The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The Committee on the Elimination of Racial Discrimination (CERD)

ICERD and CERD:

A Guide for Civil Society Actors

IMADR Geneva Office

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

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A Guide for Civil Society Actors

Prepared by Daisuke SHIRANE (IMADR Geneva Office)

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

ACKNOWLEDGEMENTS

The International Movement Against All Forms of Discrimination and Racism (IMADR) Geneva office would like to thank all the people and staff who have supported this publication, in particular Mr. Patrick THORNBERRY (CERD Member), Ms. Gabriella HABTOM (CERD Secretariat), Ms. Emily HOWIE (Director – Advocacy and Strategic Litigation, Human Rights Law Resource Centre, Australia), Ms. Jade JOHNSTON (IMADR Geneva Office intern) and Ms. Megumi KOMORI (IMADR Under-Secretary-General) for their contribution.

THE AUTHOR

ICERD and CERD: A Guide for Civil Society Actors is prepared by Mr. Daisuke SHIRANE (IMADR Geneva Office staff). Prior to this guidebook, the Minority Rights Group International (MRG) and IMADR jointly published "The International convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs" in 2001, written by Ms Atsuko TANAKA with assistance of Mr. Yoshinobu NAGAMINE. Since then, there have been many changes in our society and developments in the work of the Committee on the Elimination of Racial Discrimination (CERD). The current guide reflects these developments and changes, while taking over the basic idea and some elements from the 2001 publication.

IMADR

The International Movement Against All Forms of Discrimination and Racism (IMADR) is an international non-profit and non governmental organisation founded in 1988 by one of Japan's largest minorities, the Buraku people. IMADR has its international secretariat in Tokyo, Japan, a UN liaison office in Geneva, Switzerland, and regional committees, members and partners around the world. IMADR works for the elimination of all forms of discrimination and racism by networking relevant actors, in particular discriminated minorities and grassroots organisations, and exploiting UN human rights system. Against this backdrop IMADR puts special emphasis on the implementation of the International Convention on the Elimination of Racial Discrimination (ICERD) and its promotion among as well as utilisation by civil society actors.

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Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; *OR* Committee against Torture
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child; *OR* Committee on the Rights of the Child
CRPD	Committee on the Right of Persons with Disabilities
ECOSOC	Economic and Social Council
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICPMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRPD	International Convention on the Rights of Persons with Disabilities
NGOs	Non-governmental organisations
NHRIs	National human rights institutions
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations

Glossary

Concluding Observations	Collective and official observations and recommendations issued by a Treaty Body to a State party after the State report concerned has been considered (For CERD's concluding observation please see PART II 2.1 e) of this Guide).
Country Rapporteur	A CERD member designated for consideration of each State party report. The Country Rapporteur plays a leading role in: i) drafting "List of Themes", ii) the examination of the report, and iii) the preparation of the relevant concluding observations. (ref. PART II 2.1 c) of this Guide)
General Recommendations	CERD's interpretation of the articles of ICERD issued for assisting States parties in interpreting articles of ICERD and implementing their obligations. Other Treaty Bodies also refer to these as General Comments. (ref. PART II 2.4 of this Guide)
Human Rights Council (HRC)	A UN inter-governmental human rights body responsible for the promotion and protection of human rights, a subsidiary organ of UN GA.
List of themes	A list of themes / topics issued by CERD to each State before the consideration of its report, practiced since CERD's 77th session. (ref. PART II 2.1 c) of this Guide)
Reservation	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
Review procedure	A procedure by which the Committee considers a country situation without an up-to-date state report (ref. PART II 2.1 g) of this Guide)
Treaty Bodies:	The human rights treaty bodies (also called UN Treaty Bodies) are committees of independent experts that monitor implementation of international human rights treaties.
States parties	States that have ratified or otherwise expressed their consent to be legally bound by the international treaty concerned

PREFACE

It is an honour and a pleasure to write this brief preface to *ICERD and CERD: A Guide for Civil Society Actors.* IMADR and Daisuke Shirane should be congratulated for taking on the challenge of updating and re-writing the excellent Guide prepared by the late and sadly missed Atsuko Tanaka and by Yoshinobu Nagamine in 2001 – coincidentally the year in which the present writer joined CERD. The older Guide has proved its worth. I do not have a precise knowledge of its readership but sense that it played its part in increasing civil society understanding of the norms and the procedures of ICERD over the years since its publication. As a member of CERD, I never fail to take a copy of the Tanaka/Nagamine Guide with me to CERD sessions, and fully expect to use the new Guide in a similar fashion. We may be confident that the present volume will enjoy comparable success in sustaining and deepening the interest of civil society in the international community's most important single instrument in the field of combating racial discrimination.

A great deal has happened in the life of ICERD since 2001. The number of States parties has increased from 156 to 174. There have been major developments in ICERD's reporting procedure, notably in terms of the Committee's increased 'friendliness' to national and international NGOs and NHRIs. CERD is required to 'examine' the reports of States parties. Such examination necessitates an active civil society input in order to make a reality of the notion of a 'constructive' dialogue: otherwise the 'dialogue' could be reduced to a mere page-turning exercise. This does not imply lack of trust in information supplied, but what it does mean is that all sources of information, including civil society information, must be critically and professionally appraised by the Committee before the adoption of concluding observations. Other important areas of progress in the working methods of CERD include the further establishment and regularisation of the early warning and urgent action procedure, and key developments with respect to follow-up in the context of the reporting and communications procedures. The number of General Recommendations adopted by CERD has moved up from 27 to 33.

Less impressively, the number of States parties accepting the optional article 14 individual communications procedure has risen to only 54. This leaves the great majority of States parties outside the range of the article. Further, the number of States that have been implicated in the procedure remains stubbornly low, suggesting, *inter alia*, that article 14 is not as well known to civil society as it ought to be. It is sincerely to be hoped that the present Guide will encourage civil society to activate this important safety valve for victims of racial discrimination.

Supported by the above procedural moves, the decade since 2001 has witnessed a consolidation of CERD's concern for an increasing range of groups threatened by racial discrimination. This has occurred notably in the context of general recommendations setting out the legal bases for the recognition of categories of victim but is implicated in all aspects of procedural development. The general recommendations on indigenous peoples, on gender dimensions of racial discrimination, and on the Roma are all referred to in the 2001 Guide. Concern for such groups and categories has been sustained and enlarged by the Committee which has added fresh instruments on descent and caste, and on non-citizens, with a general recommendation on discrimination against people of African descent due shortly for consideration and adoption. The enlargement of CERD's concerns has moved *pari passu* with geopolitical and normative changes since the 1970s, notably in the recognition of new categories of right-holder, and has in turn served to provide a legal cutting edge to defend their rights.

Since its first sessions in the 1970s, CERD has also worked to enlarge our understanding of the global incidence of racial discrimination, even if it looms larger in the reality of some societies more than others. It has also highlighted the involvement of private actors in discrimination, has been resolute on the issue of racist hate speech, and has stressed the importance of education as the surest method of addressing discrimination in the long term. Improving the legal architecture within States, including the institutionalisation of remedies for discrimination, has also been a major concern.

ICERD is a specific instrument that defines a particular form of social practice (racial discrimination) and specifies a programme of legal obligations necessary to combat it. It is not a 'bucket shop' for random violations of human rights. It is therefore important for civil society to understand the nature of the instrument in terms of the concepts it contains as well as its procedures. Otherwise the interventions of civil society will not be effective. The Guide importantly combines an illuminating account of the norms and standards of ICERD together with an analysis of the procedures, employing explanatory case studies where appropriate. The Convention is not an easy instrument to understand. The Guide takes the reader to first base and beyond; putting knowledge into practical effect necessitates further applied analysis and reflection, and hard work.

I am therefore pleased to commend this Guide to its readership, which will be a wide readership, doubtless including members of CERD itself. There is perhaps less written about ICERD than about other 'core' UN human rights conventions. The Guide goes some way to remedying this *lacuna* in the literature. Racial discrimination remains one of the most pressing and sensitive human rights issues of our day, and is the cause of much conflict and suffering. Working with the Convention through the Guide will not solve every problem but will signpost avenues of redress that offer hope for many victims, actual and potential, of racial discrimination. There is good advice and practical wisdom in the present Guide on how to make the best of opportunities for engaging with CERD. Its publication is a significant occasion for all stakeholders in the fight against racism. Civil society in particular should take advantage of the occasion: *Carpe Diem*!

Patrick Thornberry
Member of CERD *July 2011*

PART I – What is ICERD?

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations (UN) General Assembly (GA) in 1965 and entered into force in 1969. As of 5 July 2011, there are 174 States parties to ICERD.[1] As its name shows this Convention (or sometimes called "treaty") is explicitly devoted to the elimination of racial discrimination. ICERD is legally binding for member State parties; each State has the obligation to uphold and implement all provisions of the Convention. However, in some cases, a State may make a declaration or reservation on particular articles of ICERD.[2]

The Convention consists of a preamble and 25 articles divided into three parts:[3] the first part sets out the definition and scope of racial discrimination prohibited by ICERD (Article 1) and States parties' obligations (Article 2 – 7); the second part deals with the establishment of a monitoring body, the Committee on the Elimination of Racial Discrimination (CERD) and its work (Article 8 – 16);[4] and the third part handles other technical matters (Article 17 – 25). CERD has also issued a number of General Recommendations on various topics in order to shape the scope of the Convention more clearly and to assist States in interpreting and implementing its provisions.[5]

Illustration 1: **Historical background of ICERD**

For many years, the struggle against racial discrimination was closely linked with anti-colonialism. 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, it should be observed that the rationale of the majority behind the adoption of these declarations was to put an end to discriminatory practices in other States, whereas the idea that discrimination could also exist in the domestic realm was largely ignored. The almost unanimous condemnation by States of apartheid as an institutionalized policy and practice in South Africa 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 ICERD was adopted in 1965 by the GA with its clear reference to apartheid in Article 3.

1. "Racial Discrimination" addressed by ICERD

1.1 Definition and grounds of racial discrimination

Article 1, Para. 1 of ICERD defines the concept of racial discrimination as follows:

> "*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.*"

[1] http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en, please also refer to ANNEX I, 1 and 2 of this guide.
[2] Please also refer to ANNEX I, 3 of this guide, exact text of declarations and reservations can be found at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en
[3] The full text of the Convention can be found at: http://www2.ohchr.org/english/law/cerd.htm, a PDF version is also available: http://www2.ohchr.org/english/law/pdf/cerd.pdf
[4] For more details of CERD and its work, please refer to PART II of this guide.
[5] Please also refer to PART II 2.5 and Annex IV of this guide.

The definition of ICERD sets out *five grounds* of discrimination; it includes not only *race*, but also *colour*, *descent*, and *national or ethnic origin*. There is no hierarchy among these five categories and any discrimination based on them should be addressed comprehensively. CERD also stresses that, according to this definition, the Convention relates to all persons who belong to different races, national or ethnic groups or to *indigenous peoples*.[6] Regarding the question of who belongs to which group, it is the opinion of CERD that the 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.*"[7]

Illustration 2: **Racial discrimination exists in every country**[8]

Sometimes State parties argue that racial discrimination does not exist in its territory. However, CERD has a contrary view that no country can claim that racial discrimination is non-existent in its territory. In the consideration of its 15th to 20th periodic report of the Philippines, the State party stated that racial discrimination has never officially or factually existed there, neither in a systematic, formal nor intermittent or isolated manner. Responding to this statement, CERD expressed its view and made recommendations as follows: "While the denial of the existence of formal racial discrimination might be acceptable, the Committee wishes to note that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination. The Committee reiterates its observations that no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination".

Illustration 3: **Common victims of racial discrimination – vulnerable groups**

There are some groups or individuals, empirically identified by CERD, who are generally more vulnerable to racial discrimination prohibited by ICERD. These are among others: minority groups (e.g. ethnic, national or linguistic); indigenous peoples; migrants, refugees and asylum seekers. These groups of individuals have indeed often been identified by CERD as victims of racial discrimination in many societies throughout the world.
Regarding indigenous peoples, the Committee issued its General Recommendation No. 23 (1997) and affirmed that discrimination against indigenous peoples falls under the scope of ICERD. As a minority or ethnic group, the situation of Roma i.e. discrimination against them in different countries, has been of a particular concern of the Committee and so it issued General Recommendation No. 27 (2000) on this group.

1.2 Discrimination based on "descent"

In 2002, CERD issued General Recommendation No. 29 confirming its consistent view that the term "descent" does not solely refer to "race" and has a meaning and application which complement the other prohibited grounds of discrimination. It further stresses that:

> *"discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights"*[9]

The Committee also sets out the following factors in identifying descent-based communities suffering from discrimination:[10]

[6] CERD General Recommendation No. 24, para. 1.
[7] CERD General Recommendation No. 8
[8] CERD annual report 2009, A/64/18, para. 42, the Philippines (13)
[9] Ibid.
[10] Ibid., para. 1

1) inability or restricted ability to alter inherited status;
2) socially enforced restrictions on marriage outside the community;
3) private and public segregation, i.e. in housing and education, access to public spaces, places of worship and public sources of food and water;
4) limitation of freedom to renounce inherited occupations or degrading or hazardous work;
5) subjection to debt bondage;
6) subjection to dehumanizing discourses referring to pollution or untouchability; and
7) generalized lack of respect for their human dignity and equality.

It can be seen that this General Recommendation has contributed to bringing the issue of descent-based discrimination to light. Indeed, since its issuance the number of cases in which the Committee expresses its concern regarding descent-based discrimination has increased. Examples can be found in the consideration of the State reports of: Mali and Senegal (2002);[11] Ghana, Republic of Korea and the UK (2003);[12] Nepal, Madagascar and Mauritania (2004);[13] Nigeria (2005);[14] Yemen (2006, 2011);[15] India (2007);[16] Ethiopia (2009);[17] and Japan (2010).[18]

Illustration 4: **Caste discrimination**

India maintains the position that discrimination based on caste falls outside the scope of the ICERD Article 1 and the Convention is not applicable in this case. However, taking note of such argument and after having an extensive exchange of views with the State party, the Committee still "maintains its position expressed in general recommendation No. 29" and "reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention."[19] *A similar view was also expressed in the consideration of the State reports of Nepal (2000) and Bangladesh (2001).*[20]

1.3 Indirect discrimination and de facto discrimination

It should be noted that the Convention covers acts where the results might unintentionally lead to discrimination, as reflected in Article 1 (1) which refers to "*the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise*" of human rights. In its General Recommendation No. 14 (1993), CERD reaffirmed its view on this matter as follows:

> "*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*" (para. 1) and
>
> "*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*" (para. 2).

