

# The Petition System under the International Convention on the Elimination of All Forms of Racial Discrimination

## A Sobering Balance-sheet

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### I. Introduction

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the United Nations General Assembly in 1965,<sup>1</sup> was the first human rights treaty approved by the United Nations to be equipped with its own mechanism of international supervision. It established in article 8 para.1 a Committee on the Elimination of Racial Discrimination (CERD) with the following tasks: to consider periodic reports submitted by the States parties (article 9), to receive state to state complaints (arts 11–13, a procedure not resorted to as yet), and to receive and consider communications from individuals or groups of individuals (article 14). It is this communications procedure, set forth in article 14 of the Convention which is the subject matter of this article. Article 14 of ICERD was the outcome of lengthy and complex negotiations in the UN General Assembly in 1965.<sup>2</sup> Its inclu-

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<sup>1</sup> A/RES/2106 A (XX) of 21 December 1965.

<sup>2</sup> Article 14 as an optional clause was adopted in the Third Committee of the UN General Assembly by 66 votes in favour, none against and 19 abstentions (East European countries, some Afro-Asian states and France). See Th.C. van Boven, "The Convention on the Elimination of All Forms of

sion in the Convention was made possible because of its optional character: States parties are only bound by the communications procedure after they have made an explicit declaration in which they recognize the competence of CERD to receive and consider communications.<sup>3</sup>

Article 14 of ICERD served as a precedent for similar provisions to be included in later years in other legal international instruments, notably the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR),<sup>4</sup> article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>5</sup> (CAT), and most recently the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>6</sup>

It should be noted that article 14 did more to serve as a breakthrough and a precedent in connection with other international legal instruments than as an international recourse procedure for victims of racial discrimination. As will be pointed out, article 14 is one of the most under-utilized provisions of ICERD. In this respect it is quite telling that a monograph of some 350 pages written by a long-standing member of the Committee who reviewed and appraised the work the Committee performed until 1995, devoted fewer than three pages to article 14 issues.<sup>7</sup> This article will try to uncover some of the largely hidden features of article 14 but it certainly cannot transform a dwarf into a giant. Why did article 14 of ICERD remain a provision of minor significance (up to now there have been just seventeen communications, compared to the several hundreds of the Human Rights Committee) while other treaty-based communications procedures have taken on much more significance.<sup>8</sup> What prevented article 14 from gaining breadth and vitality. Answers to these questions will be more tentative than conclusive.

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Racial Discrimination", *International Spectator* 20 (1966), 655 et seq., (665–666).

<sup>3</sup> The text of article 14 is reproduced in an Annex to this paper.

<sup>4</sup> A/RES/2200 A (XXI) of 16 December 1966.

<sup>5</sup> A/RES/39/46 of 10 December 1984.

<sup>6</sup> A/RES/54/4 of 10 December 1999.

<sup>7</sup> Michael Banton, *International Action Against Racial Discrimination*, 1996, 156–158.

<sup>8</sup> See in this respect note 24.

## II. Origins of Article 14

Article 14 gives the Committee the power, once it has declared a communication admissible, to consider such communication in the light of all information made available to it by the State party concerned and by the petitioner (para. 7 lit.(a)) and to forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner (para. 7 lit.(b)). This implies that the Committee has substantive duties in examining communications and formulating its views which may include suggestions and recommendations. These powers of CERD are considerably stronger than those envisaged in earlier proposals put forward during the drafting stage in the UN General Assembly. Such earlier proposals would have given the Committee no more than a sort of letterbox-function to the effect that it would merely forward the communications to States parties concerned without the requirement of any further action.<sup>9</sup> In fact, to make a stronger version of article 14 more widely acceptable, the compromise solution was reached that the communications procedure would be optional. This means that the procedure only applies to those States parties which have made the declaration that they recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within their jurisdiction who claim to be victims of a violation by those States parties of any of the rights set forth in the Convention (article 14 para. 1). Another feature of article 14 intended to accommodate those who had reservations against an international right of petition, was the inclusion of a rather complicated provision with a view to making — also on an optional basis — a national body the competent organ to receive and consider petitions before the matter could be referred to CERD (article 14 paras 2–5).<sup>10</sup>

A notable political factor that facilitated the inclusion of a communication procedure in the Convention was the wish of many Afro-Asian countries to make the Convention an effective instrument in the struggle against colonialism and apartheid, taking into account the clear

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<sup>9</sup> Van Boven, see note 2, 665.

