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Using the international human rights system to combat racial discrimination

## A Handbook

Amnesty International

### BACK COVER

#### **Using the international human rights system to combat racial discrimination**

The right to enjoy human rights without discrimination is one of the most fundamental principles underlying international human rights law. This principle appears in virtually every major human rights instrument as well as in the United Nations Charter. Yet discrimination on grounds of race, colour, descent, or national or ethnic origin persists in many forms in every country of the world. Racial discrimination is itself a violation of human rights. In addition, many other violations of social, cultural, economic, civil and political rights take place because of racial discrimination.

This Amnesty International Handbook is intended to be of use to non-governmental organizations and others who wish to address and combat racial discrimination. It provides an overview of the international and regional treaties and standards that prohibit racial discrimination. It also describes the United Nations and regional bodies that play a role in monitoring how states implement many of these human rights standards. The Handbook suggests how these bodies can be approached to further the struggle against racial discrimination.

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## Preface

Discrimination on grounds of race and other characteristics is pervasive and persists in many forms in every country of the world. Racial discrimination is itself a violation of human rights. In addition, many other violations of social, cultural, economic, civil and political rights take place because of racial or ethnic discrimination.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in South Africa in August-September 2001, is an important event for bringing global attention to the problem, with the potential to prompt practical strategies for action against racism. The World Conference against Racism has five themes:

1. Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance;
2. Victims of racism, racial discrimination, xenophobia and related intolerance;
3. Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels;
4. Provision of effective remedies, recourse, redress, [compensatory] and other measures at the national, regional and international levels; and

5. Strategies to achieve full and effective equality, including international cooperation and enhancement of the United Nations (UN) and other international mechanisms in combating racism, racial discrimination, xenophobia and related intolerance, and follow-up.

Within each of these themes, specific measures can be developed for states to use in order to implement more effectively their obligation to prohibit and protect against racial discrimination. The prohibition of racial discrimination is one of the most fundamental principles in international law; it is an important feature in the UN Charter and in all the main international and regional human rights instruments adopted since the UN was founded.

While states have been relatively willing to adopt resolutions condemning racial discrimination in other countries, many deny the existence of racial discrimination in their own territory. It is hoped that the World Conference against Racism will help achieve acknowledgement that racial discrimination takes place in every country of the world and must be fought globally.

Throughout this Handbook the terms race and racial are used in accordance with their meaning in the International Convention on the Elimination of All Forms of Racial Discrimination.

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### ABBREVIATIONS

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
CHR	Commission on Human Rights
CRC	Committee on the Rights of the Child
ECOSOC	Economic and Social Council of the UN
EU	European Union
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
African Charter	African Charter on Human and Peoples' Rights
American Declaration	American Declaration on the Rights and Duties of Man
Convention against Racial Discrimination	International Convention on the Elimination of All Forms of Racial Discrimination
Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
European Convention on Human Rights	Convention for the Protection of Human Rights and Fundamental Freedoms
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide
Women's Convention	Convention on the Elimination of All Forms of Discrimination against Women

### Chapter 1: Introduction

*"All human beings are born free and equal in dignity and rights."*

Universal Declaration of Human Rights, Article 1

The right to enjoy human rights without discrimination is one of the most fundamental principles underlying international human rights law. This principle appears in virtually every major human rights instrument as well as in the UN Charter. Indeed, one of the very purposes of the UN is to "achieve international co-operation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (UN Charter, Article 1). This

principle reflects the fact that people are often subjected to human rights violations because of prejudice against them due to some identifying characteristic such as race, religion or sex.

Events that prompted the formation of the UN included horrific human rights violations against people targeted because of their race or ethnic origin, religion or sexual orientation. Recent years have witnessed mass repression for reasons of identity. Discrimination on the grounds of identity leads to the dehumanization of the “other” and paves the way for the most inhuman forms of abuse. Often what people experience is multiple discrimination based on a combination of factors, such as ethnicity and religion, or race and sex. The international law prohibiting racial discrimination is one component of a larger body of international law prohibiting discrimination.

### **The development of international legal standards on racial discrimination**

In response to the atrocities committed before and during World War II, non-discrimination clauses were included in key provisions of the UN Charter, the document that established the UN and set out its goals, structure and powers. People had been tortured and killed by the Nazis because of their real or perceived identity or beliefs. They were targeted, for example, because of their religion, their ethnic origin, their political beliefs or their sexual orientation, or because of a combination of these, for everyone has multiple identities. The UN was formed in part to address these identity-based violations. The UN Charter states that “the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion” (Article 55c).

Once the UN Charter was adopted, the Economic and Social Council of the UN (ECOSOC) established the UN Commission on Human Rights, which addressed itself from the outset to drafting human rights standards that included the prohibition of discrimination on the basis of race, amongst other grounds. The very name of the Commission’s subsidiary organ, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, (renamed in 1999 the Sub-Commission on the Promotion and Protection of Human Rights), reflected the central importance of non-discrimination in its work.

The first human rights instrument adopted after the UN was formed was the Genocide Convention (1948), which addresses as an international crime the most extreme manifestation of hatred and discrimination on the basis of race, ethnicity, nationality or religion.

The day after it adopted the Genocide Convention, the UN adopted the Universal Declaration of Human Rights, the most widely recognized statement of human rights. Non-discrimination is one of the general principles of the Universal Declaration.

The International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination) was the first of the core international human rights treaties to be adopted by the international community. Adopted in 1965 by unanimous vote of the UN General Assembly, it was the most widely ratified human rights treaty until 1993, when it was surpassed by the Convention on the Rights of the Child.<sup>1</sup> One reason for the widespread support for the Convention against Racial Discrimination was that it was viewed primarily as being aimed at apartheid, racist practices of colonialism and the treatment of African-Americans in the USA. Most states did not view it as being applicable, or even needing application, within their own territory. Such denial of racial discrimination continues to be a serious problem to this day.

