



Executive Summary

United Nations (UN) action against racial discrimination centres on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965). The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCR) presents a pivotal opportunity to strengthen implementation of the Convention.

For UN member states who are not yet party to the Convention, their integrity and commitment to the WCR will be assessed on whether they accede to the Convention. For states parties, their commitment to the WCR will be gauged by whether they are prepared to accept individual complaints under Article 14 of the Convention, and whether they withdraw their existing reservations.

The Committee on the Elimination of Racial Discrimination (CERD), established under the Convention, also has a key role to play in implementing the WCR's recommendations. Moreover, the WCR's Declaration and Programme of Action should provide a commitment to strengthening the Committee, as recommended by its members, numerous non-governmental organizations (NGOs),

and the UN Office of the High Commissioner for Human Rights (OHCHR).

The Committee needs additional resources if its work against racial discrimination is to grow. This point has been repeatedly highlighted in the lead up to the WCR.¹ The aim is to maximize states parties' adherence to the Convention's human rights standards and procedures, and its implementation at the domestic level where a range of violations persist worldwide. These include economic marginalization, environmental racism, ethnocide and genocide, as well as institutional discrimination, racist street violence and new expressions of racism via modern communication methods and *de facto* segregation.

Racial discrimination prevents the full exercise of civil, political, economic, social and cultural rights, the repercussions of which are felt in all countries. The Committee has stated that it finds certain states' assertion that there is no racial discrimination in their territory unacceptable. It believes that racial discrimination occurs everywhere. No state party, therefore, can legitimately assert that it is not obliged to respect the

Convention's provisions.² States parties must report to the Committee on the legislative, judicial, administrative and other measures taken to give effect to the Convention's provisions.

The obligation to respect human rights is a general principle of international law. The prohibition on racial discrimination more specifically is a norm of customary international law from which no derogation is permitted³ and an obligation owed 'towards all'.⁴ All states are therefore bound to prohibit and punish racial discrimination, regardless of whether they have ratified any particular human rights treaty. However, the Convention enumerates and defines specific rights and freedoms against racial discrimination, and establishes the Committee as an implementing body to interpret and uphold those rights. Pressuring UN member states who have not already done so to accede to the Convention, without reservation, and allowing for comprehensive monitoring by the Committee, would be an effective move towards addressing racial discrimination globally, and an achievement for the WCR.

Strengthening UN Action Against Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination is the only international legal instrument specifically addressing comprehensive issues of racial discrimination. It establishes a body of 18 independent experts (the Committee), nominated by states parties, and responsible for monitoring the implementation of the Convention's provisions. The Convention covers individual and collective rights. This is of particular significance to minority groups and indigenous peoples whose collective rights are often subject to discrimination.⁵

Upon ratification of or accession to the Convention, each state party assumes an obligation to submit reports periodically to the Committee on the measures it has taken to implement the Convention.

In order to assist states parties in the implementation of their obligations under the Convention, the Committee produces General Recommendations. General Recommendations enable states parties and the Committee to have a better understanding of the types of issues and problems encountered by states when attempting to translate the Convention's legal formulations into practice. They are authoritative but not legally binding.

Article 1, para. 1, defines the concept of 'racial discrimination' as:

'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'.

The definition is noteworthy in that it includes 'descent' and 'national or ethnic origin' in addition to 'race' and 'colour'. Hence 'racial discrimination' as defined in the Convention covers a wide range of deeply-rooted discriminations, including those against various minority groups and indigenous peoples. On numerous occasions in its Concluding Observations on Bangladesh,⁶ India,⁷ and Japan⁸, the Committee has unambiguously stated that

the term 'descent' mentioned in Article 1 of the Convention does not solely refer to 'race' or ethnic or national origin. In this context, the situation of caste has been affirmed as falling within the scope of the Convention.