<sup>10</sup> See also T. Meron, "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination", *AJIL* 79 (1985), 283 et seq. As Meron quite rightly argues (at pp. 313–314) and as been confirmed by actual practice, the indication and existence of an internal body is optional and not a precondition for setting into motion the procedure to seize the international body (CERD).

connection that existed between racism and colonialism. In fact, the right of petition was regarded as an important device in the international trusteeship system and in decolonization procedures<sup>11</sup> and it was against this background that this device found its logical place in the Convention. Similar considerations and the same background led to the inclusion of article 15 dealing with petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly Resolution 1514 (XV) of 14 December 1960 — the Declaration on the Granting of Independence to Colonial Countries and Peoples — applies. In fact, article 15 has now lost most of its significance since only a few Non-Self-Governing Territories are left, the majority of which are small. Moreover, the Committee has for many years not received any copies of petitions pursuant to article 15 para. 2 lit.(a).<sup>12</sup>

### III. Some Significant Aspects of Article 14

The communications procedures provided for in article 14 of ICERD, in the Optional Protocol to ICCPR, in article 22 of CAT and in the Optional Protocol to CEDAW contain many similar features, in particular as regards the admissibility requirements set out in these legal instruments and elaborated in the Rules of Procedure. These have been amply discussed and reviewed elsewhere.<sup>13</sup> For present purposes three distinct aspects of article 14 will be highlighted. The first pertains to the authors of the communications. Article 14 ICERD refers to “individuals or groups of individuals” claiming to be victims of a violation, whereas article 1 of the Optional Protocol to ICCPR and article 22 CAT make reference to “individuals” only.<sup>14</sup> Consequently, article 14 CERD explicitly provides for the possibility that groups initiate a procedure alleging violation of any of the rights of the Convention.

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<sup>11</sup> See A/RES/1514 (XV) of 14 December 1960 and 1654 (XVI) of 27 November 1961.

<sup>12</sup> See the Committee’s Annual Reports for 1998 and 1999 (Doc. A/53/18 para. 489 and Doc. A/54/18, para. 555).

<sup>13</sup> See, *inter alia*, M. O’Flaherty, *Human Rights and the UN Practice Before the Treaty Bodies*, 1996, in particular Chapter IV, 7 concerning the communications procedure of CERD, (104–109).

<sup>14</sup> But the Optional Protocol to CEDAW also refers to “individuals or groups of individuals” (article 2).

A second distinct aspect of article 14 is that CERD is not prevented from considering communications which are being or have been examined under another procedure of international investigation or settlement.<sup>15</sup> A third significant aspect is that CERD may forward, at the end of the examination of the merits of the communication, its "suggestions and recommendations" to the State party concerned and to the petitioner(s) rather than merely its "views" as is provided for in the Optional Protocol to ICCPR (article 5 para. 4) and CAT (article 22 para.7).<sup>16</sup> Although the respective treaty bodies (Human Rights Committee and Committee against Torture), have interpreted the term "views" in a broad sense, so as to include requests for reparations and follow-up measures, CERD has, as will be shown, a wider discretion and may indicate to the State party concerned such suggestions and recommendations which would go beyond the question whether the Convention has been violated in the individual case, with broader policy implications.

#### IV. The Dismal Record of Article 14

Article 14 para. 9 provides that CERD shall only be competent to exercise its functions under this article when at least ten States parties to the Convention have made the declaration in accordance with para. 1 of the article.<sup>17</sup> While the Convention itself entered into force as early as 4 January 1969 (which was the thirtieth day after the deposit of the twenty-seventh instrument of ratification pursuant to article 19 para. 1 ICERD), it was only on 3 December 1982 that a tenth State party (Senegal) made the declaration under article 14 para. 1 and thus opened up the possibility to utilize the communications procedure against any of the ten States parties which had made the declaration. Finally, CERD began its work under article 14 at its 13th Sess., in 1984. The pace of acceptance of the article 14 procedure is slow and disappointing. As pointed out, more than thirteen years passed after the entry into force

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<sup>15</sup> See in this respect article 5 para. 2 lit.(a) Optional Protocol; article 22 para. 4 lit.(a) CAT and article 4 para. 2 lit.(a) CEDAW.

<sup>16</sup> It is significant to note that the Optional Protocol to CEDAW uses in this respect the terms "views together with its recommendations" (article 7 para. 3).