To give binding legal form to the provisions of the Universal Declaration of Human Rights, the UN adopted in 1966 two treaties: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. These two Covenants set out in more detail the rights in the Universal Declaration and, being treaties, are binding on the states that have ratified them. Both of these treaties require states to guarantee the rights in them without discrimination. They prohibit the same grounds of discrimination listed in the Universal Declaration of Human Rights.

Further human rights treaties relevant to addressing racial discrimination include the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, the Convention against Torture, adopted in 1984, and the Convention on the Rights of the Child, adopted in 1989.

In addition to the UN human rights treaties, regional human rights treaties exist for three regions: Europe, the Americas and Africa. These treaties contain rights similar to those included in the UN treaties, and establish one or more bodies for monitoring implementation of the treaty. In addition, there are a number of political bodies in these regions that may be approached for action on racial discrimination, such as the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the Organization of African Unity (OAU).

### **Racial discrimination in the context of the general principle of non-discrimination**

Discrimination is an attack on the very notion of human rights – a denial that every human being is equal in dignity and worth. This is why international human rights law is grounded in the principle of non-discrimination. The drafters of the Universal Declaration of Human Rights stated explicitly that they considered the non-discrimination principle to be the basis of the Declaration.

The Universal Declaration of Human Rights provides in Article 2 that everyone is entitled to all the rights in the Declaration without distinction of any kind, such as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Identical wording appears in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in what is known as the “identity clause”. Virtually identical language appears in the regional human rights conventions (American, African, European) and in the Convention on the Rights of the Child. The main difference is in the wording of the reference to economic status, referred to variously as “property”, “economic status” or “fortune”. A similar identity clause appears in the 1951 Convention relating to the Status of Refugees.

Non-discrimination on the basis of one’s identity is so central to international human rights law that the identity clause constitutes either Article 1 or Article 2 of every one of these instruments. The thinking behind the identity clause is that it violates international human rights principles to be deprived of one’s rights because of a characteristic that one cannot change – such as one’s race or ethnic origin – or because of a characteristic that is so central to one’s being that one should not be forced to change it, such as religion.

“Racial discrimination” is defined in the Convention against 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”.

### **About this Handbook**

This Handbook aims to be of use to non-governmental organizations (NGOs) and other people and groups engaged in addressing and combating racial discrimination. It provides an overview of the international and regional treaties and standards that prohibit racial discrimination, and of the international and regional human rights bodies that can be approached to further the struggle against racial discrimination.

There is a wide body of international law that prohibits racial discrimination and a correspondingly wide range of bodies which can be useful in addressing it. The international treaties — legally binding agreements between the states that have ratified them — briefly described in this Handbook are:

- \* the UN Charter
- \* International Convention on the Elimination of All Forms of Racial Discrimination
- \* International Covenant on Civil and Political Rights
- \* International Covenant on Economic, Social and Cultural Rights
- \* Convention on the Prevention and Punishment of the Crime of Genocide
- \* Convention on the Rights of the Child
- \* Convention on the Elimination of All Forms of Discrimination against Women
- \* Convention against Torture
- \* International Labour Organisation Conventions
- \* International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families



Racial discrimination is also prohibited by a range of international non-treaty standards. Those described here are:

- \* the Universal Declaration of Human Rights
- \* the UN Declaration on the Elimination of All Forms of Racial Discrimination

Although technically these do not have the binding legal power of treaties, they have the persuasive force of having been negotiated by governments and having been adopted by political bodies such as the UN General Assembly. These two declarations reaffirm principles considered legally binding on all states under customary international law.

Many of the above UN treaties have created specific mechanisms to oversee their implementation. How can these UN human rights mechanisms be used to address racial discrimination? The answer depends on several factors. All the mechanisms discussed in this Handbook have a mandate to address racial discrimination when such discrimination impairs the rights they protect, but the mechanisms vary in what rights — beyond the general prohibition of racial discrimination — they address. Some deal with all rights, some with only civil and political rights, some only with economic rights, some just with torture, or genocide, and so on. In addition, some mechanisms are useful in addressing an overall policy or practice of a state, but do not handle individual complaints, whereas others do examine individual cases.

Chapter 2 gives general suggestions on how to approach the treaty bodies set up to supervise the implementation of the treaties by the states which are party to them. Chapters 3 to 6 give an overview of the main UN human rights treaties, outlining their provisions on non-discrimination, equality before the law and equal protection of the law, setting out the rights they contain that must be guaranteed without discrimination, and describing the UN human rights mechanisms that play a role in monitoring states' implementation of the treaties.

Chapter 7 gives an overview of the Universal Declaration of Human Rights and the UN Declaration on the Elimination of All Forms of Racial Discrimination. Chapter 8 gives general suggestions on how to use the non-treaty mechanisms of the UN, which can examine the situation in all UN states, not just those which have agreed to be bound by a particular treaty. The Commission on Human Rights, and its subsidiary body the Sub-Commission on the Promotion and Protection of Human Rights, have established a range of thematic and country-specific mechanisms that may examine issues of racial discrimination.

The main focus of this Handbook is on the UN human rights treaties and mechanisms, but in Africa, the Americas and Europe regional human rights systems are key players in the protection of human rights. Chapters 9 to 11, on regional human rights systems, give a summary overview with a few examples to illustrate how the regional human rights mechanisms have applied the prohibition of racial discrimination in their work.

Of necessity, the suggestions for action in this Handbook are only a starting point — Appendices 2 and 3 contain useful addresses, websites and books for further information.