It is the Committee's opinion that identification of individuals as being members of a particular ethnic group shall, if no justification exists to the contrary, be based upon self-identification by the individuals concerned.⁹ Furthermore, the Committee considers the ethnic characteristics of a population to be of particular importance in examining states' reports, and thus requests that states parties provide specific information in this regard,¹⁰ as well as on the situation of women in order to examine whether racial discrimination impacts differently upon women and men.¹¹ Where relevant, a state party may make distinctions, exclusions, restrictions or preferences between citizens and non-citizens, however the Committee takes the position that the Convention is also generally applicable to discrimination against non-nationals.¹²

Article 1 covers direct and indirect discrimination. The Convention also covers acts which might unintentionally lead to discrimination. Article 1.1 refers to 'any distinction' that has the 'purpose or effect of nullifying or impairing particular rights and freedoms'.¹³ Moreover, Article 1.4 allows for 'special measures' such as 'affirmative action'.

Article 2 defines states parties' general obligations. It includes the obligation to ensure that all public authorities and institutions do not engage in racial discrimination, and the obligation to prohibit and stop racial discrimination by any individual or organization. In order to promote understanding states parties should undertake 'concrete measures' in the social, economic, cultural and other fields to ensure the adequate development and protection of certain ethnic groups or individuals.

Article 3 addresses the illegality of racial segregation and *apartheid*.

Although initially directed at the former policy in South Africa, the Committee has since stated that this Article prohibits all forms of racial segregation. The Committee invites states parties to monitor and address trends which result in racial segregation, including those which are the consequence of the actions of private persons.¹⁴

Article 4 obliges states parties to make incitement to racial discrimination an offence punishable by law. It addresses racist propaganda, organizations and activities. States parties have obligations to adopt legislation to penalize a range of racist acts linked to dissemination, incitement, violence, or providing financial assistance to racist organizations. Belonging to racist organizations should also be made a criminal offence. Although states parties have queried the potential for Article 4's incompatibility with freedom of expression and association, the Committee holds that these latter rights are subject to certain limitations.¹⁵ Article 4 also covers technological developments relating to the mass media, especially the internet.

Article 5 requires states to protect everyone subject to their jurisdiction from racial discrimination in the enjoyment of their civil, political, economic, social and cultural rights. States parties are expected to report on the non-discriminatory implementation of each of these rights.

Article 6 obliges states parties to provide effective remedies to victims of racial discrimination. Upon ratification of or accession to the Convention, states parties undertake to provide effective protection and remedies against acts of racial discrimination through the competent 'national tribunals and other State institutions'. Nationals and non-nationals under the jurisdiction of the state party have the right to receive from such tribunals just and adequate reparation or satisfaction for material and moral damages suffered as a result of such discrimination.

Under Article 7 states parties undertake to adopt immediate and effective measures in culture, education,

The Committee on the Elimination of Racial Discrimination

information and teaching. Education also includes training professionals, such as teachers and law enforcement officials.¹⁶ In considering adherence to Article 7, the Committee pays close attention to questions such as whether states parties inform public opinion about human rights in general, as well as about the Convention and the Committee in particular, and whether the Convention has been published in the local languages.¹⁷

Article 9 outlines the reporting system; Article 11 allows for inter-state complaints (although this option has not been used to date). Article 14 establishes a procedure by which a state can allow the Committee to receive complaints from individuals or groups of individuals who believe themselves to be victims of the state's failure to fulfil its obligations under the Convention.

The Committee on the Elimination of Racial Discrimination is composed of 18 experts who serve in a personal capacity. The members are elected for a term of four years at a meeting of states parties. In the election of the Committee members, consideration has to be given to 'equitable geographical distribution and [...] the principal legal systems'.¹⁸

Under the Convention, the Committee shall establish its own rules of procedure and receive no directives from outside.¹⁹ The meetings of the Committee are currently held in March and August for three to four weeks in Geneva. The Committee is serviced by the Secretariat of the OHCHR.

The Committee periodically reviews the legal, judicial, administrative and other steps taken by individual states parties to fulfil their obligations under the Convention. The Convention provides a number of instruments to evaluate the states' efforts and the overall situation, however its current mandate does not include the possibility of Committee members undertaking investigative visits, unless at the invitation of the country concerned.