[11] CERD Annual Report (2002), UN doc. A/57/18, paras. 406, 445
[12] CERD Annual Report (2003), UN doc. A/58/18, paras. 124, 492, 544
[13] CERD Annual Report (2004), UN doc. A/59/18, paras. 127, 131, 320, 342
[14] CERD Annual Report (2005), UN doc. A/60/18, para. 290
[15] CERD Annual Report (2006), UN doc. A/61/18, paras. 442, 445, 449; and CERD Concluding Observations on Yemen (2011), UN doc. CERD/C/YEM/CO/17-18, para. 15
[16] CERD Annual Report (2007), UN doc. A/62/18, paras. 166, 167
[17] CERD Concluding Observations on Ethiopia (2009), UN doc. CERD/C/ETH/CO/7-16, para. 15
[18] CERD Concluding Observations on Japan (2010), UN doc. CERD/C/JPN/CO/3-6
[19] UN doc. A/51/18, para. 352; CERD Annual Report (2007), UN doc. A/62/18, para. 166
[20] CERD Annual Report (2000) UN doc. A/55/18, para. 294, 297, 299 (Nepal); and CERD Annual Report (2001) UN doc. A/56/18, para. 73 (Bangladesh)

In the concluding observations on the Philippines, the Committee further noted that "*even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination.*"[21]

Illustration 5: **A system with a discriminatory effect – de facto discrimination**[22]

> *In the concluding observations on China in 2009, the Committee expressed its concern that the national household registration system (hukou) could indirectly have a discriminatory effect i.e. create de facto discrimination against internal migrants in the fields of employment, social security, health services and education. It further stated that this system also affects members of ethnic minorities, and in particular women. Against this backdrop, the Committee recommended that "the State party implement its decision to reform the hukou system and ensure that internal migrants, in particular members of ethnic minorities, will be able to enjoy the same work, social security, health and education benefits as long-time urban residents."*

1.4 Citizens and Non-citizens

ICERD Articles 1 (2) and 1 (3) respectively allow States parties 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. This interpretation was developed as a consequence of the practice in many countries, where distinctions between citizens and non-citizens appear to follow ethnic patterns and are inherently discriminatory in their effect.

States occasionally interpret Article 1 (2) as absolving them from any obligation to report on matters relating to legislation on foreigners. This prompted CERD to issue General Recommendation No. 11 in 1993,[23] requesting that States parties fully report on legislation on foreigners and its implementation.

Concerning the issue of xenophobic, discriminatory and racist practices against non-citizens including migrants, refugees, asylum seekers, undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live, CERD issued its General Recommendation No. 30 in 2004. This Recommendation was issued to clarify the States parties' various responsibilities with regard to non-citizens and make clear that that Article 1 (2) should not be interpreted as reducing the rights and freedoms for everyone recognized in other international human rights instruments, particularly the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). It further observes that:

> "*differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.*"[24]

In the General Recommendation No. 30, the Committee also recommends that States parties adopt various measures to protect the rights of non-citizens against discrimination in the law and practice. In this Recommendation, more concrete measures are listed in terms of:

- Protection against hate speech and racial violence;
- Access to citizenship;

[21] CERD annual report 2009, A/64/18, para. 42, the Philippines (13)
[22] Ibid., para. 32, China (14)
[23] The General Recommendation No. 11 was replaced by the General Recommendation No. 30 in 2004.
[24] CERD General Recommendation No. 30, para. 4

- Administration of justice;
- Expulsion and deportation of non-citizens;
- Economic, social and cultural rights.

Illustration 6: **De facto discrimination against students of foreign origin**[25]

In the individual communication No. 40/2007 (Murat Er v. Denmark), the petitioner, a student at the Copenhagen Technical School, claimed a violation of Articles 2 (1) (d), 5 (e) (v) and 6 of the Convention, on the basis of the school's alleged discriminatory practice towards non-ethnic Danes. The practice consisted of accepting requests from employers not to send students of Pakistani or Turkish origin to train in their companies, and the State party's failure to investigate the situation. The Committee considered that the mere existence of cases where such requests had been accepted was in itself enough to ascertain the existence of de facto discrimination towards non-ethnic Danish students, regardless of whether they were qualified for an internship. CERD further asserted that the State party had an obligation to investigate whether such a racially discriminatory school practice existed and not rely solely on the fact that the petitioner did not qualify for an internship on other grounds, such as his academic record. The Committee concluded that the State party had violated the petitioner's right to the equal enjoyment of his right to education and training under Article 5 (e) (v) and that it had failed to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, in violation of Articles 2 (1) (d) and 6 of the Convention.

Illustration 7: **A case of non-discrimination**[26]

In the individual communication case No. 32/2003 (Sefic v. Denmark), the petitioner, a Bosnian citizen residing in Denmark, sought to buy third-party liability insurance from a local insurance company. He was advised that he was not eligible for an insurance contract, as he did not speak Danish, so he complained to the authorities, arguing that the language requirement was not objectively motivated but discriminatory within the meaning of section 1 (1) of the Danish Anti-Discrimination Act. In its opinion, the Committee noted that the author's claim and the evidence produced by him concerning the reasons behind the insurance company's policy had been fully considered by the competent authorities, including the public prosecutor, who had concluded that the language requirement was not based on the complainant's race or ethnic origin, but designed to facilitate communication with customers. The Committee concluded that the reasons for the language requirement adduced by the insurance company, in particular the fact that it was a relatively small company and primarily operating through telephone contacts with customers, was a reasonable and objective ground for the requirement. Consequently, the facts did not disclose a violation of the Convention.

1.5 Special Measures – Affirmative Action

In order to achieve not only formal equality before the law but also substantive equality in practice (e.g. in the enjoyment and exercise of human rights), Article 1 (4) of the Convention allows for special measures (also named as affirmative action, affirmative measures or positive action) for the benefit of racially or ethnically disadvantaged groups or individuals. These measures 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"* (ICERD Article 1 (4)).

[25] CERD annual report 2007, A/62/18, paras. 518-524 and Annex V
[26] CERD annual report 2005, A/60/18, para. 440

On the other hand, an action is judged contrary to the Convention, when it has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin[27] (see also Article 2 (2) of ICERD). Inevitably, certain difficulties arise in the understanding of the concept of special measures. Against this backdrop, the Committee held a thematic discussion on 4 and 5 August 2008 and issued its General Recommendation No. 32 in 2009 to provide practical guidance, especially to States parties, on the meaning and scope of special measures under ICERD.

It is important that States parties distinguish special measures from "*unjustifiable preferences*"[28] and should be noted that "*to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.*"[29] Based on such understanding, special measures should be *temporary* and designed as well as implemented to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. At the same time, targets of temporary special measures should not be confused with *permanent rights* of specific groups such as: the rights of persons belonging to minorities to profess and practice their own religion and use their own language; the rights of indigenous peoples; or rights of women to non-identical treatment with men on account of biological differences from men, e.g. maternity leave, while these groups are also entitled to benefit from special measures.[30]

A wide range of measures are possible, including "*the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture, and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments.*"[31]

Illustration 8: **Special Measures: CERD's concluding observation on Colombia (2009)[32]**

> *Despite national policies on special measures, CERD was concerned that: Afro-Colombians and indigenous peoples continue to face serious challenges to the enjoyment of their rights, de-facto discrimination and marginalisation; structural causes of discrimination and exclusion from the access to socio-economic rights and development; policies on special measures are not accompanied by adequate resource allocations, including at the departmental and municipal level; and implementation of special measures is not effectively monitored in the country. The Committee respectively gave recommendations to the State party to address these concerns. In addition, CERD underlined the importance of consultation with relevant communities in the elaboration of relevant development plans and affirmative action policies.*

1.6 Multiple Discrimination

Paragraph 7 of CERD's General Recommendation No. 32 (2009) reads,

> "*The 'grounds' of discrimination are extended in practice by the notion of 'intersectionality' whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.*"

CERD pays special attention to cases where such multiple forms of discrimination are involved. Regarding the intersectionality of gender, in its General Recommendation No. 25 (2000), the Committee noted that racial discrimination does not always affect women and men equally or in the same way, and certain forms of racial

[27] Ref. CERD General Recommendation No. 14
[28] CERD General Recommendation No. 32, para. 7
[29] Ibid., para. 8
[30] Ibid., para. 15
[31] Ibid., para. 13
[32] CERD Concluding Observations on Colombia (2009), CERD/C/COL/CO/14, para. 18

discrimination directly affect women such as sexual violation against women of particular racial or ethnic groups, or coerced sterilisation of indigenous women. At the same time, racial discrimination may have consequences where women are primarily or exclusively affected e.g. racial bias-motivated rape. Against this backdrop the Committee has been enhancing its efforts to integrate gender perspective into its work and also recommending that States parties provide disaggregated data with regard to the gender dimensions of racial discrimination as well as to take necessary actions in this regard.[33]

Age is also addressed by the Committee as being a factor that can contribute to the circumstances of multiple or double discrimination against children of a specific group.[34]

Illustration 9: **Religion and racial discrimination**

"Religion" is not included in the five grounds of discrimination set out in the Article 1 of ICERD. Accordingly, CERD observes that discrimination based solely on religious grounds does not fall in the scope of ICERD.[32] *However, drawing a clear line between ethnic/national origin and religion is not always a simple task. In this regard, CERD has expressed its view that the Committee "would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in Article 1 of the Convention, including national or ethnic origin".*[33] *At the same time, under ICERD 5(d), States parties have the obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent, national or ethnic origin.*

2. State obligations under ICERD (Article 2 – 7)

2.1 Measures to be taken to eliminate racial discrimination (Article 2)

Article 2 requires the State party to prohibit and stop racial discrimination by *any* persons, groups or organisations, without any distinction between public and private actors.[37]

State obligations as set out under Article 2 (1) include:

- Not to engage in any act or practice of racial discrimination;
- To ensure that all public authorities and institutions do not engage in any act or practice of racial discrimination;
- Not to sponsor, defend or support racial discrimination by any person or organisation;
- To review policies and to amend or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.

Article 2 (2) addresses special measures which should be taken by the State party in social, economic, cultural and other fields to ensure adequate development and protection of disadvantaged groups and to guarantee them full and equal enjoyment of human rights and fundamental freedoms.[38]

[33] Ref. e.g. CERD General Recommendations No. 25, paras. 3, 4, 5, 6; No. 29, paras. 11, 12, 13; No. 30, para. 8; No. 32, para. 7
[34] CERD General Recommendation No. 31, preamble; and in the consideration of State report of Mali in 2002, ref. CERD Annual Report (2002) A/57/18, paras. 404 and 405
[35] CERD Annual Report 2007, individual communication No. 36/2006 and 37/2006, para. 516
[36] ibid
[37] See also CERD concluding observations on the USA (2001) para. 5 and (2008) para. 11.
[38] For special measure, please refer to PART I, 1.5 of this guidebook.

2.2 Racial segregation and apartheid (Article 3)

Article 3 condemns racial segregation and apartheid. Initially this Article was often interpreted as directed exclusively at South Africa. However, the Committee makes it clear in General Recommendation No. 19 (1995) that Article 3 prohibits all forms of racial segregation in all countries, including unintended segregation in housing and/or education. States also have the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments.

The Committee regularly expresses concerns and makes explicit recommendations on the issue of racial segregation, especially in sectors such as housing and education.[39] In most cases, CERD addresses this issue in relation to the situation of ethnic or national minorities, and in particular Roma and descent-based groups such as Dalits.

2.3 Prohibition of racial incitement (Article 4)

The Committee has repeatedly emphasized the paramount importance of Article 4, which puts a limit on the excessive exercise of freedom of expression "*with due regard to the principle embodied in the Universal Declaration of Human Rights.*" Furthermore CERD has issued three General Recommendations on this topic; No. 1 (1972), No. 7 (1985) and No. 15 (1993). Under Article 4, States parties must declare an offence punishable by law following acts:

- The dissemination of ideas based upon racial superiority or hatred;
- Incitement to racial discrimination;
- Acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin;
- Provisions of any assistance to racist activities, including their financing.

Additionally, organizations as well as their activities and propaganda, which promote and incite racial discrimination, must be declared illegal and be prohibited (Article 4 (b)). Belonging to such organizations as well as participating in such activities are also to be treated as a criminal offence. Article 4 (c) underlines the obligation of the States parties to prohibit any public authority or institution at all administrative levels from promoting or inciting racial discrimination.

Full compliance with Article 4 is a particularly complicated issue in many countries because the line of upholding the States obligations under this Article and respecting the freedom of expression and association is often blurred. States frequently use the argument of protecting the freedom of expression and association to justify noncompliance with Article 4. There are also countries with reservations to Article 4 (20 States parties as of 5 July 2011, cf. Annex I). In response the Committee has taken a robust position on the implementation of Article 4. In its General Recommendation No. 15 (1993), the Committee clarifies 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*" which is embodied in the Universal Declaration of Human Rights (Article 19) and recalled in the Article 5 (d) (viii) of ICERD.[40] Referencing Article 29 (2) of the Universal Declaration, CERD further stresses that the citizen's exercise of the right to freedom of opinion and expression carries special duties and responsibilities including the obligation not to disseminate racist ideas.