## **SECTION ONE: USING THE UN HUMAN RIGHTS SYSTEM TO COMBAT RACIAL DISCRIMINATION**

### **Chapter 2: Using UN treaty-monitoring bodies to address racial discrimination**

This Handbook gives an overview of the international human rights treaties that prohibit racial discrimination. Most of these treaties establish a committee of independent experts to oversee implementation of the provisions of the treaty. The powers of these committees, or “treaty bodies”, vary somewhat depending on the treaty, but in general they review and comment on reports submitted by states, issue interpretations of articles of the treaty, and, when allowed by the treaty and the state concerned, examine individual complaints or petitions against the state.

#### **Review of state reports**

NGOs and other advocates can use the state reporting process in several ways to help protect the right of people not to be subjected to racial discrimination.

A main function of treaty bodies is to review and comment on reports that have to be submitted periodically (usually every four or five years) by states that have ratified the treaty. In these reports the state is to indicate the steps it has taken to implement its obligations under the treaty. During the sessions of a committee, which are held in public, one or more representatives of the state whose report is being reviewed is present and is asked questions by committee members. The committee then issues its conclusions and observations on the state's fulfilment or non-fulfilment of the treaty obligations, along with its recommendations to the state.

NGOs and others can use the reporting process to pressurize the government to remedy a situation or to change its policies or practices. The process can be used to generate publicity at both the national and international levels about the situation in a country, and can sometimes facilitate dialogue with the government.

### **Suggested action with treaty-monitoring bodies in connection with state reports**

- ▶ ***Find out when a state report will be considered*** by a given treaty body by either checking the UN web site or by contacting the Secretary of the relevant treaty body (contact information for both is listed in Appendix 2).
- ▶ ***Send detailed and accurate information to the treaty body*** on the situation regarding racial discrimination in a state under review, so that the state's report is not the sole source of information the body has before it. Such information will be passed on to the state being examined. The information sent may take the form of a shadow report to the committee on the state's implementation — or lack thereof — of one or more articles of the treaty. Even information about individual cases can be helpful to committee members. There is usually no prescribed format for such reports to follow, although it is helpful to the committee to provide information under specific articles of the treaty.<sup>2</sup>
- ▶ ***Help publicize*** the government's report as well as shadow reports, to help generate public discussion and debate. You can alert relevant journalists, in the country under discussion, in other countries with links and interests in that country, and in New York, USA, or Geneva, Switzerland, where the treaty bodies meet. You can organize public meetings to discuss the issues in these reports, and you can try to ensure that relevant parliamentary bodies or committees discuss them.
- ▶ ***Submit suggestions for specific questions*** for the committee members to pose to government representatives when they meet in session. These should be sent to the Secretary of the treaty body.
- ▶ Once they are issued, ***publicize the conclusions and recommendations of the treaty body*** regarding the state's performance in implementing the treaty. You can contact the news media, hold public meetings and arrange for public discussions.
- ▶ ***Use the recommendations of the treaty body to press the government for change***, to hold it to the obligations it undertook in ratifying the treaty.

**Note on timing:** To be of greatest use, the information, shadow reports and suggested questions should be sent to a treaty body ahead of the session preceding the session in which it will engage in dialogue with a government about its report. This will give the committee members time to review the information and to consider it in framing the list of questions it transmits to the states whose reports it will review in its next session. You may check deadlines for submitting information with the Secretary of the relevant treaty body.<sup>3, 4</sup>

Documents generated by the reporting procedure are available on the UN's human rights web site: <[www.unhchr.ch](http://www.unhchr.ch)> This web site also provides information on when each treaty body will be meeting and where (New York or Geneva) and which states' reports the body will be examining in its upcoming sessions. The site also provides copies of the states parties' reports, the summary records of the treaty bodies, sessions with government representatives and the treaty bodies' conclusions, observations and recommendations.

The UN's human rights web site also contains treaty bodies' General Comments, which are authoritative interpretations of specific treaty provisions issued to give guidance to states regarding their obligations under the treaty.

### Individual petitions

The individual complaints procedure, available under four of the six core UN human rights treaties, provides individuals with access to a forum for bringing a complaint against a state and for having it heard by an independent international body. It can be a useful mechanism in seeking a remedy in individual cases of racial discrimination. Individual petitions can result in a finding that the petitioner's rights were violated. Although there is no formal enforcement mechanism, such findings put pressure on the government to provide a remedy and to refrain from further violations.

Individual petitions are authorized under the following four treaties:

- International Covenant on Civil and Political Rights
  - through ratification by the state of the first Optional Protocol
- International Convention on the Elimination of Racial Discrimination
  - through a declaration by the state under Article 14
- Convention against Torture
  - through a declaration by the state under Article 22
- Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention)
  - through ratification by the state of Optional Protocol

For a UN human rights treaty body to receive individual complaints against a state, the state must have formally consented to use of the petition procedure by ratifying the particular treaty establishing the complaint mechanism or by making a declaration under the treaty provision establishing the mechanism. Complaints are filed against the state, not against the particular person or persons who acted or failed to act.

You can find out whether the state concerned has consented to these petition procedures by checking the UN web site:

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/chapterIV.asp>.

It is also important to check whether the state has limited its obligations under the relevant treaty through what is called a "reservation" filed when ratifying the treaty. The UN web site lists ratifications and declarations, as well as the text of all reservations, listed alphabetically by country after the ratification information for each treaty. If a reservation to a specific right has been made, violation of that right may not be the basis of a complaint.