Reporting System

Under Article 9 of the Convention, and following a decision taken by the Committee at its 38th session in 1990, each state party is obliged to submit an initial report within one year after the entry into force of the Convention for the state concerned, and a comprehensive report every four years. The reports are expected to include any developments that took place after the submission of the previous report, information that the Committee specifically requested, and answers to questions that were not fully covered in its previous reports. States parties are to provide special reports when requested by the Committee in accordance with early warning measures and urgent procedures.

From the start, it was decided that the Committee's examination of state reports would be carried out in the presence of

the states so as to facilitate dialogue. Hence states parties send delegations of government officials to Committee meetings when their report is scheduled for examination. The Committee provides its own annual report to the UN General Assembly (GA) based on its examination of the reports.

After the Cold War, the Committee introduced procedural innovations including the designation of Country Rapporteurs from among its members. The Country Rapporteur plays a leading role in the examination of a state's report and in the preparation of the Concluding Observations.

Although the report officially submitted by a state party is the main source of information, other UN materials, such as reports of Special Rapporteurs of the UN Commission on Human Rights, and reports and comments of specialized agencies, can be taken into account. More recently, information from regional institutions – such as the European Commission against Racism and Intolerance (ECRI) – and from NGOs has been used, and often referred to in the discussions, although some members of the Committee have reservations regarding this practice.

The Committee, under the guidance of an appointed Country Rapporteur and along with the assistance of the Secretariat, prepares Concluding Observations, which consist of a review of positive developments, issues of concern, and concrete suggestions and recommendations to be presented to the state party. After consideration, discussion and amendment by Committee members in formal, public meetings, the Committee adopts the Concluding Observations for transmission to the state party concerned, to become a public document and to be included in the Committee's annual report. A state party may submit its comments on the Concluding Observations for inclusion in the Committee's annual report to the GA. The Concluding Observations are important for monitoring and for follow-up work.

The Committee has provided general guidelines to assist states parties in their preparation of reports.²⁰

Individual communications

This procedure for communications allows individuals or groups of individuals to submit their claims as victims of a violation of the Convention directly to the Committee, provided that the state(s) concerned has (have) made a declaration to recognize the Committee's competence under Article 14.²¹ The individual or group must have exhausted all local remedies. Article 14 allows individuals and groups to file communications. Moreover, the communication can still be considered while under another procedure of international investigation. The Committee makes 'suggestions and recommendations' which have concrete policy implications and serve as a tool for follow-up control. Despite its potential, this procedure is dramatically underused suggesting a need to publicize its availability. Of the 33 states which have accepted the Committee's competence under Article 14, c. 78 per cent have never been the subject of a communication.²²

While this procedure is not legally binding, the Committee's suggestions and recommendations are authoritative pronouncements and should be respected and complied with by the states parties concerned. It is important that the media and the public become aware of communications filed with, and the opinions expressed by, the Committee.

Innovative procedures

At its 45th session in 1994, the Committee decided that preventive measures – including 'early warning measures' and 'urgent procedures' – should be part of its regular agenda. Early warning measures aim to prevent problems from escalating into conflicts, and can also include confidence-building measures to strengthen and reinforce tolerance, particularly to prevent a resumption of a previous conflict. Urgent procedures are to respond to problems

requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Under these procedures the Committee examines a situation without any periodic report from the state party concerned.

In August 2000 the Committee organized for the first time a two-day discussion on a thematic issue – discrimination against the Roma. Significantly, it led to the production of a General Recommendation on the Roma²³ outlining measures that governments should take. Second, the Committee invited regional institutions as well as other UN bodies and agencies, in particular experts from the Sub-Commission on the Promotion and Protection of Human Rights and the Special Rapporteur on Contemporary Forms of Racism, to the thematic discussion. The Committee also received information and first-hand accounts from NGOs, particularly Roma representatives, by holding an informal meeting using its official meeting time and inviting their written submissions. While the thematic discussion was an innovation for this Committee, it is not new to the UN treaty monitoring mechanisms as a whole. Several other treaty monitoring bodies – including the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child – have held thematic sessions for a number of years, and successfully developed methods of involving NGOs.

