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II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES

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20. At its seventy-first session, the Committee adopted new guidelines for the early warning and urgent action procedure which replace its 1993 working paper on the prevention of racial discrimination, including early warning and urgent procedures (see annex III for the text of the guidelines).

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XII. OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

540. An overview of the methods of work of the Committee was included in its report to the fifty-first session of the General Assembly.¹⁰ It highlighted changes introduced in recent years and was designed to improve the Committee's procedures.

541. At its sixtieth session, the Committee decided to review its working methods at its sixty-first session and asked Mr. Valencia Rodríguez, convenor of an open-ended working group on this issue, to prepare and submit a working paper for consideration. The working paper submitted by Mr. Valencia Rodríguez was discussed and revised further by the Committee at its sixty-second and sixty-third sessions and adopted at the sixty-third session, with the exception of one paragraph which remains pending. The text of the paper as adopted was included in an annex to the Committee's report to the fifty-eighth session of the General Assembly.¹¹

542. The Committee had the opportunity to discuss its working methods further at the meeting with States parties held at its 1839th meeting, on 14 August 2007 (see CERD/C/SR.1839). The main issues raised and discussed during this meeting, which was attended by a high number of representatives of States parties, included: the fruitful efforts of the Committee to streamline its working methods and to harmonize them with other treaty body working methods; the positive impact of the new follow-up procedure adopted by the Committee; the adoption and transmission of lists of issues by country rapporteurs sufficiently early so that States parties have enough time to draft and submit written replies before the session. Some delegates also recommended that the Committee consider the possibility of requesting from States parties the submission of focused reports, on the basis of a list of issues. Other representatives of States parties commented on the positive impact of the provision of input by national human rights institutions and non-governmental organizations in connection with the consideration of States parties' reports and on the value of enhanced cooperation between the Committee and other United Nations bodies. States parties also requested information from the Committee on various issues including, inter alia, how country rapporteurs are appointed and the criteria

used by the Committee when selecting States parties to be considered under the review procedure and under the early warning and urgent action procedures. They also enquired about whether the Committee planned to contribute to the Durban Review process. Finally, many delegations expressed the wish that the Committee organize meetings with States parties on a more regular basis.

543. At the end of its seventy-first session, the Committee decided that it would discuss further and reach a decision regarding the timetable for the transmission of lists of issues to States parties during its seventy-second session.

544. At the end of its seventy-first session, the Committee also amended rule 40 of its rules of procedure so as to reflect its practice regarding the possibility for national human rights institutions accredited to take part in the deliberations of the Human Rights Council to address the Committee, with the consent of the concerned State party and in official meetings, on issues related to the dialogue with a State party the report of which is being considered by the Committee (see annex IX).

Notes

¹⁰ *Official Reports of the General Assembly, Fifty-first Session, Supplement No. 18 (A/51/18)*, paras. 587-627.

¹¹ *Ibid.*, *Fifty-eighth Session, Supplement No. 18 (A/58/18)*, annex IV.

XIII. DISCUSSION ON HARMONIZATION OF WORKING METHODS AND REFORM OF TREATY BODY SYSTEM

545. At its seventy-first session, the Committee had before it the report of the nineteenth meeting of persons chairing the human rights treaty bodies held at Geneva on 21 and 22 June 2007, including the report of the sixth inter-committee meeting held at Geneva from 18 to 20 June 2007 and attended by the Chairperson and by Mr. Sicilianos, who reported on the outcome of these meetings.

546. At the seventieth session, Mr. Thornberry reported to the Committee on his participation in the meeting of the working group on reservations (HRI/MC/2007/5), held on 14 and 15 December 2006, and Mr. Sicilianos reported at the seventy-first session on his participation in the meeting on reservations organized in Geneva by the International Law Commission on 15 and 16 May 2007 (HRI/MC/2007/5/Add.1). During these meetings, Mr. Thornberry and Mr. Sicilianos recalled the position of the Committee regarding the validity of reservations to international human rights treaties, and in particular its flexible and pragmatic approach regarding reservations. They stressed the practice of the Committee, which frequently requests further information or formulates

substantive recommendations on issues covered by reservations, while inviting States to consider the scope, or even the withdrawal, of their reservations.

547. At the seventieth and seventy-first sessions, Mr. Pillai reported on his participation in the meetings of the working group on harmonization of the working methods of the human rights treaty bodies held on 27 and 28 November 2006 and on 17 and 18 April 2007 (HRI/MC/2007/2 and Add.1).

548. In line with the fifth inter-committee meeting's recommendation to treaty bodies regarding the need to review their reporting guidelines so as to take into account the revised guidelines on a common core document and treaty specific reports (HRI/MC/2006/3 and Corr.1), the Committee adopted, at its seventy-first session, revised guidelines for the CERD-specific document.