[39] For example, in the consideration of States reports in 2009: Azerbaijan (Concluding Observations para. 15), Croatia (Concluding Observations para. 14), Ethiopia (Concluding Observations para. 15), Finland (Concluding Observations para. 17), Pakistan (Concluding Observations para. 12) and Turkey (Concluding Observations para. 13). In 2008: Belgium, Fiji, Italy, Namibia, Russia, USA (CERD Annual Report 2008, A/63/18, paras. 81, 174, 236, 294, 377, 487 and 488). In 2007: Antigua and Barbuda, Czech Republic, India, Israel and DR Congo (CERD Annual Report 2007, A/62/18, paras. 45, 110, 111, 171, 183, 215 and 330.

[40] CERD General Recommendation No. 15, para. 4

Illustration 10: **Racial incitement or freedom of expression**[41]

The Jewish communities of Oslo and Trondheim along with various individuals submitted individual communication No. 30/2003 regarding racist comments made by a member of the right-wing "Bootboys" in a speech commemorating a Nazi leader. The speech led to the speaker's prosecution and eventual acquittal by the Supreme Court of Norway, on the grounds of freedom of speech. CERD decided that the communication was admissible. However, the State objected to the admissibility of the complaint, on the basis that none of the groups or individuals concerned were "victims" of the remarks in question; they were not present when the speech was made, and none of them had been singled out. It also argued that the authors had not exhausted domestic remedies, although the speaker could not be retried, none of the authors had ever complained about the speech to the authorities. However, CERD found that "victim" status could pertain to all members of a particular group of potential victims and that, although none of them had complained to the authorities, the authors had had no possibility of altering the course of the criminal proceedings against the speaker. In August 2005, CERD considered the merits of the complaint that the statements contained ideas based on racial superiority or hatred; the deference shown to the principles of former Nazi leaders had to be taken as incitement to racial discrimination, if not violence.
On the issue of whether the incriminating statements were protected by the "due regard" clause in Article 4, the Committee considered that giving the right to freedom of speech a more limited role in the context of Article 4 did not deprive the "due regard" clause of significant meaning, especially taking into account that all international instruments protecting freedom of speech provide for the possibility of limiting, under certain conditions, the exercise of this right. As the incriminating statements were of an exceptionally offensive character, they were not protected by the "due regard" clause, and there had been a violation of Article 4 and consequently Article 6 of the Convention.

2.4 Equality in the enjoyment of rights (Article 5)

Article 5 provides a non-exhaustive list of rights and States parties have the obligation to guarantee that everyone – regardless of race, colour or national or ethnic origin – can enjoy these rights. The list includes:

a) the right to equal treatment before the tribunals and all other organs administrating justice;
b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
c) a whole series of political and civil rights;
d) a whole series of economic, social and cultural rights;
e) 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, cafes, theatres and parks.

According to CERD's General Recommendation No. 20 (1996), Article 5 assumes the existence and recognition of human rights and requires States to prohibit and eliminate racial discrimination in the enjoyment of these rights. However, the Article itself does not create nor define civil, political, economic, social or cultural rights, thus there is space allowing the manner in which the acknowledgement and protection of these rights are translated into actual legal order and practice differ from State to State. At the same time, it is important to note that this Article and its interpretation are also open for further developments and elaboration of human rights.

In interpreting Article 5, CERD makes a distinction between rights to be enjoyed by all persons living in a given State and rights of its citizens. While many of the rights and freedoms mentioned in Article 5 fall under the former, the right to participate in elections, to vote and to stand for elections are covered by the latter.[42] In any case "*human rights are in principle to be enjoyed by all persons*" and States parties have the "*obligation to*

[41] CERD annual report 2005, A/60/18, paras. 442-446 and Annex III, section A
[42] CERD General Recommendation No. 20, para. 3

guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognised in international law."[43]

CERD also notes that the rights and freedoms referred to in Article 5 and any similar rights are to be protected by a State party, while such protection can be achieved in different ways including activities of private institutions.[44]

2.5 Remedies for racial discrimination (Article 6)

Under Article 6, States are obliged to assure everyone within their jurisdiction has:

- effective protection and remedies against any acts of racial discrimination; and
- the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

However, quite often the degree of damage that acts of racial discrimination cause to a person is underestimated and claims for remedies are not taken seriously. In this regard, CERD stresses in General Recommendation No. 26 (2000) that the rights embodied in Article 6 are not necessarily secured solely by the punishment of the perpetrator and that the courts and other competent authorities should consider awarding financial compensation for material or moral damage suffered by a victim.[45]

2.6 Education (Article 7)

Article 7 requires States to adopt immediate and effective measures, particularly in the fields of teaching, education and culture:

- to combat prejudice which lead to racial discrimination; and
- to promote understanding, tolerance and friendship among nations and racial or ethnic groups;

Concerning States parties not paying sufficient attention to the implementation of Article 7, the Committee requests every State to submit adequate information on concrete measures taken and their effect.[46]

Full implementation of ICERD, and any other international instruments heavily depend on national law enforcement officials and whether they are properly informed about the obligations their State has entered into. Education as referred to in the Article 7 is not limited to school education but also includes training of law enforcement officials and other professionals such as teachers. CERD's General Recommendation No. 13 (1993) stresses the following:

> *"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."*[47]

In its General Recommendation No. 17 (1993), the Committee also recommends that States parties set up national institutions to serve the following purposes, including but not limited to:

[43] CERD General Recommendation No. 30, para. 3
[44] CERD General Recommendation No. 20, para. 5
[45] CERD General Recommendation No. 26, para. 2
[46] CERD General Recommendation No. 5
[47] CERD General Recommendation No. 13 para. 3

- promoting respect for human rights and the exercise thereof, free from any discrimination, as expressly stated in Article 5 of ICERD;
- examining official policies towards the protection against racial discrimination;
- monitoring laws so that they comply with the provisions of ICERD;
- educating the public as to the obligations which the States parties assume under ICERD.

Furthermore, CERD pays close attention to the question of whether States inform the public about human rights in general, in particular ICERD and CERD, and whether ICERD has been translated into and published in the local languages.[48]

[48] Recommendations adopted at the 6th meeting of the Persons Chairing the Human Rights Treaty Bodies, in September 1995, UN doc. A/50/505, para. 20

PART II – CERD and its Work

1. The Committee on the Elimination of Racial Discrimination (CERD)

CERD, the Committee on the Elimination of Racial Discrimination, was established as an independent body to monitor the implementation of the ICERD by its States parties and began its work in 1970 as the first UN treaty body. There are currently nine treaty bodies in total and subsequent bodies were established for the other UN Human Rights treaties in the following years (as of 5 July 2011):

- Human Rights Committee monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) and its optional protocols;
- Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional protocol;
- Committee Against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT);
- Subcommittee on Prevention of Torture (SPT) is established by the Optional Protocol to CAT (OPCAT);
- Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (CRC) and its optional protocols;
- Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW);
- Committee on the Right of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (ICRPD);
- Committee on Enforced Disappearance (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).

1.1 Membership

CERD is composed of 18 independent experts, who serve in a personal capacity (Article 8 (1) of ICERD). Each member is nominated by a State party and elected for a four-year term during a meeting of States parties (Articles 8 (4) and (5) (a)). Elections take place for half of the members at two-year intervals (Article 8 (5) (a)). In the election of the Committee members, consideration has to be given to equitable geographical distribution and to the representation of different forms of civilization as well as principal legal systems (Article 8 (1)). Under the Convention the Committee shall establish its own rules of procedure and receive no directives from outside (Article 10).

1.2 Sessions

CERD meets two times[49] a year in Geneva, usually at the Palais Wilson, headquarters of the Office of High Commissioner for Human Rights (OHCHR). While sessions usually last for three weeks, since its 75th session the Committee has been holding four week sessions to deal with the backlog of State reports. State party reports are considered by the Committee in an open meeting which other stakeholders e.g. NGOs are allowed to observe. Part of each CERD session consists of closed meetings in which concluding observations, individual communications or situations under the early warning and urgent action procedure and any other issues arising can be considered.

[49] From 2015, the Committee meets 3 times a year in Geneva.

2. Work and functions of CERD

The primary tasks of CERD are the consideration of State reports, individual communications, and consideration of situations under its early warning and urgent action procedure. In order to assist States parties in the implementation of their obligations under the Convention, CERD also issues a series of so called "General Recommendation"[50] on various subjects, explaining its interpretation of the provisions of ICERD and making suggestions, recommendations or requests to the States parties (ref. also Annex IV). Detailed information on activities carried out by CERD and developments in its working methods during a given year are included in the CERD's annual report.

2.1 Consideration of State Reports

Under Article 9 (1) of the Convention, States parties are obliged to submit reports "*on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention*" to the Secretary-General of the United Nations for the consideration by CERD. Each State party undertakes to submit its *initial report* within one year after the entry into force of the ICERD for the State concerned, thereafter a report is required every two years (often called a *periodic report*) or whenever the Committee so requests. In some cases States parties assert that, since their governments believe that racial discrimination does not exist within their territories, they are not obliged to submit periodic reports. However, racial 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.

The Committee reports annually to the UN General Assembly on its activities and makes suggestions and general recommendations based on the examination of state reports and information received (ICERD Article 9 (2)).

In relation to guidelines on a common core document and treaty specific documents contained in the harmonised guidelines on reporting under the international human rights treaties,[51] CERD adopted new reporting guidelines[52] at its 71st Session in 2007.[53] The guidelines provide States parties with information on how to prepare their reports especially in terms of form and content.

Under the current Treaty Body reporting system, states should submit a common core document according to the said harmonised guidelines. The common core document should include: general information on the state concerned; general framework for the promotion and protection of human rights; and general information on non-discrimination and equality and effective remedies. If a Treaty Body considers that information of the common core document is out of date, it may request the state concerned to update it.[54]

a) Information to be included

According to the new reporting guidelines of CERD, the Treaty- i.e. CERD-specific documents should not repeat the content of the common core document, but should include more specific information on e.g.:

- Implementation of Articles 1 to 7 of ICERD;

[50] In the practice of other Treaty Bodies it can be referred as General Comments.
[51] HRI/MC/2006/3 and Corr.1
[52] CERD/C/2007/1
[53] The new guidelines replaced the previous one (CERD/C/70/Rev.5).
[54] HRI/MC/2006/3, para. 27

- Implementation of CERD's recommendations included in its concluding observations (except for the initial CERD-specific document);
- Responses to the concerns of the Committee included in its concluding observations (except for the initial CERD-specific document); and
- Involvement of civil society in the reporting process

In order to monitor the progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin, CERD also requests information on persons who might be treated less favourably on the basis of these characteristics. States that do not have such information are then requested to provide information based on such as mother tongue or commonly spoken languages, together with any information about race, colour, descent, national and ethnic origin. CERD is also interested in information indicating whether groups, and if so which groups, are officially identified as national or ethnic minorities. It also recommends that information on the situation of descent based communities, non-citizens and internally displaced persons be included.[55]

Some State reports give the impression that, if the Convention has become part of legal order of the given country, no further legislative action is necessary. However, the Convention, first of all, requires legislation that clearly and specifically prohibits racial discrimination and related acts. Second of all, it calls for further concrete 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 e.g. in the Constitution of the country.

b) Reporting Cycle

The process of consideration of States Parties' reports can be seen as a cycle:

1) Preparation and submission of the report by the State party;
⇩
2) Designation of Country Rapporteurs and issuance of the list of themes by CERD;
⇩
3) Consideration of the report by CERD;
⇩
4) Issuance of Concluding Observations by CERD;
⇩
5) Implementation of CERD's Concluding Observations / Recommendations by the State party (Follow-up);
⇩
6) Preparation of next periodic report by the State party (start of the next cycle)

c) Country Rapporteur and list of themes

Once a state report is submitted to the Committee, it will be put in the list of "*Reports received and pending consideration by the Committee*".[56] CERD then decides which reports should be considered at the next session and designates one of its members to be the so-called "Country Rapporteur" for each State party i.e. its consideration. The Country Rapporteur plays a leading role in: i) drafting the "List of Themes", ii) the examination of the report, and iii) in the preparation of the relevant concluding observations.

Instead of "list of issues" which requires written answers from the State party concerned, CERD established a new practice of "list of themes" at its 77th Session.[57] Unlike the list of issues, the list of themes does not require written replies but is meant to guide the dialogue between the States party's delegation and the Committee

[55] Please also refer to the CERD's General Recommendation No. 24 (1999)
[56] These lists are included in the document "Status of submission of reports by States parties under article 9, paragraph 1, of the Convention" which will be prepared for every CERD session and can be found in the top of respective session website (e.g. for CERD 77th session, visit: http://www2.ohchr.org/english/bodies/cerd/cerds77.htm).
[57] http://www2.ohchr.org/english/bodies/cerd/cerds77.htm

during its examination in Geneva. While the list of issues is a compilation of concrete questions to be answered, the list of themes is a compilation of themes or topics which should be raised in the course of the dialogue. Both lists are not exhaustive. CERD does not have the system of "Pre-Sessional Working Group" which is practiced by some of the other treaty bodies. The list of themes is sent to the State party and published at the CERD website usually four to six week prior to the session at which the report concerned will be examined.

d) Consideration of State reports - Interactive dialogue with States parties

For the consideration of state reports CERD invites States parties to send their delegation to the CERD meetings in Geneva in order to facilitate an "interactive dialogue". Currently CERD uses two days i.e. one afternoon meeting (from 3 to 6 pm of the 1st Day) and one morning meeting (from 10 am to 1 pm of the 2nd Day) for consideration of one state report.

The consideration generally begins with an opening statement by the Chairperson of the Committee followed by an oral presentation by the state delegation. The Country Rapporteur then presents his/her analysis of the situation and raises issues or questions to be addressed. Following the Country Rapporteur other Committee members, who so wish, give their comments and questions. If present, National Human Rights Institutions (NHRIs) of the given country may also take the floor and formally present statements.

In most cases, the first day ends with this 1st round of comments and questions from Committee members. If the Committee members' 1st round of comments and questions finishes on the 1st day, the delegation will be asked whether they are able to immediately answer some of the questions, otherwise time is given for responses from the delegation on the 2nd day. In other cases, dialogue on the 2nd day starts with questions and comments from Committee members who could not take the floor on the 1st day. After the delegation has given their 1st responses, the 2nd round of CERD members' questions and comments begin and are followed by a round of responses from the delegation. Since its 77th session the CERD has been taking a more active and flexible approach to the "dialogue" by inviting the delegation to answer the question / comment of one member immediately after the member gives it. At the end of the meeting the Country Rapporteur presents his/her concluding remarks and is followed by the delegation which is also asked to give its final remarks.