Impact of the Convention on states

Since the entry into force of the Convention, changes in various countries have been attributed to it. These include:

- amendments to national Constitutions and review of existing laws to include provisions prohibiting racial discrimination, and the passing of laws to satisfy the Convention's requirements;
- making incitement to acts of racial discrimination and racial violence a punishable offence;
- legal guarantees and enforcement

procedures against discrimination relating to education, employment, housing, individual security, political rights, or access to areas and facilities intended for use by the public;

- educational programmes aimed at promoting good relations and tolerance;
- creation of institutions and agencies to deal with problems of racial discrimination and to protect the interests of indigenous groups; and,
- governments seeking technical assistance from the UN in such matters as anti-discrimination legislation and remedies to victims.

Strengthening UN action against racial discrimination

Universal ratification of the Convention

There are few greater ways for UN member states to show their commitment to the eradication of racial discrimination than by acceding to and implementing the Convention. The WCR offers an opportunity to highlight the need to achieve universal ratification of this important human rights treaty.

The Convention currently has 157 states parties.²⁴ States adopting the WCR's Declaration and Programme of Action addressing racism, racial discrimination, xenophobia and related intolerance, could be viewed with scepticism if they do not also take a commitment to accede to the Convention.

Article 14 declaration by states parties

Currently only 33 of the 157 states parties to the Convention²⁵ have made a declaration under Article 14 recognizing the competence of the Committee to consider communications by individuals or groups of individuals who feel that their rights under the Convention have been violated. There is an immediate need for states parties to commit to this procedure. This is a minimum expectation of any state party engaging in the WCR in good faith.

Withdrawing of reservations

Any comprehensive strengthening of the Convention and commitment to the WCR's objectives would require states parties to review their reservations with a view to their immediate and unconditional withdrawal.

Article 20 of the Convention provides that a reservation incompatible with the object and purpose of the Convention shall not be permitted; it shall be considered incompatible if at least two-thirds of the states parties object to it. However, international opinion has changed since 1965. The Vienna Declaration on Human Rights in 1993 stressed the importance of limiting the

number and extent of reservations to human rights treaties. The Human Rights Committee (HRC), which monitors the implementation of the International Covenant on Civil and Political Rights, maintains that it falls to the treaty monitoring body to determine whether reservations are acceptable.²⁶ The ninth meeting of those chairing the six human rights treaty bodies expressed firm support for this approach,²⁷ stating that the function of determining the scope of a convention cannot be performed effectively if the monitoring body is precluded from exercising a similar function in relation to reservations.

Improving reporting on economic and social rights

To meet their obligations under the Convention, states parties should examine the link between racism and poverty. This extends to national, bilateral and multilateral development cooperation. In their reports to the Committee, states parties should discuss the measures taken in their economic development programmes to meet the economic and social rights of minorities. Similarly, the Committee should request information from states parties on their efforts to implement the international development targets in a manner that is non-discriminatory.

Enhancing the participation of NGOs

The recent Plan of Action for 2000 – 2004 on strengthening treaty bodies from the Office of the High Commissioner emphasizes the importance of information presented from national non-governmental perspectives.²⁸ The Commission on Human Rights has recently recognized, for example in Resolution 2000/75:

'the important role played by NGOs [...] in the effective implementation of all human rights instruments, and encourages the exchange of information between the human rights treaty bodies and such organisations'.²⁹

Moreover, many members of the Committee have voiced their appreciation

of the NGOs' contribution to their work.

Suggestions have recently been made by members of the Committee³⁰ as to how NGOs could further contribute to information gathering on states parties. Suggestions include: providing country assessments on the degree to which obligations under the Convention are being upheld; undertaking greater awareness-raising domestically by holding more public debates on the Committee's Concluding Observations and General Recommendations, and by having such information more widely disseminated, including in a range of languages.

Institutionalizing thematic sessions

The Committee's recent decisions, at its 56th and 57th sessions respectively, to hold a thematic discussion on discrimination against the Roma and to invite addresses by NGOs, were widely welcomed. NGOs could convey their views to Committee members and, in addition to providing oral accounts, this development served to reaffirm the importance of NGOs in the work of the Committee.