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Annex III

GUIDELINES FOR THE EARLY WARNING AND URGENT ACTION PROCEDURE

A. Introduction

1. In 1993, the Committee on the Elimination of Racial Discrimination adopted a working paper on the prevention of racial discrimination, including early warning and urgent procedures (A/48/18, annex III). Since 1993, the Committee has adopted numerous decisions under these procedures and made recommendations to States parties to the International Convention on the Elimination of All Forms of Racial Discrimination as well as, through the Secretary-General, to the Security Council for action to prevent serious violations of the Convention, in particular those that could lead to ethnic conflict and violence.

2. The Committee adopted its working paper at the time when the development of preventive action was identified and proposed by the Secretary-General, Mr. Boutros Boutros-Ghali, in his report entitled "An agenda for peace" (A/47/277-S/24111). The General Assembly, in its resolution 47/120 of 18 December 1992, emphasized the need for all organs and bodies of the United Nations to intensify their efforts to strengthen the Organization's role in preventive diplomacy and to continue the discussion of the Secretary-General's report with a view to taking adequate action. This idea was subsequently discussed in various treaty bodies, as reflected in the following consideration made by the fourth meeting of chairpersons of human rights treaty bodies:¹³

"... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within

its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible.”

3. The current working paper aims at revising the working paper adopted in 1993, in the light of the practice of the Committee since 1993 and of the current needs and recent developments.

B. Need for early warning and urgent action capacity in the current world context

4. In his keynote speech to the Stockholm International Forum on Preventing Genocide held in 2004, the Secretary-General, Mr. Kofi Annan, exhorted that there can be no more important issue and no more binding obligation than the prevention of genocide. The declaration adopted by the International Forum committed to using and developing practical tools and mechanisms to identify as early as possible and to monitor and report on genocidal threats to human life and society in order to prevent the recurrence of genocide, mass murder and ethnic cleansing.

5. In his report entitled “In larger freedom: towards development, security and human rights for all”, the Secretary-General noted once again that “no task is more fundamental for the United Nations than the prevention and resolution of deadly conflict. Prevention, in particular, must be central to all our efforts through ... promoting democracy and the rule of law”.¹⁴

6. In his report, the Secretary-General also called upon the United Nations High Commissioner for Human Rights to submit a plan of action (A/59/2005/Add.3), in which she reiterated the importance of prevention.

7. Since 1993, the Committee has considered a large number of situations and adopted decisions under its early warning and urgent action procedures. It has addressed the presence of serious, massive, or persistent patterns of racial discrimination, in some cases with genocidal dimensions. These have included acts of extreme violence such as bombing of villages, use of chemical weapons and landmines, extrajudicial killings, rape, and torture committed against minorities and indigenous peoples. Furthermore, the Committee adopted decisions concerning situations of, inter alia, large-scale internal displacement and refugee flows linked to racial discrimination and addressed cases of encroachment on the lands of indigenous communities, in particular exploitation of natural resources and infrastructure projects posing threats of irreparable harm to indigenous and tribal peoples. Other decisions of the Committee have addressed patterns of escalating racial hatred and violence, racial discrimination as evidenced in social and economic indicators, ethnic tensions, racist propaganda or appeals to racial intolerance, as well as the lack of an adequate legislative basis for the definition and criminalization of all forms of racial discrimination.

8. The decisions taken by the Committee have included specific requests for action: not only the submission of overdue reports by the State party concerned but also the urgent provision of specific information on the situation under consideration and on the measures taken by the State party to remedy the situation in full compliance with the Convention. Some decisions have also made reference, where relevant, to measures adopted by the Security Council on the situation concerned. Many decisions have included detailed recommendations to States parties to halt further human rights violations, to initiate a dialogue with victims of racial discrimination, and to seek technical assistance and advisory services from the Office of the High Commissioner for Human Rights. In some instances, the Committee has also offered its good offices and technical assistance, and on two occasions, field missions were conducted by Committee members. In other cases, the Committee has requested the Secretary-General to draw the attention of the competent organs, including the Security Council, to situations, and appealed for an international presence as well as regional cooperation to prevent further deterioration of the situation and to increase assistance to the victims. The Committee has also recommended to the competent United Nations organs to provide humanitarian assistance. It has frequently reminded States parties as well as the international community of their obligation to prosecute and punish perpetrators of international crimes and provide reparations to victims.

9. Since its sixty-fifth session, the work of the Committee has been facilitated by a five-member working group on early warning and urgent action procedures.

10. At its sixty-sixth session, in March 2005, the Committee held a thematic discussion on the prevention of genocide, and adopted a declaration on the prevention of genocide (CERD/C/66/1) for the consideration of the States parties, the Special Adviser to the Secretary-General on the prevention of genocide, the Secretary-General, and the Security Council. Furthermore, at its sixty-seventh session, the Committee adopted a decision on follow-up to the declaration, identifying indicators for patterns of systematic and massive racial discrimination (CERD/C/67/1).

11. At its seventieth session, the Committee decided to request the working group to prepare a draft paper which would include terms of reference for its activities and provide an update of the 1993 working paper on the early warning and urgent action procedure, on the basis of the practice of the Committee since 1993.