1st Day from 3 p.m. to 6 p.m.:

1. Opening of the meeting by the CERD chairperson
2. Introduction / presentation of the state report by the state delegation (comments and supplementary information to the report may be added)
3. Analytical comments and questions by the Country Rapporteur
4. Comments and questions by other Committee members
5. (Comments / remarks of the NNHRIs, if present)
6. Responses from the delegation (if information is available)

2nd Day from 10 a.m. to 1 p.m.:

1. (Comments / remarks of the NHRIs, if present and did not do so on the 1st day)
2. Responses from the delegation to the 1st round of comments and questions
3. 2nd round of comments / questions from CERD and responses from the state delegation
4. Concluding remarks by the Country Rapporteur;
5. Final remarks by the delegation
6. Closing of the meeting by CERD chairperson

e) Concluding Observations

Following the interactive dialogue with the state delegation, CERD adopts its concluding observations to the State party concerned. Respective Country Rapporteurs will draft the concluding observations and CERD, as a

whole, then discusses and adopts them in a closed meeting, usually in the last week of each session.[58] After the preliminary adoption of the concluding observations, respective States parties are given the opportunity to provide their comments thereon. After comments by States parties are appropriately reflected, concluding observations are published on the CERD website, normally after the closure of each session. Comments from the relevant States parties on the concluding observations are listed in the CERD's annual report.

In most cases concluding observations consist of three parts: A. Introduction; B. Positive aspects; and C. Concerns and recommendations. In specific cases, a chapter on "*Factors and difficulties impeding the implementation of the Convention*" is inserted between introduction and positive aspects. The final paragraph of the concluding observations gives the date by which the next report should be submitted by the State party concerned.

f) Follow-up procedure to concluding observations

Pursuant to Article 9 of ICERD and rule 65 of the rules of procedure of the Committee, CERD may request the State party concerned to submit an additional report or information on specific topics following consideration of the state report. If the Committee decides so, it usually indicates in its concluding observations the topics as well as the manner and time (mostly one year) within which such report or information should be provided.

At its 64th session (2004) CERD adopted a second paragraph to rule 65, which provides for the appointment of a coordinator, in order to more effectively conduct this follow-up procedure. The coordinator (or its alternative) cooperates with the respective Country Rapporteur and is mandated to monitor the follow-up by States parties on the observations and recommendations of the Committee. According to its terms of reference,[59] the coordinator will among others:

- monitor the deadline for the submission of additional report i.e. information by the State party;
- analyse and assess the information received, if necessary, recommend the Committee to take appropriate action; and
- report on the progress to the Committee.

The Committee holds closed meetings to discuss the findings of the coordinator and adopt formal recommendations or decisions on further action. The coordinator's findings are included in CERD's annual report. In addition, the Committee issued guidelines[60] for States parties to facilitate their follow up activities. According to the guidelines States parties should effectively follow-up the concluding observations of CERD through e.g.:

- Dissemination of the concluding observations;
- Coordination of implementation efforts and designation of a focal point/liaison person;
- Regular reporting on progress;
- Cooperation with NHRIs and NGOs.

g) Review Procedure (review in the absence of an up-to-date state report)

Though it is their obligation, not all the States parties submit their initial or periodic reports in a timely manner or at all. In order to deal with the cases where a state report is significantly overdue, the Committee decided at its 39th session (1991) to review the implementation of the Convention in the country concerned, even in the absence of an up-to-date state report. In such case the previous state reports are used as a basis and other relevant information is taken into account (this is known as a *review procedure*). A letter is sent to the 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 then invited to attend the meeting.

[58] In the past, individual members expressed their views and assessments at the concluding stage of consideration of a stare report.
[59] CERD/C/66/Misc. 11/Rev.2
[60] CERD/C/68/Misc.5/Rev.1

At its 49th session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review procedure. In such cases the Committee would consider all information submitted by the State concerned to other UN organs, in the absence of such material, reports and information prepared by UN organs would be used. In practice CERD also considers relevant information from other sources, including NGOs. This is intended to encourage dialogue between the State party and the Committee despite the absence of a report, to ensure all States parties participate in some level of review. 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.

Examples of cases: Gambia was reviewed under this procedure at the 74th session of CERD and the Committee adopted concluding observations in the absence of a state report or delegation. Panama, which was scheduled for the review procedure at the 74th session, submitted its report prior to the session. At its 75th session CERD decided to postpone scheduled review of Maldives and Kuwait, since the former submitted its report before the session and the latter gave a commitment to finalise its reports in the near future.

h) Status of National Human Rights Institutions (NHRIs)

At its 71st session CERD amended rule 40 of its rules of procedure regarding input from NHRIs that are accredited to take part in the deliberations of the UN Human Rights Council i.e. comply with the Paris Principles. According to this new rule NHRIs, with consent of the State party concerned, are allowed to formally take the floor during official meeting in which the respective States' report is considered.

2.2 Consideration of Individual Communications (Article 14)

Under Article 14 of the ICERD, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to CERD for consideration, provided that the state concerned has made a declaration to recognize CERD's competence under Article 14 (ref. Annex I, 4). It came into operation in 1982 when a State party made the 10th of such declarations recognising CERD's competence; as of 20 April 2011, 54 States parties made such declarations.

The Convention further provides, in its Article 14 (2), that states having made this declaration 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. Consideration of communications takes place in closed meetings. All documents pertaining to the work of the Committee under Article 14 (submissions from the parties and other working documents of the Committee) are confidential. Details on this procedure can be also found in rules 80 – 97 of the rules of procedure of CERD.

As of 2 May 2011, 48 cases had been submitted to the Committee, of which 4 cases are still in consideration and 16 cases were decided as inadmissible. Of 27 admissible cases CERD found violations in 13 cases (no violation in 14 cases, cf. Annex II). One case was discontinued. CERD includes in its annual report a summary of communications examined and, where appropriate, a summary of the State party's explanation and statements regarding the action it has taken in conformity with the Committee's suggestions and recommendations. The full texts of the Committee's decisions are also reproduced in an annex to its annual reports.

a) Consideration of the admissibility of communications

Once a communication has reached the Committee, it first considers whether the communication, i.e. petition, is admissible. All the cases before CERD are examined by the Plenary (full Committee), while CERD's rules of procedure leave the possibility open for the Committee to form a Working Group consisting of 5 Committee

members, when the Committee's workload increase dramatically. Conditions for admissibility of communications can be summarized as follows:

- The communication is not anonymous;
- It emanates from an individual or group of individuals subject to the jurisdiction of a State party recognising the competence of the committee under Art. 14 of the ICERD;
- It is from a victim of a violation by the State party concerned of any of the rights set forth in the ICERD;
- It should be submitted by the individual him-/herself or by his relatives or designated representatives (when it appears that the victim is unable to submit the communication, a communication submitted by others on behalf of an alleged victim is also accepted);
- It is compatible with the provisions of the ICERD;
- It is not an abuse of the right to submit a communication in conformity with Art. 14;
- The individual has exhausted all available domestic remedies (this shall not be the rule where the application of the remedies is unreasonably prolonged);
- It is submitted within six months after all available domestic remedies have been exhausted, except in the case of duly verified exceptional circumstances.

CERD, or its Working Group, may request the State party concerned or the author of the communication to submit additional information or clarifications relevant to the question of admissibility of the communication within an appropriate time limit. A communication may not be declared admissible unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations including information relating to the exhaustion of domestic remedies. A deadline shall be indicated for the submission of such additional information or clarifications. If the deadline is not kept by the State party concerned or the author of a communication, CERD or the Working Group may consider the admissibility in the light of available information. If the State party concerned disputes the contention of the author of a communication that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case. A decision taken by CERD that a communication is inadmissible may be reviewed at a later date by the Committee upon a written request by the petitioner concerned.

b) Consideration of communications on their merits

After a communication has been decided as admissible, the Committee transmits the communication and other relevant information confidentially to the State party in question, but does not - without its consent - reveal the identity of the individual or group claiming a violation. The State party concerned shall submit within three months to the Committee written explanations or statements and the remedy, if any, which have been taken.

In the course of its consideration, CERD may express its views on the desirability of taking interim measures to avoid possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation. Any explanations or statements submitted by the State party concerned may be transmitted to the petitioner of the communication who may submit any additional written information or observations within a given time-limit that the Committee decides. The Committee may invite the petitioner or his/her representative and the representatives of the State party concerned in order to provide additional information or to answer questions on the merits of the communication. The Committee may also revoke its decision on admissibility of a communication in light of any explanations or statements submitted by the State party. However, before CERD considers revoking a decision, the explanations or statements concerned must be transmitted to the petitioner so that he/she may submit additional information.

c) Committee's suggestions and recommendations

After consideration of a communication, CERD formulates its opinion thereon including any suggestions and recommendations, which are transmitted both to the individual or group concerned and to the State party. According to the CERD 2009 annual report (A/64/18), the Committee has so far adopted final opinions on 27

complaints. The opinion i.e. suggestions and recommendations of the Committee should not be confused with the jurisdiction of a court. They do not provide any legal aid.

d) Follow-up procedure to the opinion of CERD

In 2005 CERD adopted a new rule to more effectively follow-up on any suggestions and recommendations adopted under the Individual Communication procedure. According to this rule, CERD may designate one or several special Rapporteurs[61] who should monitor the States parties' efforts in implementing Committee's suggestions and recommendations. To fulfil its mandate the Rapporteur(s) will establish contacts, take appropriate actions and report to the Committee, if necessary with recommendations for further actions to be taken by CERD. Such recommendations reflect all cases in which CERD found violations of ICERD or otherwise provided suggestions or recommendations. Information on follow-up activities is included in CERD's annual report.

e) Recommendations in case of non-violation of the Convention or inadmissible communication

As a special feature of CERD's individual communication procedure, as compared to similar procedures of other Treaty Bodies, the Committee sometimes provides suggestions or recommendations even in case of no violation, when it considers it appropriate or necessary. By its 75th session the Committee had provided suggestions or recommendations in 9 cases, which did not establish a violation of the Convention. Moreover, when cases have been considered as inadmissible, CERD has taken action by providing suggestions or recommendations to the State concerned in order to draw its attention to the issue.

Illustration 11: **CERD's action in a case without any violation of ICERD**[62]

During its 75th session (2009) CERD considered communication No. 41/2008 (Ahmed Fara Jama v. Denmark), which concerned alleged discriminatory statements by a Danish Member of Parliament against individuals of Somali origin. Due to the ambiguity of the statements in question and based on the information at its disposal, CERD found no violation of any of the provisions of ICERD. Nevertheless, the Committee called on the State to ensure that its police and judicial authorities conduct thorough investigations into the alleged acts of racial discrimination. It also drew the attention of politicians and members of political parties to the particular duties and responsibilities incumbent upon them under ICERD Article 4.

Illustration 12: **CERD's decision on an inadmissible case**[63]

During its 72nd session (2008) CERD considered communication No. 38/2006 (Zentralrat Deutscher Sinti und Roma et al. v. Germany), which concerned alleged hate speech against the Roma and Sinti community through a letter by a police officer published in the journal of the Association of German Detective Police Officers (BDK). Although it decided that the claim was inadmissible regarding Article 4 (c) of ICERD and found no violation of Article 4 (a) or 6, the Committee called the State party's attention to the discriminatory, insulting and defamatory nature of the comments and of the particular weight of such comments if made by a police officer, whose duty is to serve and protect individuals.

[61] This term should not be confused with the Special Rapporteur established within the framework of Human Rights Council Special Procedures.
[62] CERD annual report 2009, A/64/18, paras. 62 and 63 and Annex III
[63] CERD annual report 2008, A/63/18, paras. 532 and 533 and Annex III

2.3 Early Warning and Urgent Action Procedure

In 1993, CERD adopted a working paper on the prevention of racial discrimination, including early warning and urgent procedures.[64] CERD works under this procedure to prevent and respond to serious violations of ICERD. Since then, CERD has examined a number of situations and adopted decisions, e.g. regarding conflicts in the former Yugoslavia and in the Great Lakes Region in Africa, and Australia's amendment of its Native Title Act that was considered to be racially discriminatory against indigenous peoples in Australia.

At the Committee's 71st session in 2007, the 1993 working paper was replaced by the new guidelines[65] in light of contemporary practices of CERD as well as current needs and recent developments. Since its 65th session a five-member working group has been facilitating the Committee's work under this procedure. CERD and the Working Group meetings for the examination of situations under the early warning and urgent action procedure are mostly closed, although CERD may decide to have a public meeting to consider general issues under this procedure.

The working group meets during regular sessions of CERD, or at any other time as the Committee decides, to preliminarily analyse and assess information received. It makes recommendations to the Committee and may draft decisions of the Committee as well as letters to be sent to the State party concerned. Members of the working group are elected for a renewable term of two years with equitable geographical representation.

a) Purpose and indicators for the procedure

According to the revised guidelines of 2007, CERD shall act under early warning and urgent action procedure to address serious violations of ICERD in an urgent manner. The new guidelines have set out the following indicators replacing the criteria of 1993 working paper:

(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.

[64] Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18), para. 18 and annex III.
[65] Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18), annex III

In accordance with these indicators and on the basis of information provided by inter alia UN agencies and human rights bodies, HRC special procedures, regional human rights mechanisms, NHRIs and NGOs, CERD may decide to consider a specific situation under this procedure.

b) Possible measures to be taken

In considering specific situations under the early warning and urgent action procedure CERD can take the following measures:

(a) Request the State party concerned for the urgent submission of information on the situation;
(b) Request the Secretariat to collect information from field presences of the OHCHR and UN specialized agencies, NHRI, and NGOs on the situation under consideration;
(c) Adopt 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) 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) Recommend the State party concerned to avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.

c) Recent actions[66]

At its 76th session in February and March 2010 CERD adopted a decision on Nigeria concerning attacks and killings of a large number of persons resulting from tensions between ethno-religious groups in January and March 2010. The Committee strongly urged Nigeria to take all appropriate measures to immediately stop ethnic violence, to protect victims, and to avoid the reoccurrence of such killings in the future. In addition it also urged Nigeria to investigate the massacre, bring those responsible to justice, and to provide redress to the victims and their families.

