination of Racial Discrimination,

Alarmed at the increasing number of racially and ethnically motivated massacres and atrocities occurring in different regions of the world,

Convinced that the impunity of the perpetrators is a major factor contributing to the occurrence and recurrence of these crimes,

Convinced of the need to establish, as quickly as possible, an international tribunal with general jurisdiction to prosecute genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto,

Taking into account the work already done on this question by the International Law Commission and the encouragement given in this regard by the General Assembly in its resolution 48/31 of 9 December 1993,

Also taking into account Security Council resolution 872 (1993) of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia,

1. *Considers* that an international tribunal with general jurisdiction should be established urgently to prosecute genocide, crimes against humanity, including murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhuman acts directed against any civilian population, and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto;

2. *Urges* the Secretary-General to bring the present recommendation to the attention of the competent organs and bodies of the United Nations, including the Security Council;

3. *Requests* the High Commissioner for Human Rights to ensure that all relevant information pertaining to the crimes referred to in paragraph 1 is systematically collected by the Centre for Human Rights so that it can be readily available to the international tribunal as soon as it is established.

General Recommendation XIX on Article 3 of the Convention (47th session, 1995)

1. The Committee on the Elimination of Racial Discrimination calls the attention of States Parties to the wording of article 3, by which States Parties undertake to prevent, prohibit and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction. The reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries.

2. The Committee believes that the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.

3. The Committee observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.

4. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States Parties to monitor all trends which 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.

General Recommendation XX on non-discriminatory implementation of rights and freedoms (Article 5) (48th session, 1996)

1. Article 5 of the Convention contains the obligation of States Parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial dis-

crimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights have been elaborated in the International Covenants on Human Rights. All States Parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States Parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

2. Whenever a State imposes a restriction upon one of the rights listed in article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that neither in purpose nor effect is the restriction incompatible with article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to inquire further to make sure that any such restriction does not entail racial discrimination.

3. 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.

4. The States Parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention one by one.

5. The rights and freedoms referred to in article 5 of the Convention and any similar rights shall be protected by a State Party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. 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.

General Recommendation XXI on the right to self-determination (48th session, 1996)

6. The Committee notes that ethnic or religious groups or minorities frequently refer to the right to self-determination as a basis for an alleged right to secession. In this connection the Committee wishes to express the following views.

7. The right to self-determination of peoples is a fundamental principle of international law. It is enshrined in article 1 of the Charter of the United Nations, in article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights,

as well as in other international human rights instruments. The International Covenant on Civil and Political Rights provides for the rights of peoples to self-determination besides the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion or to use their own language.

8. The Committee emphasizes that in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved by the United Nations General Assembly in its resolution 2625 (XXV) of 24 October 1970, it is the duty of States to promote the right to self-determination of peoples. But the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations. In this context the Committee draws the attention of Governments to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in its resolution 47/135 of 18 December 1992.

9. In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.

10. In order to respect fully the rights of all peoples within a State, Governments are again called upon to adhere to and implement fully the international human rights instruments and in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Concern for the protection of individual rights without discrimination on racial, ethnic, tribal, religious or other grounds must guide the policies of Governments. In accordance with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international documents, Governments should be sensitive towards the rights of persons belonging to ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth and to play their part in the Government of the country of which they are citizens. Also, Governments should consider, within their respective constitutional frameworks, vesting persons belonging to ethnic or linguistic groups comprised of their citizens, where appropriate, with the right to engage in activities which are particularly relevant to the preservation of the identity of such persons or groups.

11. The Committee emphasizes that, in accordance with the Declaration on Friendly Relations, none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and possessing a Government representing the whole people belonging to the territory, without distinction as to race, creed or colour. In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a State. In this respect, the Committee follows the views expressed in *An Agenda for Peace* (paras. 17 and following), namely, that a fragmentation of States may be detrimental to the protection of human rights, as well as to the preservation of peace and security. This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned.

General Recommendation XXII on Article 5 and refugees and displaced persons (49th session, 1996)

The Committee on the Elimination of Racial Discrimination,

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world,

Considering that the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination proclaim that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, descent or national or ethnic origin,

Recalling the 1951 Convention and the 1967 Protocol relating to the status of refugees as the main source of the international system for the protection of refugees in general,

1. Draws the attention of States Parties to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination as well as Committee's General Recommendation XX (48) on article 5, and reiterates that the Convention obliges States Parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms,

2. Emphasizes in this respect that:
- All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;
 - States Parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;
 - All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;
 - All such refugees and displaced persons have, after their

return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

General Recommendation XXIII on the rights of indigenous peoples (51st session, 1997)

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States Parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States Parties to:

- 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;
- 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;
- provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
- 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;
- 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.

5. 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.

6. The Committee further calls upon States Parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

General Recommendation XXIV on Article 1 (55th session, 1999)

1. The Committee stresses that, according to the definition given in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples. 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 territory of such groups.

2. It appears from the periodic reports submitted to the Committee under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, and from other information received by the Committee, that a number of States Parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, language or culture different from the majority or from other groups within the population.

3. Some States Parties fail to collect data on the ethnic or national origin of their citizens or of other persons living on their territory, but decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such. The Committee believes that there is an international standard concerning the specific rights of people belonging to such groups, together with generally recognized norms concerning equal rights for all and non-discrimination, including those incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the Committee draws the attention of States Parties that the application of different and non-objective criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.

4. The Committee recalls recommendation IV, which it adopted at its eighth session in 1973, and paragraph 8 of the general guidelines regarding the form and contents of reports to be submitted by States Parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3), inviting States Parties to endeavour to include in their periodic reports relevant information on the demographic composition of their population, in the light of the provisions of article 1 of the Convention, that is, as appropriate, information on race, colour, descent and national or ethnic origin.

General Recommendation XXV on gender related dimensions of racial discrimination (56th session, 2000)

1. The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or

primarily affects women, or affects women in a different way or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgment of the different life experiences of women and men, in areas of both public and private life.

2. 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 in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. The consequences of racial discrimination may primarily or only affect women, such as pregnancy, and in some societies ostracism, as the result of racial bias-motivated rape. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender related impediments, such as gender-bias in the legal system and discrimination against women in private spheres of life.

3. Recognizing that some forms of racial discrimination have unique and specific impact on women, the Committee will endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination. The Committee believes that its practices in this regard would benefit from developing, in conjunction with the States Parties, a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.

4. Accordingly, the Committee, when examining forms of racial discrimination, intends to enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its sessional working methods, including its review of reports submitted by States Parties, concluding observations, early warning mechanisms and urgent action procedures, and general recommendations.

5. As part of the methodology for fully taking into account the gender related dimensions of racial discrimination, the Committee will include in its sessional working methods an analysis of the relationship between gender and racial discrimination, by giving particular consideration to:

- the form and manifestation of racial discrimination;
- the circumstances in which racial discrimination occurs;
- the consequences of racial discrimination; and
- the availability and accessibility of remedies and complaint mechanisms for racial discrimination.

6. Noting that reports submitted by States Parties often do not contain specific or sufficient information on the implementation of the Convention with respect to women, States Parties are requested to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention. Data which has been categorized by race or ethnic origin, and which is then disaggregated by gender within those racial or ethnic