Individual petitions must meet certain criteria (called "admissibility" criteria) in order for the relevant committee to examine it. The list of admissibility requirements is found in the Rules of Procedure for each committee, available on the UN web site or from the Office of the UN High Commissioner for Human Rights in Geneva (web site: [www.unhchr.ch/html/menu2/complain.htm](http://www.unhchr.ch/html/menu2/complain.htm)). In general, the requirements are as follows:

- ▶ To bring a complaint, one must personally **be a victim of a violation** of one or more of the rights set out in the treaty. In exceptional circumstances a relative, a designated representative or other person acting on behalf of the victim – including an NGO – may submit the communication, but that person must justify acting on the victim's behalf. Third parties with no links to the victims may not file complaints about their treatment.
- ▶ The individual does not have to be a national of the state against which the complaint is being brought, but does need to have been **subject to the state's jurisdiction** when the events giving rise to the complaint took place.
- ▶ The complaint **must allege a violation of the treaty** involved. **Both action and inaction** by the state can give rise to a complaint. For example, if the state has enacted legislation prohibiting racial discrimination in housing, but fails to take adequate measures to enforce that law, this could give rise to a complaint under the Convention against Racial Discrimination by individuals who have personally been victims of this failure to protect their rights.

- ▶ The **events that constitute the violation must have taken place after the treaty entered into force** in the state, or, if an initial event began before that time, it must have continuing effects after the date of entry into force. Note that for the ICCPR and Women's Convention, this means entry into force of the relevant optional Protocol, not just of the Covenant or Convention. You can check the relevant dates on the UN web site, or else with the Secretary of the relevant treaty body.
- ▶ All available **domestic remedies must have been exhausted** before a complaint may be examined by a treaty body. If, however, there is evidence that domestic remedies would be ineffective, unavailable or unreasonably prolonged, the communication may be considered. Those sending a communication to a treaty body should send with it a copy of the judgment of the relevant judicial or administrative body, where this exists. If asserting that domestic remedies are ineffective, unavailable or unreasonably prolonged, detailed material should be sent to support this claim.
- ▶ Under the Convention against Torture and the Women's Convention, a communication will not be considered **if the "same matter" is being or has been examined under another international petition procedure**. The Optional Protocol to the ICCPR prohibits consideration if the same matter is being examined under another petition procedure, but some states have entered reservations to prohibit consideration if the same matter has been addressed by another international body. The Convention against Racial Discrimination does not contain such a provision.
- ▶ Communications to the Committee on the Elimination of Racial Discrimination must be submitted within six months of the exhaustion of domestic remedies. The other treaties contain no time limit for bringing complaints.

Contact details for each treaty body are given in Appendix 2. In addition, Appendix 1 gives a summary of the treaty body membership, meeting times, and time periods for state parties to report to them.

The following chapters describe the main international human rights treaties that can be used to address racial discrimination.

### **Chapter 3: International Convention on the Elimination of All Forms of Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination) is the principal UN treaty dealing with discrimination on grounds of race, and was the first of the core international human rights treaties to be adopted.

Under the Convention against Racial Discrimination, states commit to a series of specific steps to prohibit and eliminate racial discrimination. They also undertake to guarantee the right of everyone, without discriminating on the basis of race, to equality before the law and the enjoyment of civil, political, economic, social and cultural rights.

Article 1.1 of the Convention against Racial Discrimination defines "racial discrimination" as meaning the treatment of someone because of their "race, colour, descent, or national or ethnic origin" that limits, whether intentionally or not, the person's human rights. The Convention therefore covers discrimination on the basis of ethnicity and caste, as well as "race" and colour. During the drafting of the Convention concern was expressed about using the word "race" because the term could be read to imply that there are different races, whereas in fact people are all of the same human race. However, since the terms "race" and "racial" were so commonly used, the term was included. It was followed by other categories that took note of related prejudice and intolerance based on certain physical characteristics ("colour") or origins (descent, national and ethnic origin).

The Convention defines racial "discrimination" to include exclusions or restrictions that have the "purpose or effect" of limiting the enjoyment or exercise of human rights on a basis of equality (Article 1). In other words, even unconscious racism, or acts done without intent to discriminate but which lead to racist effects, constitute prohibited discrimination under the Convention.

The Convention specifies that it does not apply to exclusions or restrictions on rights "between citizens and non-citizens" (paragraph 2). Nonetheless, the protection of rights in the Convention is

fully applicable if the discrimination a person faces is on the basis of race or ethnic origin rather than on their immigration status.

States are instructed to take special measures, sometimes known as affirmative action, to guarantee the full enjoyment of human rights. The Convention specifies that these measures do not constitute prohibited discrimination under the treaty.

In recognition of the fact that people face discrimination from private individuals as well as from governments, states that ratify the Convention against Racial Discrimination commit to protecting people against both state-sponsored discrimination and discrimination at the hands of private individuals. For example, states agree in Article 5(b) to guarantee, without discrimination on the basis of race, the right to protection by the state against violence, “whether inflicted by government officials or by any individual, group or institution”.

The Convention against Racial Discrimination set a precedent by creating a special body – the Committee on the Elimination of Racial Discrimination (CERD) – to monitor implementation of this treaty and to hear individual complaints from people or groups claiming to be victims of racial discrimination.<sup>5</sup>

Given the racial and ethnic discrimination that people often face in a range of areas covered by the Convention, including housing, employment and lack of police protection from attacks, the Convention has the potential to be of great use in challenging the discrimination that so deeply affects people’s lives. This applies to both citizens and non-citizens alike; CERD has often told states parties that they should include information in their reports on laws and policies that affect non-citizens. CERD has also issued a General Recommendation (No. XXII, 1996) on discrimination against refugees and displaced persons.