At its 77th session in August 2010, CERD adopted a decision on Kyrgyzstan concerning the reported attacks and killings between Uzbek and Kyrgyz ethnic groups that occurred in June 2010, whereby the ethnic Uzbek community appeared the main target of violence, threats, unlawful arrests and detentions, disappearances, torture and denial of access to justice. Through consideration of the situation, CERD urged the government of Kyrgyzstan, among others, to ensure protection of all its citizens from ethnic hatred and to pay due attention to possible discrimination on ethnic grounds in various areas e.g. employment and education. Furthermore the Committee strongly urged the government to facilitate access to justice for the victims, to investigate the violation of human rights and to bring those responsible to justice, and to provide redress to the victims and their families.

Other situations considered by the Committee during 2010 (in most cases a letter was sent to respective governments) include situations of: people of Raposa Serra do Sol in Brazil, indigenous peoples in Orissa in India,

[66] Letters sent to state parties and regional institutions as well as decisions taken by the Committee can be found at the CERD website: http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about

Achuar indigenous people in Peru, Hmong people in the Lao People's Democratic Republic, Touareg people in Niger (concerning alleged negative impact of uranium extraction by a French state company), Yakye Axa and Sawhoyamaxa people and their traditional lands in Paraguay, Aboriginal legal aid in Australia, and Romani and Irish Traveller communities in the United Kingdom.

Moreover, CERD took a noteworthy action at its 77th session. Concerning the situation of Roma communities in several, primarily European, countries[67] and recognising the importance of a regional approach in addition to efforts of individual governments, CERD sent letters to the Council of Europe and European Union. This was the first time, in which regional bodies were addressed by CERD through its early warning and urgent action procedure.

Illustration 13: **CERD's decision on the New Zealand Foreshore and Seabed Act 2004**[68]

A political and legal debate concerning the ownership of foreshore and seabed of New Zealand has emerged in 2003 when New Zealand's Court of Appeal decided on the Ngati Apa case. The decision provided the backdrop to drafting and enactment of the New Zealand Foreshore and Seabed Act 2004. At its 66th session in February and March 2005, CERD reviewed, under the early warning and urgent action procedure, the compatibility of this Act with ICERD in the light of information submitted from the Government of New Zealand as well as a number of Maori NGOs. The Committee had a dialogue with the State party on 25 February 2005 and adopted its decision 1 (66) (CERD/C/DEC/NZL/1) on 11 March 2005. In this decision, CERD expressed its concern over the process of the legislation and stated that "the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under article 5 and 6 of the Convention." (paragraph 6). Furthermore, the Committee urged the State party to resume dialogue with the Maori community regarding the legislation and requested that the State party: closely monitors the implementation of the legislation and its impact on Maori; takes steps to minimise any negative effects; and includes full information on the state of its implementation in the next periodic report.

CERD considered the combined 15th through 17th periodic report of New Zealand (CERD/C/NZL/17) at its 71st session in July/August 2007 in which the State party provided information on the follow-up to the Committee's decision 1(66). In the concluding observations on New Zealand (CERD/C/NZL/CO/17) CERD expressed its concern over the discrepancy between the assessment of the government and the one of NGOs on the issue, reiterated recommendations made in the decision 1 (66) and requested the State party to submit information on the implementation of these recommendations within a year. New Zealand submitted the information in its follow-up report (CERD/C/NZL/CO/17/Add.1) which was considered by CERD during its 74th session in February/March 2009. Under its follow-up procedure, then, CERD issued a letter to New Zealand[68] and requested it to include in its next periodic report (combined 18th to 20th) information on: recent progress made in ongoing negotiations with the Maori; new negotiations with groups which have decided to collaborate with the Government; the status of the dialogue held with tribes who oppose the act; and the realisation of the right to access justice through a fair and equitable process, e.g. in the case of Te Whanau a Apanui. The 18th to 20th periodic report of New Zealand is due on 22 December 2011.

[67] The issue of Roma people were also addressed in the consideration of state reports of: Bosnia and Herzegovina, Denmark, Estonia, France, Romania, Slovenia and Uzbekistan at 77th session.
[68] CERD/C/DEC/NZL/1 (2005)
[69] Can be found at: http://www2.ohchr.org/english/bodies/cerd/followup-procedure.htm

2.4 General Recommendations and Thematic Discussions

In order to assist States parties in interpreting articles of ICERD and implementing their obligations, CERD produces "General Recommendations"[70] which provides the Committee's interpretation of the articles of ICERD. So far 33 General Recommendations have been issued on various thematic topics.[71] 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, CERD regularly holds thematic discussions where other stakeholders e.g. States parties, and intergovernmental and non-governmental organisations are allowed to express their views. The first thematic discussion was organised in 2000 on the issue of discrimination against Roma. Since then there have been six thematic discussions[72] and most of them have also connected with the drafting process of respective General Recommendations.

Inter-state complaints (Article 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). To date, no state has ever used the inter-state procedures under any of the UN human rights treaties.

[70] In the practice of other Treaty Bodies it can be referred as General Comments.
[71] Please refer to Annex IV of this guide and for the text of each recommendation to the CERD website: http://www2.ohchr.org/english/bodies/cerd/comments.htm
[72] Please refer to http://www2.ohchr.org/english/bodies/cerd/discussions.htm

PART III – Civil Society Participation

When the state concerned is a party to ICERD,[73] there are several ways in which civil society actors can engage with the Committee and its work, in particular 1) in the course of States reporting cycle, 2) under individual communication procedure, 3) under the Early Warning mechanism and Urgent procedure, and 4) through thematic discussions. Usually NGOs and other stakeholders do not need any ECOSOC consultative status to use these opportunities.

For example, civil society actors can:

1. In the course of State reporting cycle:
   - A) Before the consideration of State report concerned:
     - Participate in the preparation of the State report.
     - Provide information for the list of themes.
     - Prepare and submit an alternative report.
     - Submit their own answers to the list of themes.
   - B) During the CERD session:
     - Organise an informal briefing to CERD members.
     - Lobby in Geneva.
     - Observe the CERD sessions.
   - C) Follow-up - After the consideration of the State report concerned:
     - Monitor implementation.
     - Lobby national governments.
     - Disseminate information and raise awareness.
2. Submit Individual Communication under Article 14
3. Submit information under Early Warning measures and Urgent Procedure
4. Submit information to and/or participate in thematic discussions

In any case when civil society actors wish to submit information to the Committee and take full advantage of available opportunities, their engagement and information should be laid out in a *constructive and non-adversarial manner*. To increase the effectiveness of civil society participation, information submitted should be as precise, concise and accurate as possible, with clear reference to the concrete articles of ICERD. Besides providing the Committee with information, NGOs and other civil society actors, especially those active at national and grassroots levels, can also disseminate information on ICERD and CERD in general or on a specific state report for consideration in their society. In order to make the best use of existing opportunities, civil society actors can take up issues from their society to the Committee, bring back the outcome, and create or facilitate actual changes in the lives of those who are facing issues of racial discrimination.

CERD Secretariat Contact:[74]
Secretariat of the Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaty Division (HRTD), Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson – 52, rue des Pâquis
Geneva, Switzerland
Tel.: +41 22 917 9440
Fax.: +41 22 917 9008
E-mail: cerd@ohchr.org
Mailing address:
CERD Secretariat, UNOG-OHCHR
8-14 Avenue de la Paix, CH- 1211 Geneva 10, Switzerland

[73] To check whether the state concerned is a party to the ICERD, please refer to the Annex I or the website of the UN Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en
[74] For up to date information, please see: http://www2.ohchr.org/english/bodies/cerd/contact.htm, or the document "Information for NGOs" uploaded at each CERD session page

1. In the course of the State Reporting Cycle

Generally civil society actors can submit information to CERD through its secretariat at any time. However, there are several different key phases in the State reporting cycle (ref. PART II 2.1). In order to be more effective, inputs should be provided in a more targeted and timely manner at each phase of the cycle.

1.1 Before the consideration of the State report concerned

Before taking any steps civil society actors may need to clarify following question.

- **When is the State report due?**
- **Has the State report already been sent?**
- **When is the consideration of the State report concerned?**

As explained in PART II of this guide, an initial report is due one year after the Convention has entered into force for the State concerned. Thereafter, periodic reports are due every two years. However, the reality of most cases is that reports are not submitted according to this time schedule and consideration of each State report does not take place every two years.

Once a State report has reached the Committee, it will be put on the list of "Reports received and pending consideration by the Committee." This list is updated and published at every CERD session together with the list of State reports of which submission is due or overdue.[75] Once consideration of a State report is scheduled for a coming session (or thereafter), detailed information is put on the CERD website under "*Sessions*"[76] and relevant State reports can be found at the respective session page.

Depending on whether and when the relevant State report will be or was submitted, different options are available for civil society actors on how to interact with the Committee. Alternatively, civil society actors can also directly contact the government concerned or the CERD Secretariat in order to obtain information on aforementioned questions.

a) Participating in the preparation of the State report:

If the due State report has not yet been submitted to the Committee, civil society actors can contact the government authority in charge (very often the Ministry of Foreign Affairs) to find out when the government plans to submit it. If the report is still being prepared, NGOs could negotiate with the appropriate authority to become involved in the drafting process. In some cases governments may be willing and even keen to consult national NGOs in order to avoid being criticized for an incomplete State report.

b) Providing information for the list of themes

For the consideration of each State report at the coming session, CERD prepares and publishes a list of themes.[77] In addition to (or as a part of) the alternative report, civil society actors can provide information to be specifically reflected in the list of themes and/or concrete proposals of themes. In any case input targeted at the list of themes should be made early enough, so that the Country Rapporteur can take account of it when drafting the list. Usually the list of themes is sent to the respective State government and published 4 to 6 weeks prior to the relevant session. It is generally recommended that, if wishing to provide information specifically for the list of

[75] These lists are included in the document "Status of submission of reports by States parties under article 9, paragraph 1, of the Convention" which will be prepared for every CERD session and can be found in the top of respective session website (e.g. for CERD 77th session, visit: http://www2.ohchr.org/english/bodies/cerd/cerds77.htm).
[76] http://www2.ohchr.org/english/bodies/cerd/sessions.htm
[77] This has been practiced since its 77th session, please also refer to the PART II 2.1 c) of this guide.

themes, civil society actors start preparing and *submit it to the Secretariat as soon as possible*. When submitted, it must also be clearly indicated that the input is for the list of themes so that it is processed in a timely manner.

c) Preparing and submitting an alternative report

Regarding the relevant State report, civil society can submit their own "*alternative*" report. Such reports should serve to primarily help CERD members gain a more comprehensive picture of the human rights situation in a given country, particularly concerning the implementation of ICERD. While State reports often tend to present legislative framework, but may not always thoroughly reflect the reality on the ground, civil society actors have the opportunity to conduct their own research, present alternative evidence, views, findings etc. and/or raise issues that are not covered by the State reports. Various alternative reports submitted to CERD can be found at the CERD website,[78] which can also be used as examples.

- **When and how to submit:**

Civil society actors can basically submit reports at any time, however it may not be effective to submit a report when no consideration of a relevant State report is scheduled. Generally it is suggested to submit alternative reports after the submission of relevant state report and before its consideration by CERD. While there is no official deadline for submission, information provided in the very last minutes might not be reflected thoroughly during the consideration. Therefore the CERD secretariat advises that alternative reports *be sent to the secretariat at the latest two weeks before the relevant session*. CERD usually considers more than 10 state reports at one session and *the earlier such a report is submitted, the more time CERD members have to examine it*. At the same time, more updated, precise and rather brief information may be submitted to the secretariat shortly before the relevant consideration so that any new developments and current changes in the field can also be addressed by the Committee.

When submitting an alternative report *an electronic version* (by email) and *24 hard copies* (by post or given personally) should be submitted to the secretariat. Alternative reports that have been submitted in a timely manner are published on the CERD website in relation to the State report concerned, unless it has been requested to keep it confidential.

- **Working languages of CERD:**

Information should be submitted in one of the working languages of CERD members, in most cases English, French or Spanish, while English is the preferred working language of many members.

- **Length and layout of the report:**

There is no page or words limit for alternative reports. However, submission of voluminous documents should be avoided considering the amount of information that CERD members receive and process for each session. Generally it is suggested that civil society actors make their alternative reports *as concise as possible* and preferably submit it *with a summary page*. A title page with the name of the organisation(s) and a table of contents should also be included. A short description of the mandate or nature of the organisation, network or coalition of organisation is also helpful.

- **Content and structure of the report:**

When providing information to CERD, in the interest of both the Committee and the civil society actor, it is important that the information is submitted in the most constructive and non-adversarial manner. Practice has shown that a simple submission of random cases or media report articles to the Committee does not normally

[78] For example, alternative reports submitted to the 77th session for respective state reports can be found in the column "Information from other sources" at: http://www2.ohchr.org/english/bodies/cerd/cerds77.htm

have a great impact, nor does submitting an abundance of information without a clear nexus to ICERD result in a concrete outcome.

Committee members generally seek *specific, reliable and objective information* that enables them to genuinely and independently assess the status of the implementation of ICERD in the territory of each State. In order to provide CERD with such information, civil society actors can present:

- Statistics (description on the methodology of data collection should be included, e.g. how, when, where and by whom data was collected);
- Results of academic research;
- Court cases;
- Official documents issued by authorities;
- Reliable media reports on specific cases.

In order to increase the reliability and objectivity, especially when findings of personal research are presented, cross-reference of information sources is quite useful. For example, "reliable sources said …" may be enough in journalism but not in this case. Any source referred to in the alternative report should be *precise, truthful and authentic* and allegations should never be made without firm evidence to support them.