<sup>17</sup> See in this respect article 22 para. 8 CAT where the number is five; article 16 CEDAW and article 9 Optional Protocol both require ten instruments.

of ICERD before the crucial number of ten acceptances was reached in 1982. It took another twelve before, in 1994, the twentieth State party (Chile) made the declaration, and on 31 December 1999 only 29 out of 155 States parties had accepted the article 14 procedure. These 29 states are geographically distributed as follows: Africa 3, Asia 2, Latin America 5, Western Europe and Others 12, Eastern Europe 7.<sup>18</sup>

Equally disappointing is the modest number of communications received and considered under article 14. At the time of writing only seventeen communications have been or are under consideration by the Committee.<sup>19</sup> Seven cases have been concluded with an opinion on the merits.<sup>20</sup> Three cases have been declared inadmissible.<sup>21</sup> Two cases have been declared admissible and have been transmitted to the State party concerned for comments on the merits<sup>22</sup> and five cases are still in the pre-admissibility stage.<sup>23</sup> On the positive side it should be noted that

<sup>18</sup> *Africa*: Algeria, Senegal, South Africa; *Asia*: Cyprus, Republic of Korea; *Latin America*: Chile, Costa Rica, Ecuador, Peru, Uruguay; *Western Europe and Others*: Australia, Denmark, Finland, France, Iceland, Italy, Luxembourg, Malta, Netherlands, Norway, Spain, Sweden; *Eastern Europe*: Bulgaria, Hungary, Macedonia, Poland, Russian Federation, Slovakia, Ukraine.

<sup>19</sup> See the Committee's Annual Report for 1999 (Doc. A/54/18, Chapter IV).

<sup>20</sup> Communication No. 1/1984 (*Yilmaz-Dogan v. The Netherlands*), see the Committee's Annual Report for 1988 (Doc. A/43/18, Annex IV); Communication No. 2/1989 (*Demba Talibe Diop v. France*), see the Committee's Annual Report for 1991 (Doc. A/46/18, Annex VIII); Communication No. 3/1991 (*Michel L.N. Narrainen v. Norway*), see the Committee's Annual Report for 1994 (Doc. A/49/18, Annex IV); Communication No. 4 /1991 (*L.K. v. Netherlands*), see the Committee's Annual Report for 1993 (Doc. A/48/18, Annex IV); Communication No. 6/1995 (*Z.U.B.S. v. Australia*), see the Committee's Annual Report for 1999 (Doc. A/54/18, Annex III); Communication No. 8/1996 (*B.M.S. v. Australia*), see the Committee's Annual Report for 1999 (Doc. A/54/18, Annex III); Communication No. 10/1997 (*Ziad Ben Ahmed Habassi v. Denmark*), see the Committee's Annual Report for 1999 (Doc. A/54/18, Annex III).

<sup>21</sup> Communication No. 5/1994 (*C.P. v. Denmark*), see the Committee's Annual Report for 1995 (Doc. A/50/18 Annex VIII); Communication No. 7/1995 (*Barbaro v. Australia*), see the Committee's Annual Report for 1997 (Doc. A/52/18 Annex III); Communication No. 9/1997 (*D.S. v. Sweden*), see the Committee's Annual Report for 1998 (Doc. A/53/18, Annex III).

<sup>22</sup> Communications No. 11/1998 and No. 13/1998.

<sup>23</sup> Communications No. 12/1995; No. 14/1998; No. 15/1998; No. 16/1999; No. 17/1999.

there is a certain increase in the frequency of communications addressed to CERD (see notes 20–23). However, these facts and figures do not offer an impressive picture, in particular when they are compared with corresponding data concerning the optional communications procedures under other international human rights treaties.<sup>24</sup> This unfavourable state of affairs will require some explanation or assessment which will be attempted in the final remarks of this paper.