### **Rights in the Convention against Racial Discrimination**

The following are substantive rights that must be guaranteed without discrimination:

**Article 5:** The right to freedom from racial discrimination and to equality before the law in the enjoyment of a series of rights, including the following:

#### ***Civil and Political Rights***

- the right to equal treatment before tribunals and other justice organs (paragraph a);
- the right to security of the person and protection by the state against violence and bodily harm, “whether inflicted by government officials or by any individual, group or institution” (b);
- the right to vote and participate in elections and in the conduct of public affairs (c)
- the right to freedom of movement and residence within the state (d(i));
- the right to leave any country including one’s own, and to return to one’s country (d(ii));
- the right to nationality (d(iii));
- the right to marriage and choice of spouse (d (iv)), which would include equal protection against forced marriage;
- the right to own property (d(v)) and the right to inherit (d(vi));
- the right to freedom of thought and religion (d(vii));
- the right to freedom of opinion and expression (d(viii));
- the right to freedom of assembly and association (d(ix));

#### ***Economic, Social and Cultural Rights***

- the right to work and to equal pay for equal work, and to just and favorable conditions of work (paragraph e(i));
- the right to form and join trade unions (e(ii));
- the right to housing (e(iii));
- the right to public health, medical care and social services (e(iv));
- the right to education (e(v));
- the right of access to places open to the public (f).

**Article 6:** The right to a remedy against acts of racial discrimination that violate the above rights, and to seek reparation for any damage suffered as a result of such discrimination.

### **Protection of foreign nationals**

The Convention protects these rights not only for nationals of states that have ratified the treaty, but also for others who are in the state's territory. Here are some examples of the application by CERD of this important principle:

#### ***Property rights of returned refugees and internally displaced persons - Article 5(d)(v)***

States must guarantee to everyone in their territory, without racial or ethnic discrimination, the right to own property "alone as well as in association with others." In its "General Recommendation XXII on refugees and displaced persons", CERD states that all refugees and displaced persons "have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;"

#### ***Discrimination in the right to work - Article 5(e)(i)***

CERD is very clear on the obligation of the state to investigate adequately allegations of employment discrimination. In the case of *Yilmaz-Dogan v. The Netherlands*, for example, CERD found that the state had violated the petitioner's right to work under Article 5(e)(i) when it failed to take into account the alleged discrimination expressed by an employer in dismissing an employee. The petitioner was a Turkish national dismissed from work because she became pregnant. In a letter trying to justify the termination from employment, the employer had gone into detail making distinctions between Dutch women and "our foreign women workers". CERD found a violation because the Dutch court reviewing her claim had never addressed the alleged discrimination in the employer's letter.

#### ***Discrimination in denying social services - Article 5(e)(iv)***

CERD has expressed concern over the denial of social services that results in racial or ethnic discrimination. For example, CERD expressed concern that a proposed asylum and immigration bill being considered in the United Kingdom (UK) in 1995 would deny a number of social services to people who had been granted permission to remain in the UK, including asylum-seekers and others who had been granted permanent leave to stay but not UK nationality. CERD stated: "It is a matter of deep concern that most of the affected persons would be persons belonging to ethnic minorities."<sup>6</sup>

#### ***Ethnic discrimination restricting freedom of movement - Article 5(d)(i)***

In light of Article 5(d)(i), which guarantees the right without racial or ethnic discrimination "to freedom of movement and residence within the border of the State", CERD expressed concern when Croatia refused to allow 30,000 refugees to leave what CERD described as appalling camp conditions.<sup>7</sup>

#### ***Racial and ethnic discrimination prohibited in asylum procedures***

Although the Convention against Racial Discrimination does not address asylum itself, asylum procedures have been the subject of comment by CERD in reviewing some states' reports. In commenting on Germany's report in 1993, for example, CERD recommended that the government "consider reviewing certain restrictive provisions recently adopted with regard to asylum-seekers, to ensure that they did not result in any discrimination in effect on the grounds of ethnic origin."<sup>8</sup> In reviewing the report of France in 1994, CERD expressed concern that its laws of immigration and asylum "could have racially discriminatory consequences, particularly with the imposition of limitations on the right of appeal against expulsion orders and the preventive detention of foreigners at points of entry for excessively long periods."<sup>9</sup>

#### ***Training of law enforcement officials***

CERD has frequently urged states to develop training programs for law enforcement officials to teach them how to avoid committing human rights violations such as the arbitrary arrest and detention of refugees and foreigners. In addition, CERD has welcomed legislative measures aimed at protecting the rights of refugees and displaced persons regardless of their ethnic origin.

### **Gender-related dimensions of racial discrimination**

The Convention against Racial Discrimination does not require that discrimination be “solely” on the basis of race in order to be covered by the treaty. In fact, CERD has issued a General Recommendation on the gender-related dimensions of racial discrimination.<sup>10</sup> It begins with the important point that “racial discrimination does not always affect women and men equally in the same way”, and that “there are some circumstances in which racial discrimination only or primarily affects women” or affects them in a different way than men. If there is no explicit recognition or acknowledgement of the different life experiences of women and men, in both public and private life, it states, “then such discrimination will often escape detection”.

The CERD General Recommendation XXV illustrates these points in paragraph 2:

“Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. The consequences of racial discrimination may primarily or only affect women, such as pregnancy, and in some societies ostracism, as the result of racial bias-motivated rape. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender related impediments, such as gender-bias in the legal system and discrimination against women in private spheres of life”.

CERD has incorporated this gender-awareness into the detailed measures it sets out for states to take in its General Recommendation XXVII (2000) on the Roma. Amongst other measures, states are to:

“take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination”;

“ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women”, and “initiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups”.