Comments, decisions, General Recommendations and previous concluding observations adopted by CERD can be also referred to. In a similar vein, alternative reports can include references to reports and comments of:

- Other Treaty Bodies;
- UN Human Rights mechanisms e.g. Special Procedures, UPR etc.;
- NHRIs;
- Regional institutions;
- UN specialised agencies such as the ILO

As an option, civil society actors can include concrete *suggestions for questions and recommendations* that CERD members can use in the consideration of the State report concerned.

Considering the ***structure*** of the alternative report, there will be several possibilities on how to construct it. Major options for effective input are:

i. **State report oriented**
ii. **In accordance with articles of ICERD**
iii. **Issues oriented**

The *first option* is to consider each point of the State report and offer either supplementary or contradictory information. This requires thorough examination of the State report concerned and possibly a lot of time and resources. However, in this way those points or issues which are not properly or at all reflected in the State report can be highlighted. The *second option* is to collect and present information in accordance with the articles of ICERD. In this way various information and issues can be presented in a more comprehensive way and with clear connection to ICERD. This allows both CERD members and civil society actors to process information more efficiently and effectively, especially when civil society actors have jointly prepared one report or when the state report is not well structured or prepared. Cross-cutting issues and general human rights concerns can of course be included and presented as such e.g. at the beginning of the report. Specific reference to State reports should be made as often as possible so that the comparisons between the State and the alternative reports are more straightforward. The *third option* is useful for actors who are not able to bring together the necessary resources and/or whose activities are limited in certain fields or areas. A report can be prepared targeting specific issues of concern — like those affecting particular groups, or specific fields such as education, employment or working conditions. However when choosing this option, civil society actors should make it clear how the issues raised relate to specific articles of ICERD, or at least ensure that those issues fall within the scope of ICERD.

Regardless of how civil society actors construct their alternative reports, it should always be kept in mind that the *Committee is a monitoring body*, and is thus concerned with the *State party's implementation of the*

provisions set forth in ICERD. Moreover, the decision of whether and how to take up alternative reports i.e. information from civil society actors, is entirely up to the Committee members, thus an imperative or adversarial tone should be avoided.

- **Alternative contacts:**

NGOs: Alternatively civil society actors may find it useful to contact other civil society actors such as NGOs. Alternative reports jointly prepared by several organizations are often more convincing and make a greater impact. By preparing joint reports, civil society actors can avoid duplicating their work and use their knowledge, materials and resources more effectively and efficiently. Moreover, a comprehensive single report covering various issues can provide CERD members, who have to process a large amount of information in a limited time, with a clearer picture of the country situation; while separate reports dealing with the same issues may confuse experts. Civil society actors can, for example, form coalitions or (temporary) networks and coordinate their work. Coordinating work and sharing information can play a significant role in best utilising available resources and opportunities, while maximising the outcomes of their work. This is not only effective when reporting to the Committee, but in each stage of the reporting cycle e.g. lobbying and briefing CERD in Geneva and for follow-up (ref. below). International NGOs (that have an office in Geneva) who have experience in working with Treaty Bodies can also be of great help to national or local actors in this regard.

NHRIs: Although NHRIs do not exist in every country, nor share the same level of independence; they can be a unique partner for civil society actors. NHRIs can formally present their statements, with consent of respective State party, during the consideration of the State report by CERD and may have a separate closed briefing meeting with CERD members. When civil society actors choose to work with NHRIs, they can be a good contact for follow-up activities in a given country.

The Government: It often happens that the State delegation does not have data or competent staff available to answer the questions raised by Committee members. In order to facilitate the dialogue between the delegation and the Committee, and in particular to obtain tangible answers from the delegation, it may be useful for civil society actors to inform the delegation of the questions they have recommend the Committee to ask during the consideration of the State report.

Parliamentarians: This may be especially useful in States where the government is very sensitive to concerns raised by the legislature. Civil society may contact parliamentarians and indirectly lobby the government.

Media: The media can be a valuable partner in raising public awareness about ICERD and CERD in general, and more specifically about the consideration of the state report concerned. If the national media of the country concerned has a correspondent or an office in Geneva or nearby, contacts may be established with both the headquarters in the country and the correspondent. In cases where no such branch exists, it is still worth trying to encourage the national media to send a reporter to Geneva. Organisation of press briefings, conferences or any similar events can be a useful possibility for attracting media attention.

- **What can we do, if a comprehensive report cannot be prepared?**

Not all civil society actors have the time and resources to prepare a comprehensive alternative report and this can be a common obstacle especially for civil society actors at the grass-roots level. In such cases, however, it is still encouraged that, civil society actors at least consider submitting information that focuses on key issues and highlights State's non-compliance or violation of specific articles of ICERD. As stated below, submission of civil society answers to the list of themes is also an option.

Illustration 14: **Case of Australian NGO Coalition: Before the consideration of the State report**[79]

Start of the work:
The Australian NGO coalition started its substantive work, when Australia provided its periodic report to CERD. The idea was to prepare a single report in consultation with community organisations that would cover comprehensively CERD-related issues in Australia, and that could be endorsed broadly by Australian NGOs, in order to provide CERD with a single document which covers a wide range of issues and to minimise the likelihood of the Committee being provided with multiple reports and duplicated information.

Preparation of an alternative report:
First, the likely issues to be canvassed in an alternative report were identified. Then the peak bodies working with the key issues or with relevant affected communities were identified to form a Strategy Group to guide and inform the consultation. A meeting of the Strategy Group of key NGOs and experts was convened and a list of issues for the alternative report was prepared. A team was established to be primarily responsible for drafting the report. NGOs agreed that the alternative report should be developed on the basis of community consultation and evidence, and each of the Strategy Group members undertook to consult with their contacts and communities and to provide information and guidance to the drafting team in their area of interest and expertise. After a draft report was prepared, further consultation took place.

Submission of the report:
The final version of the alternative report was provided to CERD six weeks prior to the scheduled review. Six weeks was determined to be a sufficient amount of time to give CERD, particularly the country rapporteur and the secretariat, the chance to read and digest our information.

Before the CERD session:
In the months just prior to the review NGOs were in touch by email with the CERD secretariat to let them know that they were planning to provide an alternative report. They also began to build a relationship with the Australian government delegation in Australia, providing them with their materials.

d) Submitting additional information on the list of themes:[80]

As a complement (or an alternative) to other input, civil society actors can consider submitting information that specifically focuses on the list of themes which compiles themes and topics to be raised during the dialogue between the Committee and state delegation. However, concerning the fact that the list will be usually published 4 to 6 weeks before the respective session, this should be regarded as an optional submission. If civil society actors send their representatives to Geneva or have partners in Geneva, they can consider providing precise information with regard to the List of Themes directly to Committee members, especially to the Country Rapporteur, e.g. during the informal briefing (see below).

1.2 During the CERD session

If NGOs can send someone to the CERD session in Geneva, they will have the opportunity to:

- Interact with CERD members in an informal meeting at the beginning of the week;
- Organise an informal briefing to CERD members;
- Lobby CERD members;
- Observe the consideration of the State reports by CERD.

[79] Communication with Ms. Emily Howie, Director – Advocacy and Strategic Litigation, Human Rights Law Resource Centre. More information on their NGO alternative report can be found at their website: http://www.hrlrc.org.au/content/topics/equality/cerd-ngo-report-for-review-of-australia/

[80] For the list of themes, please also refer to PART II, 2.1 c) and PART III 1.1 b) of this guide.

Although civil society actors do not have the possibility to formally participate in the interactive dialogue between States and the Committee, they are highly encouraged to send their representatives to Geneva to utilise existing opportunities as much as possible. In order to *obtain access* to Palais Wilson, where the CERD session is held, civil society actors are required to contact the CERD secretariat and apply for an *accreditation* in advance.

a) Informal meeting with CERD at the beginning of the week

Since its 78th session (February/March 2011)[81] CERD holds an informal meeting with NGOs at the beginning of each week; a total of 3 hours are allocated for one meeting and NGOs can provide information on all counties that are considered by CERD in that respective week. *NGOs who wish to participate should contact the CERD secretariat before the session concerned*. At the 78th session NGOs from Bolivia and Uruguay participated in the meeting at the beginning of the first week and those from Norway, Ireland, Spain and Serbia at the beginning of the second week.[82]

These meetings are convened in the conference room where CERD has its formal sessions and *interpretation* is provided by the conference service in English, French, Spanish, Russian and Chinese.[83] Here NGOs have the opportunity to directly provide country-specific information to CERD members and receive their questions, even if NGOs and CERD members use different working languages. Depending on the number of NGOs wishing to speak, exact time given to one speaker will vary.

b) Organising an informal briefing for CERD members

Civil society actors can organise an *informal briefing* for CERD members. Usually *1 hour during the lunch break* is allocated for all those who wish to provide information on one country immediately before the consideration of the relevant State report. *In order to do so, civil society actors must first contact the CERD secretariat and request this possibility*. All Committee members are informed by the secretariat when there is a briefing, however it is an informal meeting and, thus, *up to Committee members to decide whether to actually attend or not*. Civil society actors can also choose to personally invite the Committee members to the briefing in hopes of increasing the chances of their attendance. The length of a briefing is usually 1 hour, whereas longer briefings might be organised for 1.5 hours if lunch for CERD members is provided.

Such briefings are usually held in the room next to the main conference room where CERD convenes its formal sessions. There is a *screen* and *sockets* for e.g. using lap tops to show *power point presentation*, *pictures* or *short movies*. Wireless *internet* is normally available in the room and there have been briefings where civil society actors who could not come to Geneva have participated through *skype*. It is important that there is no facility for simultaneous interpretation, so briefings should ideally be convened in one of the working languages of the Committee members, mostly *English, French or Spanish*. Organising and providing interpretation of oral presentations can be complicated for the briefing, but civil society actors can, for example, prepare short information sheets, in which key issues are summarised, in English, French and/or Spanish for those Committee members whose native language is one of these.

Committee members have stated that they have found these informal briefings to be very useful. These informal briefings provide civil society actors with the opportunity to interact directly with Committee members and present updated information, explain complicated issues, and/or to answer any questions which CERD members may raise. When more than one organisation wishes to have such a briefing, it is highly recommended that all participants cooperate with each other in order to maximise the benefit of it for all; civil society actors and CERD members alike.

[81] Decision to have this meeting was made by CERD at its 77th session in August 2010. Ref. CERD annual report 2010, A/65/18, para. 87

[82] Refer to the programme of work of CERD for its 78th session, can be found at: http://www2.ohchr.org/english/bodies/cerd/cerds78.htm

[83] Current working languages of CERD members

c) Lobbying in Geneva

Once in Geneva and after receiving accreditation, civil society actors can try to make informal contacts with the Committee members outside of the formal meeting hours. However, it must be noted that Committee members have quite a tight schedule when dealing with more than 10 State reports and other work and tasks during these three (or four) weeks.

Illustration 15: **Experience of Australian NGO Coalition: activities in Geneva**[84]

Once we arrived in Geneva, we sought to meet with the secretariat to provide them with information on the NGO delegation likely to be in Geneva for the review, to see if we could assist with any further information and to arrange an informal lunchtime briefing of the Committee. We also arranged a meeting between the NGO delegation and the Australian Mission to the UN to discuss issues in the review. This is an important element of the relationship building to support implementation and follow up after the review.

As it happened, four other NGO reports were provided to the Committee as well as a report from Australia's NHRI, the Australian Human Rights Commission. Representatives of the organisations that submitted the other reports arrived in Geneva a couple of days before the review. At that stage all the Australian NGOs in Geneva met and began a process of working cooperatively and collaboratively to brief CERD.

For the lunch time briefing, we decided to provide the Committee with lunch to enable us to increase our time with them by an extra half hour or so – so about 1.5 hours in total. It was very important to ensure that we used our limited time with the Committee in a strategic way, to ensure all relevant issues were covered and that we avoided duplication. We carefully allocated time to all speakers. It cannot be understated how difficult it is to reduce important issues to short, sharp statements for the purposes of the briefing, but also how ineffective it is to be underprepared and undisciplined with time.

To support our short oral briefing, we also created short two page fact sheets on key issues of concern that we provided to the Committee as we spoke to them. We had the fact sheets interpreted into Spanish and French, given that key members of the committee did not have English as a mother tongue. This seemed to be an effective way of increasing our influence beyond the strong English speakers.

d) Observing the CERD sessions

Civil society can attend the session of CERD as observers. The session usually takes place in the ground floor conference room at Palais Wilson in 52 rue des Pâquis in Geneva. There are a number of seats available for the observers and State reports and other printed materials are also available in the room. If possible, it is useful for civil society actors coming to Geneva to attend other consideration of State reports by CERD in order to get familiar with the process of CERD meetings. Although as observers civil society actors do not have the right to formally take part in the dialogue between states and CERD, they can directly see and even *audio record* what questions and issues the Committee members raise, how states respond thereto, and again how the Committee reacts to those replies.

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.

- **Following the session from outside Geneva:**

A press release on the consideration of a State party by CERD is usually issued on the following day[85] detailing the progress of the dialogue, however, this is not an official UN document. A "summary record" is issued as the

[84] Communication from Ms. Emily Howie, Director – Advocacy and Strategic Litigation, Human Rights Law Resource Centre

official record of each meeting held by CERD (a three-hour meeting either in the morning or afternoon is counted as one meeting). They are usually redacted and circulated one week after the respective meeting and first released in English or French. The document number of each summary record begins with CERD/C/SR. followed by the number of the meeting (e.g. summary record for CERD's 1979th meeting is CERD/C/SR.1979).[86] They can be obtained through the UN Official Document System Search,[87] or found at the CERD website on the respective session page.[88] As an option, if a representative or partner attends CERD session, civil society actors can ask that person/organisation to audio record the dialogue between the State concerned and the Committee and share it.

An official record of one whole session, consisting of concluding observations and other work or decisions made by the Committee are compiled in the Committee's annual report that covers the two respective sessions convened in the year concerned. The annual report is usually published in October or November and submitted to the UN General Assembly.