C. Indicators for the early warning and urgent action procedure

12. The Committee shall act under its early warning and urgent action procedure when it deems it necessary to address serious violations of the Convention in an urgent manner. The Committee shall be guided by the indicators set out below which replace the criteria in the 1993 working paper. As these indicators may be present in situations not requiring immediate attention to prevent and limit serious violations of the Convention, the Committee shall assess their significance in light of the gravity and scale of the situation, including the escalation of violence or irreparable harm that may be caused to

victims of discrimination on the grounds of race, colour, descent or national or ethnic origin:

- (a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- (b) Presence of a 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 State officials;
- (c) Adoption of new discriminatory legislation;
- (d) Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;
- (e) Lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures;
- (f) Policies or practice of impunity regarding: (a) Violence targeting members of a group identified on the basis of race, colour, descent or national or ethnic origin by State officials or private actors; (b) Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin; (c) Development and organization of militia groups and/or extreme political groups based on a racist platform;
- (g) Significant flows of refugees or displaced persons, especially when those concerned belong to specific ethnic groups;
- (h) Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources;
- (i) Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.

D. Possible measures to be taken under the early warning and urgent action procedure

13. The Committee shall decide to consider a specific situation under its early warning and urgent action procedure on the basis of the information made available to it by, inter alia, United Nations agencies and human rights bodies, special procedures of the Human Rights Council, regional human rights mechanisms, and national human rights institutions and non-governmental organizations, that reflects serious violations of the Convention according to the above indicators.

14. The measures to be taken by the Committee under the early warning and urgent action procedure may include:

- (a) To request the State party concerned for the urgent submission of information on the situation considered under the early warning and urgent action procedure;
- (b) To request the Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation under consideration;

(c) Adoption of a decision including the expression of specific concerns, along with recommendations for action, addressed to:

(i) The State party concerned;

(ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the independent expert on minority issues;

(iii) Other relevant human rights bodies or special procedures of the Human Rights Council;

(iv) Regional intergovernmental organizations and human rights mechanisms;

(v) The Human Rights Council;

(vi) The Special Adviser of the Secretary-General on the prevention of genocide;

(vii) The Secretary-General through the High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the Security Council.

(d) To offer to send to the State party concerned one or more of the members of the Committee in order to facilitate the implementation of international standards or the technical assistance to establish a human rights institutional infrastructure;

(e) Recommendation to the State party concerned to avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.

E. Terms of reference of the working group on early warning and urgent action

Establishment of a working group

15. The Committee shall, in accordance with rule 61 of its rules of procedure,¹⁵ set up a working group to meet during its sessions, or at any other convenient time to be decided by the Committee in consultation with the Secretary-General, for the purpose of making recommendations to the Committee under its early warning and urgent action procedure and assisting the Committee in any manner which the Committee may decide.

16. The Working Group shall not comprise more than five members of the Committee, to be elected for a renewable term of two years, respecting the principle of equitable geographical representation.

17. The Working Group shall elect its own officers, including the member to act as coordinator of the Working Group, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings.

18. The coordinator shall: (a) convene meetings of the Working Group; (b) preside at meetings of the Working Group; (c) report on meetings of the Working Group to the Committee; (d) fulfil other responsibilities which might be required for the proper functioning of the Working Group in consultation with the members of the Working Group.

Meetings

19. Meetings of the Committee or the Working Group during which situations under the early warning and urgent action procedure will be examined shall be closed. Meetings during which the Committee may consider general issues under the early warning and urgent action procedure may be public if the Committee so decides.

20. The Working Group shall operate in close cooperation and consultation in particular with the Chairperson of the Committee, the Rapporteur of the Committee, other members of the Bureau, the Follow-up Coordinator and his or her alternate.

21. The Working Group is mandated to analyse and assess in a preliminary way information received on situations that may require urgent action; it shall make recommendations to the Committee as well as draft decisions of the Committee and letters addressed to States parties.

22. The Working Group may recommend to the Committee the adoption of any of the measures referred to in section D above.

23. The Committee may adopt in a private meeting any decision or action to be taken under the early warning and urgent action procedure.

Notes

¹³ A/47/628.

¹⁴ A/59/2005, para. 106.

¹⁵ Pursuant to article 10 (1) of the international convention on the elimination of all forms of racial discrimination the committee shall adopt its own rules of procedure. According to rule 61 of its rules of procedure, the committee may, in accordance with the provisions of the convention and subject to the provisions of rule 25, set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary and define their composition and mandates. Each subsidiary body shall elect its own officers and adopt its own rules of procedure.

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Annex IX

OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

Rules of procedure

List of speakers

Rule 40

1. During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairman may, however, accord the right of reply to any member or representative if a speech delivered after he has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairman shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

2. National Human Rights Institutions accredited to take part in the deliberations of the Human Rights Council may, with the consent of the concerned State party, address the Committee in official meetings, in an independent capacity and from a separate seating, on issues related to the dialogue between the Committee and a State party, the report of which is being considered by the Committee.

Note: This document complements and amends the rules of procedure of the Committee on the Elimination of Racial Discrimination (CERD/C/35/Rev.3).