### **Implementation measures**

In order to guarantee the rights set out above, states must take a series of steps outlined in the Convention. Under Article 2, states must pursue a policy of “eliminating racial discrimination in all its forms and promoting understanding among all races”, and to this end, must:

- Refrain from any act or practice of racial discrimination,  
— and ensure that all public authorities and public institutions, national and local, act in conformity with this obligation;
- Undertake not to sponsor, defend or support racial discrimination by any persons or organizations;
- Review its policies – both national and local – and amend or nullify any laws and regulations that have either the purpose, or the effect, of creating or perpetuating racial discrimination;
- Prohibit and bring to an end racial discrimination “by any persons, group or organization”;
- Encourage “integrationist multiracial organizations and movements”, and discourage “anything which tends to strengthen racial division”;
- Take “special measures” – sometimes known as “affirmative action” — to ensure that individuals belonging to certain racial groups are guaranteed the full and equal enjoyment of human rights.

### **Addressing hate propaganda**

Recognizing the power of hate propaganda, Article 4 sets forth additional steps that states must take to address this problem. In a provision considered to be a justified limitation on freedom of expression,

the Convention requires states to condemn all propaganda and organizations which are based on the notion of racial or ethnic superiority, or attempt to justify or promote racial hatred and discrimination. States are required to adopt measures to eradicate incitement to, and acts of, racial discrimination by measures including the following:

- Declare an offence punishable by law:
  - all dissemination of ideas based on racial superiority or hatred;
  - all acts of violence or incitement to violence against any racial or ethnic group;
  - the provision of assistance to racist activities, including financial assistance.
- Declare illegal, and prohibit, organizations and all propaganda activities that promote and incite racial discrimination. Participation in these organizations or activities must be made an offence punishable by law.
- Not permit public authorities or public institutions, both national and local, to promote or incite racial discrimination.

### **Right to a remedy**

Article 6 requires states to assure to everyone in their jurisdiction effective protection and remedies against acts of racial discrimination, as well as adequate reparation for any damage suffered from such discrimination. This includes both material injury as well as indignity and humiliation suffered. In its General Recommendation XXVI (2000) on the implementation of this requirement, CERD notes that “the degree to which acts of racial discrimination and racial insults damage the injured party’s perception of his/her own worth and reputation is often underestimated”. It states that the right to adequate reparation “is not necessarily secured by the punishment of the perpetrator of the discrimination”, but that the authorities should also consider awarding financial compensation for damage, “material or moral”, suffered by a victim.

CERD applied this concept in the case of *B.J. v. Denmark*,<sup>11</sup> in which it noted that “[b]eing refused access to a place of service intended for the use of the general public solely on the ground of a person’s national or ethnic background is a humiliating experience which, in the opinion of the Committee, may merit economic compensation and cannot always be adequately repaired or satisfied by merely imposing a criminal sanction on the perpetrator.”

### **Addressing the root causes of discrimination**

Of vital importance is the obligation of states parties not only to legislate but also to educate, so as to eliminate the root causes of racial discrimination. Article 7 requires states to take measures in the fields of “teaching, education, culture and information” to combat “prejudices which lead to racial discrimination” and to promote “understanding, tolerance and friendship” among racial and ethnic groups.

### **BOX**

*“Using legislation by itself [is] like cutting down a noxious weed above the ground and leaving the roots intact.”*

Lady Gaitskill, UK delegate, during the UN General Assembly debate in 1963 on the draft Convention<sup>12</sup>

END BOX

Guidelines on teaching, education, culture and information have been developed by CERD in collaboration with UNESCO.<sup>13</sup>

Article 7 is not aimed solely at the education of school children. CERD has stated that implementation of Article 7 also entails the need to educate teachers and other opinion leaders on eliminating prejudice and fostering tolerance, as well as provide training for public officials including law enforcement officers, judges, and prosecutors. In its General Recommendation XIII (1993) on the training of law enforcement officials in the protection of human rights, CERD states that “in the implementation of article 7”, states parties are “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.”



The inclusion of the third area, culture, aims to make use of the power of cultural events to shape views and opinions, for example through theatre performances, shows, concerts, cultural events, sport, films and the like. The fourth area, information, is aimed at making use of the media in efforts to eliminate prejudice and foster tolerance.

### **The Committee on the Elimination of Racial Discrimination**

The Committee on the Elimination of Racial Discrimination (CERD) which monitors implementation of the Convention against Racial Discrimination, is composed of 18 experts who serve in a personal capacity. It meets twice yearly in Geneva, has requested to meet in New York, and reports annually to the UN General Assembly through the UN Secretary-General.

#### ***State reports***

CERD periodically reviews the steps taken by states to fulfil their obligations to combat racial discrimination. Each state party is required to submit a comprehensive report every four years giving information on legislative, judicial, administrative and other measures to implement the Convention against Racial Discrimination.

#### ***Individual petitions***

Individuals or groups of individuals may submit claims that they are victims of a violation of the Convention against Racial Discrimination directly to CERD, provided that the state concerned has agreed to this procedure by making a declaration under Article 14.

#### ***Early warning measures and urgent procedures***

CERD has also initiated two innovative methods of work: “early warning and urgent procedures”. The procedures, founded on Article 9(1) of the Convention, were adopted in 1993 as a means for CERD to help prevent human rights violations from escalating into conflict, and to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the prohibition of racial discrimination. Criteria CERD has said could trigger urgent procedures include “a serious, massive or persistent pattern of racial discrimination; or that the situation is serious and there is a risk of further racial discrimination”.

Under the early warning and urgent procedures, CERD examines the human rights situation in a state outside the schedule of the regular periodic reporting process. NGOs can suggest that CERD takes action under these procedures. Since 1993, the following states have been considered as part of CERD’s efforts to prevent racial discrimination: Algeria, Australia, Bosnia and Herzegovina, Burundi, Croatia, Cyprus, Democratic Republic of the Congo, Israel, Liberia, Mexico, Papua New Guinea, Russian Federation, Rwanda, Sudan, the former Yugoslav Republic of Macedonia and Yugoslavia. CERD has also adopted a statement on Africa and another on the human rights of Kurdish people.