1.3 Follow-up - after the consideration of the State report concerned:

The ultimate purpose of the participation of civil society actors in the reporting cycle is not the submission of information or getting quality concluding observations from the Committee, but bringing about actual changes in society. In order to fulfil this purpose, concluding observations and recommendations of the Committee must be effectively followed up. In a similar vein the Committee itself also has its own Follow-up procedure.[89] Although the concrete steps to be taken by the State concerned and civil society actors vary from country to country, the major follow-up activities of civil society actors can be summarised as follows.

a) Monitoring implementation

Civil society actors can monitor how national governments are implementing the concluding observations or recommendations of CERD. Additionally CERD sometimes requests that States submit information before the submission of the next State report under its follow-up procedure (rule 65 of the rules of procedure of CERD).[90] Pursuant to Article 9 of ICERD and rule 65 of CERD's rules of procedures, the Committee may request the State concerned to submit an additional report or information on specific topics following the consideration of the State report. When the Committee makes this request, it usually indicates in its concluding observations the topics as well as manner and time frame (usually one year) within which the report or information should be provided. Civil society actors can also submit additional information to the Committee when monitoring the efforts of their national government in taking the necessary steps to bring about changes in the country's law, policy, and practice.

At its 64th session (2004) CERD adopted a second paragraph to rule 65, which provides for the appointment of a coordinator, in order to follow up on the concluding observations more effectively. The coordinator (or their alternative) cooperates with the respective country Rapporteur and is mandated to monitor the follow-up by States parties on the observations and recommendations of the Committee. In such cases the Committee holds closed meetings to discuss the findings of the coordinator and adopt formal recommendations or decisions on further action. The coordinator's findings are then included in CERD's annual report.

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[85] Please refer to: http://www.unog.ch/80256EDD006B9C2E/%28httpPages%29/CBD301FF98AF69B980256EE700376D86?OpenDocument

[86] For example, summary records for the consideration of Romania at CERD 77th session (2022nd meeting on 10 August pm and 2023rd meeting on 11 August am) consist of CERD/C/SR.2022 and CERD/C/SR.2023 respectively.

[87] http://www.un.org/en/documents/ods/

[88] Summary records for States considered during CERD 77th session can be found in the row of respective states and the column "Timetable" under the date of the meeting at: http://www2.ohchr.org/english/bodies/cerd/cerds77.htm. Please note that it might take longer than one week till summary records are uploaded onto the website.

[89] Please refer to PART II 2.1 f) of this guide.

[90] Please also refer to PART II 2.1 f) of this guide.

b) Lobbying the national government

Civil society actors can lobby the government in various ways e.g. contacting relevant ministries, departments, local authorities, parliamentarians and other stakeholders; and/or organising meetings, conferences, or workshops to discuss and facilitate implementation of recommendations. When ICERD and State obligations under the Convention are not familiar to stakeholders, some kind of awareness raising event and/or activities should also be organised.

Civil society actors can refer to CERD's concluding observations at other international forums such as the Human Rights Council or UPR, other Treaty Bodies' sessions, or regional forum to indirectly urge the national government to take actions.

c) Disseminating information and raising awareness

Civil society actors can inform the public and raise awareness about the Committee's concluding observations / recommendations to the State concerned not only by distributing them, but also by translating them into the national language(s) and, more importantly, into the language of ethnic or minority groups in the country. The national media can also be contacted to assist with raising awareness. For those who are not familiar with ICERD and CERD's work, briefings or any other information event can be organised. Moreover, seminars and workshops are useful to discuss actions with relevant stakeholders. It is also important to raise the awareness of national courts and other law enforcement organs / officers, so that ICERD and Committee observations can be fully implemented.

Illustration 16: **Experience of Japanese NGOs: Follow-up**[91]

After the CERD consideration of Japan in February 2010, we translated the concluding observations into Japanese and shared the translated text with all concerned groups and individuals. The text was also uploaded on the IMADR's website. Press release with the brief translation was sent to the Japanese media for their news coverage. Three newspapers and one news agency took it up and covered in their papers. Other organizations and movements that joined the coalition (named "ERD Net") also shared and reported the outcomes of the CERD consideration using their own media.

Following the dissemination of information, the ERD Net held a public meeting in May 2010 inviting those members who went to Geneva as speakers. They shared first-hand information with participants.

As a part of the follow-up, IMADR published a book in Japanese entitled "Elimination of Racial Discrimination in Japan Faces the Last-Minute Challenge" containing all the relevant documents and articles concerning the CERD consideration. It also includes the transcript of the dialogue between CERD and the Japanese government during the session. So far, about 1,000 copies were sold.

The most important in our follow-up activities rests with dialogues with the government and parliament members. ERD Net, through the coordination of IMADR, has been in contact with the Japanese government. While NGOs and the civil society welcome strong statements and recommendations made in Concluding Observations by CERD, we cannot be contended with these outcomes. We are stepping into the next challenge to discuss with the government about its observation and implementation of the recommendations. Based on the list of questions that we submitted to relevant government agencies including Ministries of Justice, Foreign Affairs, Education, Health-Welfare-Labor, and Cabinet Office, dialogues with them have started. In the meantime, we approach to members of the Diet which is also responsible to the implementation of the Convention. For us, it is specifically important to get them involved since they are usually not well informed of what are recommended by UN human rights mechanisms in regard to the implementation of human rights instruments ratified by Japan.

[91] Communication from Ms. Megumi Komori, Under-Secretary-General, IMADR / IMADR Japan Committee

2. Submitting an Individual Communication under ICERD Article 14[92]

If any right of individuals set forth in ICERD is violated, a communication can be submitted to CERD under the Individual Communications procedure. However, before considering the submission of individual communications, civil society actors have to *check whether the State concerned has made a declaration* recognising the competence of CERD to receive such communications (Article 14 of ICERD). Out of 173 States parties, 54 have recognised that competence (as of 5 July 2011, the list of 54 states is available in Annex II, 4). According to rule 91 (a) of CERD's rules of procedure, an individual or a group of individuals subject to the jurisdiction of these 54 States can invoke this procedure. *If the State concerned has not made the declaration*, civil society actors should organise activities to persuade their respective governments to recognize CERD's competence under Article 14.

2.1 Before the submission: Admissibility of the communication

Provided that the State concerned has made the necessary declaration, there are still some conditions that must be met in order for the communication to be admissible.[93] The main condition, although not the sole condition, is that *the individual or group wishing to submit a communication must have exhausted all local remedies*. However, there is an exception to this rule when the application of local remedies is unreasonably prolonged. In addition, 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.[94] In other words, where domestic remedies are ineffective and *a priori* of no avail, the rule of exhaustion of these remedies does not apply.

Normally, only the individual concerned, their relatives or designated representatives can submit a communication claiming violation of a right (or rights) set forth in the ICERD can be submitted to the Committee. 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 by themselves and the author of the communication justifies their acting on the victim's behalf. Furthermore, the communication should be submitted within six months after all available domestic remedies have been exhausted, except in the case of duly verified exceptional circumstances. Under no circumstances can the Committee consider a violation of human rights beyond the scope of ICERD.

Generally, 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 relevant national law(s). The whole process of consideration of a communication normally takes around two years.

2.2 Submitting a communication

First of all, the communication must not be anonymous or contain abusive language. According to rule 84.1 of the rules of procedure of CERD, the following information should be also included:

- 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;

[92] Please also refer to PART II 2.2 of this guide.
[93] Please also refer to PART II 2.2 a) of this guide and rule 91 of the Rules of Procedure of the CERD..
[94] Communication no. 8/1996 (B.M.S. v. Australia), paras. 6.1 and 6.2.

- 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.

Several bodies dealing with such communication developed a model format for individual communications (can be found in the Annex IV). However, it should be noted that communications are considered even when they are not submitted in the model format. In any case, it should appear at the very beginning of the communication that it is to be submitted to the CERD, so as to ensure its easy and immediate channelling to the addressee.

Contact Information

Mail: Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Fax: +41 22 917 9022 (particularly for urgent matters)
Email: tb-petitions@ohchr.org

2.3 After the submission

When a communication is submitted to the Committee, its admissibility is considered first. If all the formal requirements are met and the communication is decided to be admissible, the Committee confidentially transmits the text of the communication and other relevant information to the State party concerned. The identity of the individual is not revealed, unless they have given their consent. At the same time, the petitioner is also informed that the communication has been decided as admissible.

When a communication is considered admissible, the Committee examines whether there are any violation of rights set forth in ICERD. If the information provided to the Committee is not sufficient to get a complete picture of the situation, the Committee may ask the petitioner to give clarification or request more information within an appropriate time limit. During the consideration of a communication on its merits, CERD may ask the State concerned to take interim measures to avoid possible irreparable damage to the person(s) who claim to be victim(s) of the alleged violation. According to its rules of procedure CERD may also invite the petitioner or their representatives and the representatives of the State concerned to be present at the examination of the Communication in order to provide additional information. However, so far the Committee has never used oral hearings. Finally the Committee will formulate its opinion (with suggestions and recommendations) and send it to the petitioner and to the State party concerned.[95]

It is as equally important that civil society actors follow up on CERD's suggestions and recommendation after this process as they do after the consideration of a State reports. This can be done in various ways e.g. monitoring government efforts in their implementation, and communicating with CERD's Rapporteur on Follow-up through its secretariat.

The opinion, suggestion or recommendation of the Committee should not, however, be confused with the jurisdiction of a court. A judgment of a court is legally binding, while suggestions and recommendations 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 should be respected and complied with by the State party concerned.

[95] For more detailed working method / procedure of the Committee under this procedure, please refer to PART II 2.3 of this guide.

3. Early Warning measures and Urgent Procedures

Civil society actors can submit information on situations to which attention of CERD should be drawn under its early warning and urgent action procedure. Consistent with submissions given to the Committee during the course of the State reporting cycle, and as individual communications, information should be fact based, non-adversarial and as concise and precise as possible. There is no fixed or model format for information submission under this procedure, however, the revised guidelines of 2007[96] can be used as a reference. There are indicators that have been set out by the Committee according to which CERD collects information and considers the situation. These indicators can also be used by civil society actors when collecting and presenting information on a particular situation which requires the attention of CERD and its urgent action. The indicators are outlined in this guidebook, PART II, 2.3 a) in page 20 and 21. In providing information, civil society actors may also suggest what kind of actions should be taken by the State concerned.

4. Thematic Discussions

CERD regularly holds thematic discussions[97] on issues related to racial discrimination and ICERD. Civil society actors can submit written information on the subject of each discussion. In addition, civil society actors are allowed to orally express their views on the subject during the discussion. Usually the time allocated for each civil society actor for an oral intervention is 5 minutes. Those who wish to make such oral intervention should inform the CERD secretariat and provide one electronic version and 20 hard copies of their intervention.

[96] Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18), annex III, the version in English, French and Spanish can be found at: http://www2.ohchr.org/english/bodies/cerd/early-warning.htm

[97] Please also refer to PART II 2.5 of this guide.

Annexes

Annex I: Status of the Convention[98] (As of 5 July 2011)

1. Number of Signatories and States Parties

Signatories: 85, States parties: 174

2. States Parties and Signatories[99]

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

[98] United Nations Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en,

[99] States which have signed but not yet acceded to the Convention are indicated with (s)

3. States Parties' Reservations (or Declarations) to the ICERD

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 texts of all the reservations (and declarations) made by States parties to ICERD can be found at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en.

Article 1	**UK** 1(1)
Article 2	**FIJI**; **MONACO** 2(1); **SWITZERLAND** 2(1)(a); **UK**; **USA** 2(1), 2(1)(c), 2(1)(d)
Article 3	**FIJI**; **UK**; **USA**
Article 4	**ANTIGUA AND BARBUDA** 4(a), 4(b), 4(c); **AUSTRALIA** 4(a); **AUSTRIA** 4(a), 4(b), 4(c); **BAHAMAS** 4(a), 4(b), 4(c); **BARBADOS** 4(a), 4(b), 4(c); **BELGIUM** 4(a), 4(b), 4(c); **FIJI** 4(a), 4(b), 4(c); **FRANCE**; **IRELAND** 4(a), 4(b), 4(c); **ITALY**; **JAPAN** 4(a), 4(b); **MALTA** 4(a), 4(b), 4(c); **MONACO**; **NEPAL** 4(a), 4(b), 4(c); **PAPUA NEW GUINEA** 4(a), 4(b), 4(c); **SWITZERLAND**; **THAILAND** 4(a), 4(b), 4(c); **TONGA** 4(a), 4(b), 4(c); **UK** 4(a), 4(b), 4(c); **USA**
Article 5	**FIJI** 5(c), 5(d)(v), 5(e)(v); **TONGA** 5(d)(v); **UK** 5(c), 5(d)(v), 5(e)(v); **USA**
Article 6	**FIJI**; **FRANCE**; **ITALY**; **MALTA**; **NEPAL**; **TONGA**; **UK**
Article 7	**USA**
Article 15	**FIJI**; **FRANCE**; **TONGA**; **UK**
Article 17	**AFGHANISTAN**; **BELARUS** 17(1); **BULGARIA** 17(1); **HUNGARY** 17(1); **MONGOLIA** 17(1); **POLAND** 17(1); **ROMANIA**; **RUSSIAN FEDERATION** 17(1); **UKRAINE** 17(1); **VIET NAM** 17(1); **YEMEN** 17(1)
Article 18	**AFGHANISTAN**; **BULGARIA** 18(1); **HUNGARY** 18(1); **POLAND** 18(1); **ROMANIA**; **VIET NAM** 18(1); **YEMEN** 18(1)
Article 20	**FIJI**; **TONGA**; **UK**
Article 22	**AFGHANISTAN**; **BAHRAIN**; **CHINA**; **CUBA**; **EGYPT**; **EQUATORIAL GUINEA**; **INDIA**; **INDONESIA**; **IRAQ**; **ISRAEL**; **KUWAIT**; **LEBANON**; **LIBYAN ARAB JAMAHIRIYA**; **MADAGASCAR**; **MOROCCO**; **MOZAMBIQUE**; **NEPAL**; **SAUDI ARABIA**; **SYRIAN ARAB REPUBLIC**; **THAILAND**; **TURKEY**; **USA**; **VIET NAM**; **YEMEN**

4. States Parties that have made a Declaration recognising the competence of the CERD under Art. 14 of the ICERD

(The first ten declarations recognizing the competence of the Committee on the Elimination of Racial Discrimination took effect on 3 December 1982, date of the deposit of the tenth declaration, according to Article 14, paragraph 1 of the Convention.)