Finally, in the context of facts and figures, attention must be drawn to the fact that from among the 29 States parties which have made the declaration under article 14, only two states i.e. Luxembourg and South Africa, have indicated a national body to receive and consider communications pursuant to article 14 paras 2–5. In Luxembourg it is the *ad hoc* Standing Committee against Discrimination set up in May 1996 under article 24 of the Act of 27 July 1993 on the integration of aliens.<sup>25</sup> When asked about the implications of the declaration made under article 14 para. 2 in relation to the declaration made under article 14 para. 1, and in particular whether petitioners should first have resort to the national body before referring their claims to CERD, the representative of Luxembourg replied that in making the declaration under para. 2, there had been no intention to limit the access of persons under Luxembourg jurisdiction to CERD. He would welcome further feedback and would keep the Committee informed of subsequent developments.<sup>26</sup> When South Africa ratified the Convention on 10 December 1998 it made both declarations under article 14 para. 1 and 2 and this State party indicated that the South African Human Rights Commission is the body which shall be competent to receive and consider petitions. Pending the

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<sup>24</sup> According to - its Annual Report to the 54th Sess. of the UN General Assembly (1999) the Human Rights Committee has received as from the start of its work under the Optional Protocol – 873 registered communications. Of these 873 communications 328 were concluded by Views of the Committee, 267 were declared inadmissible, 129 were discontinued or withdrawn, 149 are not yet concluded of which 38 have been declared admissible (Doc. A/54/40, para. 385). The Committee against Torture has received 133 registered communications. Of these communications 34 were concluded by Views of the Committee, 28 were declared inadmissible, 38 were discontinued, 33 are pending at the pre-admissibility stage (Annual Report of the Committee against Torture to the 54th Sess. of the UN General Assembly (1999), (Doc. A/54/44, para. 238).

<sup>25</sup> 9th Periodic Report of Luxembourg, Doc. CERD/C/277/Add. 2, para. 110.

<sup>26</sup> Doc. CERD/C/SR.1194, paras 20 and 32.

submission and consideration of South Africa's initial report pursuant to article 9 para. 1 of the Convention, no further information is as yet available about the operation of the national procedure.

## V. CERD's Attitude towards Article 14

Since CERD agreed in 1991, like other treaty bodies, to adopt after the consideration of each report of a State party a collective statement in the form of "concluding observations", it developed a practice of including in the concluding observations some reference to article 14. When a State party has made the declaration under para. 1, the Committee may express its satisfaction and when a State party indicates its willingness to consider making the declaration, the State party would be encouraged to take the necessary steps. In other instances, when a State party leaves it open whether it would accept the right of petition under article 14, the Committee occasionally recommends or suggests that the State party considers making the declaration. Since some members of the Committee made efforts that such recommendations or suggestions be included more consistently in the concluding observations with regard to each State party that had not made the declaration under article 14 para. 1, this issue led time and again to controversies between these members and a few other members who opposed such inclusion with the argument that the provision of article 14 was deliberately made optional and that states need not be reminded of this provision. Given the fact that the concluding observations reflect the collective opinion of the Committee and that they are adopted by consensus, a standard formula was finally worked out in order to accommodate the conflicting views. This standard formula, reflecting conspicuously the discord that exists among members, is now included in the concluding observations relating to many States parties.

It reads:

"It is noted that the State Party has not made the declaration provided for in Article 14 of the Convention and *some* (emphasis added) members of the Committee requested that the possibility of such declaration be considered."<sup>27</sup>

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<sup>27</sup> See for instance the Report of CERD to the 54th Sess. of the General Assembly (1999), Doc. A/54/18, para. 44 (Austria); para. 105 (Portugal); para. 182 (Syrian Arab Republic); para. 227 (Kuwait); para. 250 (Mongolia); para.

It is genuinely regrettable that CERD as a custodian of the Convention is unable to take a common and solid stand on this issue. It is an anomaly that the body whose task it is to monitor the implementation of the Convention devaluates a strategic, though optional, provision of the Convention whilst the UN General Assembly in its annual resolutions on the work of CERD and the status of the Convention expresses itself in an undivided manner:

“Requests States Parties to the Convention that have not yet done so to consider the possibility of making the declaration provided for in Article 14 of the Convention.”<sup>28</sup>

Some States parties which have not made the declaration under article 14 announce their positive intentions and many others prefer to remain uncommitted or silent on the matter. However, a few States parties clearly state their intention not to accept the communications procedure under article 14. A clear illustration of this is the position of the United Kingdom. This State party argued in its 14th periodic report (22 August 1996):

“... it does not believe that the making of such a declaration, which is optional under the Convention, would significantly enhance the nature of the existing legal framework for protecting the individual from racial discrimination in the United Kingdom. The overall effect of the various remedies, which include compensation, available within the United Kingdom under both domestic and international law, including through the right of individual petition under the European Convention on Human Rights, is already considerable.”<sup>29</sup>

The reference to the right to petition under the European Convention on Human Rights — an argument also invoked by some other European countries which have not made the Declaration under article 14 — is not convincing. It is true that the European Convention, equipped with a fully-fledged Court, provides strong protection in many respects, but the protection against discrimination has always been one of the weaker aspects of the European Convention: the non-

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270 (Haiti); para. 312 (Islamic Republic of Iran); para. 334 (Mauritania); para. 360 (Iraq); para. 413 (Latvia); para. 452 (Kyrgyzstan); para. 480 (Colombia); para. 502 (Azerbaijan); para. 521 (Dominican Republic); para. 543 (Guinea).