## **Chapter 4: International Covenant on Economic, Social and Cultural Rights**

*“International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life — work, food, housing, health care, education and culture — are adequately and equitably available to everyone.”<sup>14</sup>*

The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) sets out rights that are fundamental to human existence. Rights protected in the ICESCR include rights relating to work and to just and safe conditions of work; the right to form trade unions; the right to social security, and to an adequate standard of living, including adequate food, clothing and housing; the right to the highest attainable standard of physical and mental health, and the right to education. One purpose of education, the ICESCR specifies, is to promote understanding, tolerance and friendship among all racial, ethnic and religious groups (Article 13.1).

States that ratify the ICESCR agree to guarantee the rights it contains “without discrimination of any kind as to race, colour” and other grounds (Article 2.2). A state party has a duty to take steps to achieve these rights “within the maximum of its available resources”, so that in allocating these resources, it may not discriminate on the basis of race, sex, or any of the other grounds listed in Article 2.2.

## **Rights in the International Covenant on Economic, Social and Cultural Rights**

All these rights must be guaranteed without racial discrimination:

- the equal right of men and women to the enjoyment of all the rights in the ICESCR (Article 3); discrimination on the grounds of race and sex sometimes combine to result in a violation of the ICESCR;
- the right to work, to equal pay for equal work, and to safe and healthy working conditions (Articles 6 and 7);
- the right to form trade unions (Article 8);
- the right to social security (Article 9);
- entry into marriage must be with the free consent of the intending spouses (Article 10.1);
- special protection to mothers for a reasonable period before and after childbirth; paid leave or leave with adequate social security benefits during this period (Article 10.2);
- special measures of protection and assistance for children and young persons (Article 10);
- the right to an adequate standard of living (Article 11), including adequate
  - food,
  - clothing, and
  - housing;
- the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12); this includes:
  - provision for reduction of stillbirth rate and infant mortality (para. 2-a),
  - improvement of environmental and industrial hygiene (para. 2-b),
  - prevention, treatment and control of diseases (para. 2-c),
  - creation of conditions to assure medical service to all (para. 2-d);
- the right to education (Articles 13 and 14);
- the right to take part in cultural life and to enjoy the benefits of scientific progress (Article 15).

## **Implementation measures**

The ICESCR provides that each state party is to take steps “to the maximum of its available resources, with a view to achieving progressively” the rights in the ICESCR. The obligation of non-discrimination in Article 2(2) applies immediately and is subject neither to progressive realization nor to the availability of resources.

In addition to legislation, states are to provide judicial remedies with respect to those rights for which, in accordance with the national legal system, there may be a judicial remedy.

The Committee on Economic, Social and Cultural Rights (CESCR), the body which monitors compliance with the ICESCR, has explained that the ICESCR imposes three levels of obligation on states: the obligations to respect, protect and fulfil. Here is an example to illustrate these obligations with respect to the right to adequate food, as set out in CESCR’s General Comment 12 (1999):

- The obligation to respect the right to adequate food requires states parties not to take any measures that result in preventing such access.
- The obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.
- The obligation to fulfil (facilitate) means the state must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.

General Comment 13 (1999) on the Right to Education notes that educational data should be disaggregated in categories defined by the prohibited grounds of discrimination. In that General Comment, the CESCR indicates that states parties “must closely monitor education — including all relevant policies, institutions, programmes, spending patterns and other practices — so as to identify and take measures to redress any de facto discrimination.”

General Comment 14 on the Right to Health (2000) notes that “right to health indicators require disaggregation on the prohibited grounds of discrimination.” It also notes that the right to

health is closely related to and dependent upon the realization of other human rights, including the right to non-discrimination.

The ICESCR guarantees the right to adequate housing. The CESCR has noted in its General Comment 4 that states should provide legal remedies for illegal actions carried out by landlords (whether public or private) in relation to racial or other forms of discrimination. They should also provide legal remedies against any form of discrimination in the allocation and availability of access to housing.

BOX

Environmental racism

The dumping of toxic waste in areas inhabited by marginalized racial or ethnic groups can constitute a violation of the right to adequate health and of the requirement of Article 2 of the International Covenant on Economic, Social and Cultural Rights that this right be guaranteed without racial discrimination.

END BOX

The CESCR has noted that indigenous people, ethnic and other minorities are among those who suffer disproportionately from the practice of forced eviction. It also noted that many instances of forced eviction are associated with violence, including evictions resulting from ethnic violence.

### ***State reports***

The CESCR has expressed concerns about racial discrimination in its review of the reports of states parties. In reviewing the report of Spain, for example, the Committee noted “with great concern the growth in the number of acts of discrimination and racism against foreigners in Spain, particularly directed at groups from North Africa, asylum seekers, illegal workers and the Romany (Gypsy) population”.<sup>15</sup>

In reviewing the report of the Dominican Republic, the CESCR said it “notes the presence of racial discrimination in the Dominican Republic, although this seems to be denied by the authorities”.<sup>16</sup> The CESCR emphasized that, in order to combat and prevent racial discrimination in the enjoyment of economic, social and cultural rights, its existence must be recognized by the authorities. The Committee stressed that, without such recognition, no effective anti-discrimination policies can be put in place. The Committee stated that the existence of racial discrimination does not necessarily entail institutionalized or legal discrimination. The CESCR recommended that concrete and appropriate measures be taken, such as information and education campaigns and reforms to the criminal law, in order to penalize acts of racial discrimination by public officials and private individuals, and to prevent and combat such acts.