Algeria (12 Sep 1989)
Andorra (22 Sep 2006)
Argentina (05 Feb 2007)
Australia (28 Jan 1993)
Austria (20 Feb 2002)
Azerbaijan (27 Sep 2001)
Belgium (10 Oct 2000)
Bolivia (14 Feb 2006)
Brazil (17 Jan 2002)
Bulgaria (12 May 1993)
Chile (18 May 1994)
Costa Rica (08 Jan 1974)
Cyprus (30 Dec 1993)
Czech Republic (11 Oct 2000)
Denmark (11 Oct 1985)
Ecuador (18 March 1977)
Estonia (21 July 2010)
Finland (16 Nov 1994)
France (16 Aug 1982)
Georgia (30 June 2005)
Germany (30 Aug 2001)
Hungary (13 Sep 1989)
Iceland (10 Aug 1981)
Ireland
Italy (05 May 1978)
Kazakhstan (29 May 2008)
Liechtenstein (18 March 2004)
Luxembourg (22 July 1996)
Malta (16 Dec 1998)
Mexico (15 March 2002)
Monaco (06 Nov 2001)
Montenegro (confirmed upon succession)
Morocco (19 Oct 2006)
Netherlands
Norway (23 Jan 1976)
Peru (27 Nov 1984)
Poland (01 Dec 1998)
Portugal (02 March 2000)
Republic of Korea (05 March 1997)
Romania (21 March 2003)
Russian Federation (01 Oct 1991)
San Marino (22 Feb 2008)
Senegal (03 Dec 1982)
Serbia
Slovakia (17 March 1995)
Slovenia (10 Nov 2001)
South Africa
Spain (13 Jan 1998)
Sweden
Switzerland (19 June 2003)
The former Yugoslav Republic of Macedonia (22 Dec 1999)
Ukraine (28 July 1992)
Uruguay (11 Sep 1972)
Venezuela (Bolivarian Republic of) (22 Sep 2003)

(*Total 54 States*)

5. States Parties that have NOT made Declaration recognising the competence of the CERD to consider individual communication

Afghanistan	Egypt	Liberia	Sri Lanka
Albania	El Salvador	Libyan Arab Jamahiriya	St. Kitts and Nevis
Antigua and Barbuda	Equatorial Guinea	Lithuania	St. Lucia
Armenia	Eritrea	Madagascar	St. Vincent and the Grenadines
Bahamas	Ethiopia	Malawi	Sudan
Bahrain	Fiji	Maldives	Suriname
Bangladesh	Gabon	Mali	Swaziland
Barbados	Gambia	Mauritania	Syrian Arab Republic
Belarus	Ghana	Mauritius	Tajikistan
Belize	Greece	Mongolia	Thailand
Benin	Guatemala	Mozambique	Timor-Leste
Bosnia and Herzegovina	Guinea	Namibia	Togo
Botswana	Guinea-Bissau	Nepal	Tonga
Burkina Faso	Guyana	New Zealand	Trinidad and Tobago
Burundi	Haiti	Nicaragua	Tunisia
Cambodia	Holy See	Niger	Turkey
Cameroon	Honduras	Nigeria	Turkmenistan
Canada	India	Oman	Uganda
Cape Verde	Indonesia	Pakistan	UAE
Central African Republic	Iran	Panama	UK
Chad	Israel	Papua New Guinea	Tanzania
China	Jamaica	Paraguay	USA
Colombia	Japan	Philippines	Uzbekistan
Comoros	Jordan	Qatar	Viet Nam
Congo	Kenya	Republic of Moldova	Yemen
Côte d'Ivoire	Kuwait	Rwanda	Zambia
Croatia	Kyrgyzstan	Saudi Arabia	Zimbabwe
Cuba	Lao PDR	Seychelles	
Democratic Republic of Congo	Latvia	Sierra Leone	(*Total 120 States*)
Dominican Republic	Lebanon	Solomon Islands	
	Lesotho	Somalia	

Annex II: Individual complaints considered by CERD under Article 14 of ICERD (As of 14 March 2011)

(Source: Office of the United Nations High Commissioner for Human Rights: Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, Statistical survey of individual complaints considered, http://www2.ohchr.org/english/bodies/cerd/procedure.htm, edited by the author)

States*	Living Cases	Concluded Cases				Total
		Inadm.	Discont.	Views**		
				Yes	No	
Australia	1	3	0	0	4	8
Denmark	2	8	0	4	6	20
France	0	1	0	0	1	2
Germany	0	1	0	0	0	1
Netherlands	0	0	0	2	1	3
Norway	0	1	0	1	1	3
Russian Federation	1	0	0	0	0	1
Serbia	0	0	0	1	0	1
Slovakia	0	0	0	2	1	3
Sweden	0	3	0	0	0	3
Total	4	17	0	10	14	45
		41				

*Only those states on which consideration of individual complaints are recorded are listed.
** Whether cases disclose violations or not

Annex III: Model Complaint Form for an Individual Communications under ICERD

(Ref. Model questionnaires for communications or complaints at:
http://www2.ohchr.org/english/bodies/docs/annex1.pdf)

Contact Information:
Mail: Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Fax: +41 22 917 9022
(particularly for urgent matters)
Email: tb-petitions@ohchr.org

The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses

Invoking individual complaint procedure under International Convention on the Elimination of Racial Discrimination (ICERD),

Communication to: Committee on the Elimination of Racial Discrimination (CERD)

DATE: ……

I. Information on the complainant:

Name: …… First name(s): …….
Nationality: …… Date and place of birth: …….
Address for correspondence on this complaint: ……..

Submitting the communication:
on the author's own behalf: ……..
on behalf of another person: ……..

[If the complaint is being submitted on behalf of another person:]

Please provide the following personal details of that other person
Name: …… First name(s): ……..
Nationality: …… Date and place of birth: ……..
Address or current whereabouts: …….

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint ……
Or
If you are not so authorized, please explain the nature of your relationship with that person: ……
and detail why you consider it appropriate to bring this complaint on his or her behalf: ……..

II. State concerned/Articles violated

Name of the State that has made the relevant declaration: ……

Articles of the Covenant or Convention alleged to have been violated: ……

III. Exhaustion of domestic remedies/Application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:
……..

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail: ……

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)? ……

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes: ……

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.
…….
…….
…….
Author's signature: ……

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization): ……..
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful): ……..
- Complaints to and decisions by any other procedure of international investigation or settlement: ……..
- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights: …..…

If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the Secretariat, the consideration of your complaint may be delayed.

Annex IV: List of General Recommendations issued by CERD (As of 5 July 2011)

(Source: Office of the United Nations High Commissioner for Human Rights: Committee on the Elimination of Racial Discrimination – General Comments. At: http://www2.ohchr.org/english/bodies/cerd/comments.htm[100])

NUMBER	SUBJECT	SESSION (YEAR)
1	States parties' obligations (Art. 4)	5th Session (1972)
2	States parties obligations (Art. 9)	5th Session (1972)
3	Apartheid (Art. 3)	6th Session (1972)
4	Demographic composition of the population (Art. 9)	8th Session (1973)
5	Reporting by States parties (Art. 7)	15th Session (1977)
6	Overdue reports (Art. 9)	25th Session (1982)
7	Legislation to eradicate racial discrimination (Art. 4)	32nd Session (1985)
8	Identification with a particular racial or ethnic group (Art. 1, par.1 & 4)	38th Session (1990)
9	Independence of experts (Art. 8, par.1)	38th Session (1990)
10	Technical assistance	39th Session (1991)
11	Non-citizens (Art. 1)	42nd Session (1993)
12	Successor states	42nd Session (1993)
13	Training of law enforcement officials in the protection of human rights	42nd Session (1993)
14	Definition of discrimination (Art. 1, par.1)	42nd Session (1993)
15	Organized violence based on ethnic origin (Art. 4)	42nd Session (1993)
16	References to situations existing in other States (Art. 9)	42nd Session (1993)
17	Establishment of national institutions to facilitate implementation of theConvention	42nd Session (1993)
18	Establishment of an international tribunal to prosecute crimes against humanity	44th Session (1994)
19	Racial segregation and apartheid (Art. 3)	47th Session (1995)
20	Non-discriminatory implementation of rights and freedoms (Art. 5)	48th Session (1996)
21	Right to self-determination	48th Session (1996)
22	Art. 5 and refugees and displaced persons	49th Session(1996)
23	Indigenous Peoples	51st Session (1997)
24	Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1)	55th Session (1999)
25	Gender related dimensions of racial discrimination	56th Session (2000)
26	Art. 6 of the Convention	56th Session (2000)
27	Discrimination against Roma	57th Session (2000)
28	The follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	60th Session (2002)
29	Art. 1, par.1 of the Convention (Descent)	61st Session (2002)
30	Discrimination against Non Citizens	(2004)
31	Prevention of racial discrimination in the administration and functioning of the criminal justice system	(2005)
32	Meaning and scope of special measures in the ICERD	75th Session (2009)
33	Follow-up to the Durban Review Conference	75th Session (2009)

[100] Text of each recommendation can be found here too.

Useful addresses and sources

Information on ICERD

Text of the Convention: http://www2.ohchr.org/english/law/cerd.htm
Text of the Convention in PDF: http://www2.ohchr.org/english/law/pdf/cerd.pdf

States parties to ICERD including the reservations and declarations made by them:
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

Information on CERD

Main page: http://www2.ohchr.org/english/bodies/cerd/index.htm

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

General Recommendations: http://www2.ohchr.org/english/bodies/cerd/comments.htm

Letters sent and decisions made by CERD through Early Warning and Urgent Action procedure:
http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about

CERD Secretariat contact: http://www2.ohchr.org/english/bodies/cerd/contact.htm

Model complaint form for the individual communication:
http://www2.ohchr.org/english/bodies/docs/annex1.pdf

UN petition team for submitting individual communications:

Postal Address:	Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10, Switzerland
Fax:	+41 22 917 9022 (particularly for urgent matters)
Email:	tb-petitions@ohchr.org

General Information on the UN Treaty Body System

OHCHR, "Human Rights Treaty Bodies": http://www2.ohchr.org/english/bodies/treaty/index.htm

International Service for Human Rights, "Simple Guide to the UN Treaty Bodies":
www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies

UN Documents

UN Official Documents System Search: http://www.un.org/en/documents/ods/

UN Treaty Body Documents: http://tb.ohchr.org/default.aspx

IMADR

ABOUT IMADR

IMADR is an international non-profit, non-governmental human rights organization devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system. Founded in 1988 by one of Japan's largest minorities, the Buraku people, IMADR has grown to be a network of concerned individuals and minority groups with regional committees and partners in different countries in Asia, Afrcia, Europe, North, Central and Latin America. IMADR's International Secretariat is based in Japan and maintains a UN liaison office in Geneva. IMADR is in consultative status with the United Nations Economic and Social Council (ECOSOC).

IMADR'S CORE VALUES

EMPOWERMENT: To promote the capacity of discriminated groups to raise their voices and represent themselves in activities to combat discrimination.

SOLIDARITY: To promote cooperation and solidarity among discriminated people in ways that rise above regional, national and gender differences.

ADVOCACY: To promote implementation of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, through the voice and power of discriminated groups, and strengthen legal standards, institutions and organs for the elimination of discrimination and racism; to promote their effective use by the discriminated.

WHAT IMADR DOES

IMADR's primary focus is to combat racism, racial discrimination and multiple discrimination (in particular, discrimination based on both race and gender) and our activity are aimed at:

- Eliminating discrimination based on work and descent
- Eliminating exploitative migration & trafficking in women & children
- Upholding the rights of indigenous peoples
- Upholding the rights of minorities
- Eliminating racial discrimination in the administration of justice
- Strengthening international human rights protection mechanisms for the elimination of discrimination and racism, and promoting their effective use by the discriminated

IMADR's activities include developing grassroots movements around the world together with local partner organizations, and building links between minority communities. Through local, regional and international events, IMADR also builds awareness that discrimination and racism are not just problems for minorities, but for society as a whole.

IMADR has been instrumental in raising awareness of international instruments and mechanisms to combat discrimination, and is one of the few NGOs that place special emphasis on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the only legally binding global instrument that comprehensively addresses racial discrimination.

IMADR lobbies at UN meetings and major world conferences, linking grassroots minority groups with UN human rights bodies and mechanisms. Through its regional committees and local partners, IMADR also advocates for the rights of discriminated groups at the local level.

WHAT YOU CAN DO WITH US

In order to eliminate racism and racial discrimination, there are several things you can do with IMADR:

- Utilise and promote ICERD and CERD's work
- Disseminate and promote this Guide
- Translate this Guide into local languages
- Join our network

In order to know more about IMADR and help us:

- Subscribe to IMADR's monthly E-news E-Connect
- Purchase IMADR's publications (visit www.imadr.org for listing)
- Join IMADR and work with us
- Conduct internship
- Make donations

ICERD and CERD: A Guide for Civil Society Actors

Prepared by Daisuke SHIRANE (IMADR Geneva Office)

This Guide is prepared in order to provide practical information to civil society actors, e.g. NGOs, minority groups, indigenous peoples, and especially those who are facing various issues of racial discrimination in their society. It provides information on: ICERD, the Convention (PART I); the work of CERD (PART II); and how civil society actors can engage with them (PART III).

This book should serve as a practical tool for all those who want to learn about ICERD and CERD, and in paticular those who seek to effectively utilise ICERD and engage with CERD in order to combat all forms of racial discrimination on the ground. It can also be used as a tool in human rights teaching and training.

It is our pleasure, if this publication could help you in your combat against racism and racial discrimination and we hope you find it useful. You can also download an electronic version of the Guide at our website: www.imadr.org. Any updated and related information on ICERD, CERD and our work can be found there too.

www.imadr.org

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