Thematic discussions can also address the discrimination faced by minority groups that have a presence in more than one country, thereby highlighting cross-boundary issues that may not be addressed in individual state reports or in Concluding Observations.

Enhancing cooperation

The Committee's decision at its 57th session to invite the Chairperson and two members of the Sub-Commission on the Promotion and Protection of Human Rights, the Chairperson of the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance to address the Committee was also a welcome initiative. This reflects the need for the treaty and charter bodies to be more systematic in the way information is exchanged and to maximize their cooperation.



*A mother waits to vote in South Africa's first democratic elections. The baby's name is 'Vote'.
ERIC MILLER/PANOS PICTURES*

The Committee needs greater visibility in the UN. Just as, for example, the Chairperson of the Sub-Commission and the Independent Expert on Human Rights and Extreme Poverty should be invited to Committee sessions, so should the Committee Chairperson be invited, for example, to make a statement to open the discussion on relevant items in the Sub-Commission, or address the Commission on Human Rights – a practice undertaken by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. A similar arrangement should be made with the General Assembly. UN fact-finding missions to countries to pre-empt 'ethnic' conflict from erupting should draw on the Committee's expertise, as could the Special Rapporteurs of the Commission on Human Rights in their fact-finding missions.

Strengthening the Committee: resources and treaty body review

The Committee has inadequate resources for its work and this significantly limits its capacity. For example, there is insufficient time or resources to allow members of the Bureau (the Committee's Chairperson, three vice-Chairs and a Rapporteur) to meet prior to sessions. Increasing the staff at the Secretariat to cope with the shortest reporting cycle of all treaties (every 2 years), and the intended increase in both states parties and adherents to Article 14, is essential.

The Committee lacks the resources to fully apply its early warning procedure to alert the international community to potentially dangerous inter-ethnic tensions. Mechanisms for pre-empting conflict should be improved and

indicators should be established. The assessment of economic, social and political factors in a given country would be instrumental in informing the Committee of the direction its dialogue with a given state should take and the focus it should apply in its assessment of state reports. In order for early warnings to have impact, a stronger relationship between the Committee and the Security Council would be valuable.

Notes

1. See *Report of the Expert Meeting convened by Minority Rights Group International in cooperation with the Office of the High Commissioner for Human Rights on Strengthening ICERD*, London, 2000; Banton, M., *Combating Racial Discrimination: the UN and its Member States*, London, MRG, 2000; Report of the ninth meeting of persons chairing the human rights treaty bodies, *Effective implementation of international instruments on human rights including reporting obligations under international instruments on human rights*, UN doc. A/53/125, Annex, para. 24 of 14 May 1998.
2. CERD General Recommendation II (5). See also, UN doc. HR/WSW/SEM.2/2000/BP.8, Background paper prepared by Rechetov, Y., *Strengthening Human Rights Capacity-Building Against Racism and Intolerance and the Implementation of the International Convention on All Forms of Racial Discrimination*, Regional Seminar of Experts on the Protection of Minorities and other Vulnerable Groups and Strengthening Human Rights Capacity at the National Level, in preparation for the WCR, Warsaw, 5–7 July 2000.
3. Judge Tanaka, *South-West Africa Cases* (Second Phase), ICJ Reports (1966) 4 at 298.
4. *Barcelona Traction, Light and Power Co. Ltd.* (Second Phase), ICJ Reports (1970) 3 at paras 33–34.
5. See, CERD General Recommendation XXI (48) on the right of self-determination and General Recommendation XXIII (51) on the rights of indigenous peoples.
6. CERD/C/58/Misc.26/Rev.3, para. 11.
7. CERD Annual Report A/51/18 para. 352.
8. CERD/C/58/Misc.17/Rev.3, para. 8.
9. CERD General Recommendation VIII (38).
10. CERD's General Guidelines Regarding the Form and Contents of Reports to be submitted by states parties under Article 9, para. 1 of ICERD (CERD/C/70/Rev.4).
11. *Ibid.*, see new para. 9 adopted by CERD at its 55th session, August 1999 (CERD/C/70/Rev.4).
12. CERD General Recommendation XI (42).
13. CERD General Recommendation XIV (42).
14. CERD General Recommendation XIX (47).
15. CERD General Recommendation XV (42).
16. CERD General Recommendation XIII (42).
17. Recommendations adopted at the 6th meeting of the Persons Chairing the Human Rights Treaty Bodies, Sept. 1995, UN doc. A/50/505, para. 20.
18. ICERD Article 8.1.
19. ICERD Article 10.
20. CERD's General Guidelines Regarding the Form and Contents of Reports to be submitted by states parties under Article 9, para. 1 of ICERD (CERD/C/70/Rev.4).
21. Details of the process, and advice on how to file a complaint, can be found in Part II, section 2 of Tanaka, A. with Nagamine, Y., *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, London, MRG and IMADR, 2001.
22. Bayefsky, A.F., *The UN Human Rights Treaty System: Universality at the Crossroads*, York University. www.yorku.ca/hrights/
23. CERD General Recommendation XXVII (57).
24. As at March 2001.
25. As at March 2001.
26. HRC General Comment 24, UN doc. CCPR/C/21/rev.1/add.6
27. UN doc. A/53/125.
28. Plan of Action to strengthen the implementation of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2000–2004, UN doc. HRI/MC/2000/4, Section D, para. 43.
29. Commission on Human Rights Res. 2000/75 para. 18
30. *Report of the Expert Meeting*, op. cit.
31. UN doc HRI/MC/2000/4, Section A, entitled 'Historical Background', para. 5

