

KENYA

Special Decisions or Action Taken Re: Reporting

CCPR A/63/40 vol. I (2008)

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CHAPTER II. METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT AND COOPERATION WITH OTHER UNITED NATIONS BODIES

A. Recent developments and decisions on procedures

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44. For several years, the Committee has been concerned about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant.¹⁰ Two working groups of the Committee proposed amendments to the rules of procedure in order to help States parties fulfil their reporting obligations and to simplify the procedure. These amendments were formally adopted during the seventy-first session, in March 2001, and the revised rules of procedure were issued (CCPR/C/3/Rev.6 and Corr.1).¹¹ All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee recalls that general comment No. 30, adopted at the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.¹²

45. The amendments introduce a procedure to be followed when a State party has failed to honour its reporting obligations for a long time, or requests a postponement of its scheduled appearance before the Committee at short notice. In both situations, the Committee may henceforth serve notice on the State concerned that it intends to consider, from material available to it, the measures adopted by that State party to give effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure further introduce a follow-up procedure to the concluding observations of the Committee: rather than setting in the last paragraph of the concluding observations a date by which the State party's next report should be submitted, the Committee will invite the State party to report back to it within a specified period regarding its follow-up to the Committee's recommendations, indicating what steps, if any, it has taken. The responses received will thereafter be examined by the Committee's Special Rapporteur on follow-up to concluding observations, and a definitive deadline will then be set for the submission of the next report. Since the seventy-sixth session, the Committee has, as a rule, examined the progress reports submitted by the Special Rapporteur on a sessional basis.¹³

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49. At its eightieth session (March 2004), the Committee decided to consider the situation of civil and political rights in Kenya at its eighty-second session (October 2004), as Kenya had not submitted its second periodic report, due on 11 April 1986. On 27 September 2004, Kenya submitted its second periodic report. The Committee considered the second periodic report of Kenya at its eighty-third session (March 2005) and adopted concluding observations.

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¹⁰ [*Official Records of the General Assembly*], chap. III, sect. B, and *ibid.*, *Fifty-seventh Session, Supplement No. 40 (A/57/40)*, chap. III, sect. B.

¹¹ *Ibid.*, *Fifty-sixth Session, Supplement No. 40 (A/56/40)*, vol. I, annex III, sect. B.

¹² *Ibid.*, *Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, annex VI.

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⁹ *Ibid.*, *Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, annex VI.

¹⁰ Except for the eighty-third session, when a new Special Rapporteur was appointed.

¹¹ Rule 70 of the revised rules of procedure.

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Chapter III: Submission of Reports by States Parties under Article 40 of the Covenant

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B. Overdue Reports and Non-compliance by States parties with their Obligations under Article 40

50. The Committee wishes to reiterate that States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

51. The Committee notes with concern that the failure of States parties to submit reports hinders the performance of its monitoring functions under article 40 of the Covenant. The list below identifies the States parties that have a report more than five years overdue, and those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that these States are in default of their obligations under article 40 of the Covenant.

52. The Committee once again draws particular attention to the fact that 26 initial reports are overdue (including the 22 initial reports overdue by at least five years listed above). The result is frustration of a crucial objective of the Covenant, namely, to enable the Committee to monitor compliance by States parties with their obligations under the Covenant on the basis of periodic reports. The Committee addresses reminders at regular intervals to all those States parties whose reports are significantly overdue.

53. Owing to the concern of the Committee about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant,¹⁰ two working groups of the Committee proposed amendments to the rules of procedure in order to help States parties fulfil their reporting obligations and to simplify the procedure. These amendments were formally adopted during the seventy-first session, in March 2001, and the revised rules of procedure were issued (CCPR/C/3/Rev.6 and Corr.1).¹¹ All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee recalls that general comment No. 30, adopted at the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.¹²

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