<sup>28</sup> See for instance A/RES/53/131 of 9 December 1998, para. 21, adopted without a vote.

<sup>29</sup> 14th Periodic Report of the United Kingdom of Great Britain and Northern Ireland, Doc. CERD/C/299/Add. 9, para.112.

discrimination clause of the European Convention has no autonomous meaning and, as distinct from ICERD, the European Convention on Human Rights does not cover economic and social rights. Therefore, as a non-discrimination instrument ICERD is much more pervasive and wider in scope than the European Convention and the right of petition under ICERD is in no way overridden by the right of petition under the European Convention.<sup>30</sup>

## VI. Article 14 in Operation

As noted earlier, up till its 55th. Session (August 1999) only seventeen communications have reached CERD under the article 14 procedure. As mentioned above seven cases have been concluded with an Opinion on the merits; three cases have been declared inadmissible; two cases were declared admissible and transmitted for comments on the merits; five further cases are still in the pre-admissibility stage.<sup>31</sup> The ten cases which have been concluded with an Opinion on the merits or with a Decision on the admissibility issue — these Opinions and Decisions were published in annual reports of the Committee in accordance with article 14 para. 8 — reveal some interesting aspects.

### 1. Foreign Origin

First, the type of persons who made use of the communications procedure: a Turkish national residing in the Netherlands (*Yilmaz-Dogan*), a Senegalese citizen residing in Monaco-France (*Demba Talibe Diop*), a Moroccan citizen residing in the Netherlands (*L.K.*), a Norwegian citizen of Tamil origin and born in Mauritius (*Michel L.N. Narrainen*), an American citizen of African origin living in Denmark (*C.P.*), an Australian citizen of Italian origin residing in Australia (*Barbaro*), other Australian citizens of respectively Pakistani and Indian origin residing in Australia (*Z.U.B.S. and B.M.S.*), a Swedish citizen of Czechoslovak ori-

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<sup>30</sup> It should be noted, however, that preparations leading to an additional protocol to the European Convention and providing for a general protection non-discrimination clause (Protocol No. 12) are now very advanced. Approval and entry into force of this protocol would considerably strengthen the non-discrimination thrust of the European Convention.

<sup>31</sup> See notes 20–23 above.

gin residing in Sweden (*D.S.*), and a Tunisian citizen residing in Denmark (*Ziad Ben Ahmed Habassi*) all these persons whether or not citizens of the state against which they directed their complaints, were of foreign national or ethnic origin and as such were disposed to rely on the protection of ICERD and the procedure of article 14.

## 2. Economic and Social Rights

Another notable aspect is that in the majority of the cases the complaints allege in substance violations of equality and non-discrimination in the area of economic and social rights (article 5 lit.(e)), in particular the right to work and access to employment (article 5 lit.(e) (i)) (*Yilmaz-Dogan, Diop, C.P. case, Barbaro, D.S. case, Z.U.B.S. case*) and the right to housing (article 5 lit.(e) (iii)) (*L.K. case*). Further, alleged violation on racial grounds of the right to equal treatment before the tribunals (article 5 lit.(a)) and of the right to effective protection and remedies (article 6) was a central issue (*Narrainen, L.K. case and Ziad Ben Ahmed Habassi* respectively).

While the limited number of cases do not warrant the drawing of general conclusions, they nevertheless appear to confirm the pattern that in daily life practices of racial discrimination affect the enjoyment of economic and social rights more directly than the enjoyment of civil and political rights. Equally, the cases also tend to show that states often fail to prohibit or bring to an end acts and practices of racial discrimination carried out by any persons, group or organisation, contrary to the prescription of article 2 para. 1 lit.(d) of the Convention.