The more recent documents relating to the Convention and the work of the Committee can be located on the website of the High Commissioner for Human Rights - www.unhchr.ch

Recommendations

1. The WCR should unequivocally call for universal ratification of ICERD. MRG calls on states, that have not already done so, to accede to the Convention.

2. States parties to the Convention should accept obligations under Article 14 enabling the Committee to consider individual complaints.

3. States should limit any reservation under the Convention and ensure the immediate withdrawal of any reservation that has been recognized by the Committee as incompatible with the object and purpose of the Convention or is otherwise inconsistent with international law. Relevant states should explicitly recognize that caste discrimination falls within the scope of the Convention.

4. In national, bilateral and multilateral development cooperation, states parties should ensure that economic development programmes are consistent with their obligations under the Convention. Ensuring the full and equal participation of minorities and indigenous peoples in the drafting, implementation and evaluation of programmes for economic development and poverty reduction must be a priority.

5. States parties should invite NGOs and other actors in civil society to monitor the Convention's implementation via the preparation of national reports to the

Committee. States are urged to publish and publicly disseminate their reports and the Concluding Observations adopted by the Committee.

6. The Committee should hold regular thematic discussions with the active participation of NGOs with a view, *inter alia*, to producing General Recommendations.

7. The Committee should consider issuing recommendations to support the work of other UN bodies and agencies, as well as relevant external institutions, including regional human rights bodies and the Bretton Woods institutions.

8. An increase in resources is needed for the Committee to accommodate a greater number of states parties and adherents to Article 14. Resources are also needed to strengthen the urgent procedures mechanisms to enable the Committee to investigate allegations of incitement to commit genocide, and to facilitate cooperation with relevant UN bodies. Additional resources could also assist less populous states with their reporting obligations, and expand the Secretariat's capacity to facilitate the relationship between NGOs and the Committee members. To these ends MRG urges all states to support the Office of the High Commissioner's Plan of Action for 2000–2004 on strengthening treaty bodies which calls for voluntary contributions by states.³¹

Minority Rights Group International



Minority Rights Group International (MRG) is a non-governmental organization working to secure the rights of minorities and indigenous peoples, and to promote cooperation and understanding between communities. We work with the United Nations, among other international bodies, to promote awareness of minority rights, in conjunction with partner organizations. We coordinate training on minority rights internationally and work with different communities to counter racism and prejudice. We have a wide-ranging publications programme covering issues facing oppressed groups around the world.

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