The Petition System under ICERD: An Unfulfilled Promise

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Introduction

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the United Nations (UN) General Assembly in 1965,1 was the first human rights treaty approved by the United Nations that provided for its own mechanism of international supervision. It established in Article 8(a) the Committee on the Elimination of Racial Discrimination (CERD) with tasks to: consider periodic reports submitted by the States Parties (Article 9); to receive State-to-State complaints (Articles 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, that is the subject matter of this paper. Article 14 was the outcome of lengthy and complex negotiations in the UN General Assembly in 1965.2 Its inclusion 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 recognise the competence of the CERD to receive and consider communications.

Article 14 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),3 Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

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1 General Assembly resolution 2106A (XX) of 21 December 1965.
3 General Assembly resolution 2200A (XXI) of 16 December 1966.
Punishment (CAT)\textsuperscript{4} and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).\textsuperscript{5}

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. Article 14 still remains one of the most underutilised provisions of the ICERD. This paper will try to uncover some of the largely hidden features of Article 14, but it certainly cannot transform a dwarf into a giant.

**Origins of Article 14**

Article 14 gives the Committee on the Elimination of Racial Discrimination the power once the Committee 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 (Article 14(7)(a)) and to forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner (Article 14(7)(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 the 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.\textsuperscript{6} 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.

A notable political factor that facilitated the inclusion of a communications procedure in the Convention was the wish of many African-Asian countries to make the Convention an effective instrument in the struggle against colonialism and apartheid, taking into account the clear nexus 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 decolonisation procedures,\textsuperscript{7} and it was against this background that this device found its logical place in the ICERD.

**Some significant aspects of Article 14**

The communications procedures provided for in Article 14 of the ICERD, in the First Optional Protocol to the ICCPR, in Article 22 of the CAT and in the Optional Protocol to the CEDAW contain many similar features, in particular as regards the admissibility requirements set out in these legal instruments and elaborated in their Rules of Procedure.

\textsuperscript{4} General Assembly resolution 39/46 of 10 December 1984.

\textsuperscript{5} General Assembly resolution 54/4 of 6 October 1999.

\textsuperscript{6} Van Boven, *supra* note 2, p. 665.

\textsuperscript{7} See General Assembly resolutions 1514 (XV) and 1654 (XVI).