## 3. Follow-up

A further important aspect is the follow-up given to the Committee's Opinions in the light of the Committee's suggestions and recommendations pursuant to article 14 para. 7 lit.(b). In accordance with Rule 95, para. 5, of the Committee's rules of procedure the State party is invited to inform the Committee in due course of the action it takes in conformity with the Committee's Opinion. Thus, with regard to the *Yilmaz-Dogan* case where the Committee held that the petitioner was not afforded adequate protection in respect of her right to work and recommended that the State party ascertain whether the petitioner was again gainfully employed and provide her with such relief as may be consid-

ered equitable, the Netherlands in its 9th periodic report informed the Committee that it had established that, after her dismissal, the petitioner had been either employed or received social security benefits, with the exception of a brief period. In respect of the period of unemployment, the Netherlands Government had agreed to provide for an *ex gratia* payment.<sup>32</sup> In the *L.K. case* the Committee found that the police and judicial proceedings in the Netherlands did not afford the petitioner effective protection and remedies within the meaning of article 6 and recommended that the State party reviews its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination in the light of its obligations under article 4 of the Convention. Furthermore the Committee recommended that the State party provide the petitioner with relief commensurate with the moral damage he had suffered. In its 13th periodic report to the Committee, the Netherlands Government provided elaborate information on new and more strict anti-discrimination guidelines for the police and the public prosecutions department and it added that, in issuing these new guidelines, it believed that it had also complied with the relevant recommendation of the Committee in the *L.K. case*. Moreover, the Netherlands Government stated that, in consultation with the applicant's counsel and the applicant, it had provided reasonable compensation (8500 Dutch florins).<sup>33</sup>

In the *Narrainen* case the Committee did not conclude that a breach of the Convention had occurred but it felt nevertheless duty bound to recommend to the State party that every effort be made to prevent any form of racial bias from entering into judicial proceedings which might result in adversely affecting the administration of justice on the basis of equality and non-discrimination. The Committee therefore recommended that in criminal cases like the one it had examined due attention should be given to the impartiality of juries, in line with the principles underlying article 5 lit.(a) of the Convention. In its 13th periodic report to the Committee the Government of Norway did not explicitly refer to the Committee's recommendation in the *Narrainen* case but it may be assumed that the Government was mindful of this recommendation when it reported in connection with article 5 lit.(a) that the Ministry of Justice had issued a directive to all municipalities regarding the selection

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<sup>32</sup> 9th Periodic Report of the Netherlands, Doc. CERD/C/182/Add. 4, para. 37.

<sup>33</sup> 13th Periodic Report of the Netherlands, Doc. CERD/C/319/Add. 2, para. 51.

of jury members, emphasizing that it was of the utmost importance that the list from which jury members were selected, reflected the Norwegian population and that persons of different ethnic origins should appear on the list and also be selected for jury service.<sup>34</sup>

Equally, in two cases filed against Australia (*B.M.S. and Z.U.B.S. cases*) the Committee did not conclude that a violation of the Convention occurred but the Committee recommended, pursuant to para. 7 lit.(b) of article 14, that the State party take all necessary measures and give transparency to the applicable domestic procedures so that the system would in no way be discriminatory towards persons of foreign origin irrespective of their race or national or ethnic origin. The Committee also suggested that the State party simplify the procedures to deal with complaints of racial discrimination, in particular those in which more than one recourse measure is available, and avoid any delay in the consideration of such complaints. It would be most welcome, in terms of follow-up action, if Australia in its next periodic report would inform the Committee what actions it had taken in the light of the Committee's recommendations.

In the case of *Ziad Ben Ahmed Habassi v Denmark* the State party responded quite expeditiously, two months after the Committee had formulated its suggestions and recommendations, to the Committee's invitation, pursuant to Rule 95, para. 5, of the rules, to receive information "as appropriate and in due course" on any relevant measures taken. In its *note verbale* the State party stated, *inter alia*, that the police and prosecution authorities involved in the case had been informed of the Committee's opinion and that arrangements had been made for it to be transmitted to relevant financial institutions. Furthermore, Denmark informed the Committee that it would provide compensation for reasonable and specified expenses for judicial assistance to the author of the communication. The Committee acknowledged this follow-up information which raised the issue of just and adequate reparation or satisfaction referred to in article 6 of the Convention. The Committee stated in this regard that it expected to examine this issue both in general and in connection with the forthcoming consideration of the next periodic report of Denmark.<sup>35</sup>

It is interesting to note that in cases where the Committee found that the State party had not provided the petitioner with adequate pro-

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<sup>34</sup> 13th Periodic Report of Norway, Doc. CERD/C/281/Add. 2, para. 135.

<sup>35</sup> See the Committee's Annual Report for 1999 (Doc. A/54/18, paras 551-552).

tection under the Convention, it recommended that relief measures be taken as a means of reparation to the petitioner (*Yilmaz-Dogan, L.K. case and the Habassi case*), but it also recommended, as appropriate, that structural measures of a policy nature be taken, going beyond the individual case (*L.K. case*).

Remarkably enough, the Committee recommended such further structural measures even where it had not established a breach of the Convention in the relevant individual cases (*Narrainen, B.M.S. and Z.U.B.S. cases*). These examples, still limited in numbers, show that communication procedures may have wider implications and effects than individual cases would suggest.

Since there is a tendency and an expectation that the flow of communications under article 14 of the Convention will increase, CERD would be well advised to introduce a closer and more coherent system to monitor the follow-up of its suggestions and recommendations pursuant to para. 7 lit.(b) of article 14. In this respect, the experience gained by the Human Rights Committee would be instructive. For some ten years the Human Rights Committee has established and refined its monitoring of the follow-up given to the Views it adopted on communications received and considered under the Optional Protocol. For the follow-up of its Views it created the mandate of a Special Rapporteur, being one of the members of the Committee.<sup>36</sup> A similar course of action by CERD would undoubtedly strengthen the meaning and impact of the communication's procedure of article 14.

## VII. Final Remarks

The overall picture regarding article 14 is not satisfactory. The balance-sheet is very modest. While there are indications of slight progress, the overall statistics as regards acceptances of the petition procedure by States parties and the number of communications submitted under this procedure speak for themselves.

The question arises why article 14 so far failed to gain impact and vitality, particularly taking into account that petition procedures under other human rights treaties, their optional character notwithstanding,

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<sup>36</sup> See in detail the Annual Report of the Human Rights Committee for 1999, Doc. A/54/40, Chapter VII (Follow-up Activities under the Optional Protocol).

are progressively growing in reach and relevance. There are no easy answers to this question. One explanation might be that many states have always considered ICERD more a (foreign) policy instrument than a (domestic) rights document. This was at least the predominant perception about ICERD in the early years and has a continuing effect. The same perception influenced the role and the composition of CERD which, more than any of the other treaty bodies, has strong roots in international diplomacy. This background may also provide some indication why the Committee is divisive about the practical value of the petition procedure as an effective means to combat racial discrimination and why it fails to take a firm stand so as to impress upon States parties to make the declaration under article 14.

Although the circumstances just described may offer some clue as to why only a limited number of States parties have made the declaration under article 14, they appear to be less relevant as an explanation why so few persons have resorted to the petition procedure *vis-à-vis* the States parties that have made the declaration. Here it would seem that the sheer lack of knowledge and information about the existence of article 14 as a possible recourse is a major impediment. While there is an increasing awareness among human rights lawyers and other interested people about the availability and the accessibility of petition procedures under other worldwide and regional human rights treaties, article 14 of ICERD is generally overlooked as a possible avenue of redress. It is a positive sign, however, that in recent years some important non-governmental institutions, possessing a good deal of expertise on ICERD, have taken an active interest in article 14 and started to encourage and to assist the utilization of this communications procedure.<sup>37</sup> In their dialogues with representatives of States parties which have made the declaration under article 14, members of CERD have raised this issue and the Committee, in its concluding observations pertaining to such States parties, has in several instances recommended that the public should be better informed about the remedies available under article 14 of the Convention.<sup>38</sup>

The need for publicity and information regarding the potential of article 14 must be emphasized consistently. With this purpose in mind

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<sup>37</sup> The Documentation and Advisory Centre on Racial Discrimination in Copenhagen; the Danish Centre for Human Rights; the European Roma Rights Centre in Budapest.

<sup>38</sup> See for instance the Annual Report of CERD for 1998, Doc. A/53/18, para. 50 (Russian Federation); para. 155 (Ukraine); para. 345 (Cyprus).

States parties, CERD itself, human rights organizations and institutes, the legal profession and many constituencies combating racial discrimination must engage themselves in more vigorous and persistent action.

## Annex

*Article 14* of the International Convention on the Elimination of All Forms of Racial Discrimination reads as follows:

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications; (b) Within three months, the receiving state shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged; (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.
8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.
9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.