## **Chapter 5: International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, contains a wide range of protected rights, including the right to life, to liberty and security of the person, the right not to be subjected to torture or ill-treatment and the right not to be held in slavery. It covers rights regarding arrest, detention and trial procedures, freedom of association, of expression and of religion, rights in marriage, privacy rights, and the right to participate in public affairs.

States that have ratified the ICCPR must both “respect” and “ensure” all of the rights without discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2.1). The obligation to “respect” these rights includes the obligation on the part of the state not to violate these rights itself. The obligation to “ensure” these rights includes the obligation on the part of the state to protect people from abuses of these rights by private individuals. The Human Rights Committee (HRC), which monitors implementation of the Covenant, has actively pursued implementation of both of these obligations.

The HRC has adopted the definition of racial discrimination found in Article 1 of the Convention against Racial Discrimination, applying it to all rights and freedoms (General Comment 18 on Non-Discrimination, para 6). The HRC has noted that the principle of equality “sometimes requires states to take affirmative action in order to diminish or eliminate conditions which cause or help to

perpetuate discrimination prohibited by the Covenant”; giving preferential treatment to a group to correct discrimination is permitted under the Covenant (General Comment 18, para. 10).

Article 2 of the ICCPR requires states to respect and ensure the rights in the Covenant to all individuals in their jurisdiction. This includes citizens and non-citizens alike. The only exceptions are two articles that expressly limit their coverage: Article 25 on the right to take part in public affairs and to vote, which by its wording limits the right to “every citizen”, and Article 13 on the right of “[e]very alien lawfully in the territory of a State Party” not to be arbitrarily expelled. The HRC has emphasized in its General Comment 15 on “The position of aliens under the Covenant” that aliens are entitled to all the other rights in the Covenant.

### **Rights in the International Covenant on Civil and Political Rights**

All these rights must be ensured without racial discrimination:

- the right to life (Article 6);
- the prohibition of torture and cruel, inhuman, or degrading treatment (Article 7);
- the prohibition of slavery (Article 8);
- the right to liberty and security (Article 9.1);
- the right not to be subjected to arbitrary arrest or detention (Article 9.2 and 9.3);
- the right to be treated with humanity and dignity when detained (Article 10);
- the right to liberty of movement and freedom to choose one’s residence (Article 12);
- the prohibition of arbitrary expulsion of aliens lawfully in the state’s territory (Article 13), which may be invoked for example regarding unfair asylum procedures and unfair hearings before expulsion;
- the right to equality before the courts and tribunals (Article 14.1);
- a set of detailed rights to a fair trial (Article 14);
- the right to recognition as a person before the law (Article 16);
- the right to non-interference with privacy and family (Article 17);
- the right not to be subject to unlawful attacks on one’s honour and reputation (Article 17), which is relevant to racist defamation;
- the right to freedom of thought, conscience and religion (Article 18);
- the right to freedom of expression, and the freedom to seek and impart information (Article 19);
- the prohibition, by law, of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20);
- the right to peaceful assembly (Article 21) and freedom of association (Article 22);
- the right to marry, and the requirement that no marriage be entered into without the free and full consent of the intending spouses (Article 23);
- special protection for minors, including protection against racial and ethnic discrimination (Article 24);
- equality before the law and equal protection of the law (Article 26); this requirement means that states must ensure there is no discrimination on the basis of race, for example, when they regulate housing, or employment, or education;
- for ethnic, religious and linguistic minorities, the right to enjoy their own culture, religion and language (Article 27).

### **Implementation measures**

Steps that states must take to implement the ICCPR include the following:

- adopt legislative and other measures to give effect to the rights in the ICCPR;
- ensure that any person whose rights under the ICCPR have been violated has an effective remedy, and ensure that the authorities enforce such remedies when granted.

The HRC has noted that the obligation to “ensure” the enjoyment of rights “calls for specific activities by the states parties to enable individuals to enjoy their rights” (General Comment 3, 1981).

#### **State reports**

In reviewing states parties’ reports, the HRC has expressed concern about racial and ethnic discrimination in every region of the world. Reports reviewed in recent years generated the following concerns:<sup>17</sup>

Chile – discrimination in employment and housing.

Congo – incitement to discrimination and hostility.

Finland – discrimination in private housing, employment, services, acts of violence.

Hong Kong Special Administrative Region – lack of remedy for racial discrimination.

Iraq – discrimination against ethnic minorities, lack of equality before the law and equal protection of the law.

Israel – discrimination in education, health care, housing, land and employment.

Japan – discrimination in education, land rights, income and effective remedies against discrimination.

Romania – discrimination in education and language.

#### **Individual petitions**

Provided the state concerned has ratified the (first) Optional Protocol to the ICCPR, individuals may submit claims to the HRC that they have been victims of violations of rights specified in the ICCPR on a discriminatory basis.

### **Chapter 6: Other international treaties and mechanisms**

Racial discrimination is addressed in several core international treaties in addition to the Convention against Racial Discrimination and the two Covenants on human rights. The UN Charter itself contains obligations to work against racial discrimination. Human rights treaties focusing on violations such as genocide and torture, as well as those on the rights of children and of women and on labour rights, are also an important part of the struggle to combat racial discrimination.

#### **UN Charter**

Founded in the wake of the atrocities committed before and during the Second World War, the UN has as one of its goals the protection of human rights without discrimination on grounds of race and other elements of personal identity. Article 1 of the UN Charter states that one of the purposes of the UN is:

“to achieve international co-operation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

The Charter then states that:

the UN General Assembly “shall initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 13).

Another key human rights clause of the Charter states that:

the UN “shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 55c ) and member states pledge to take action in cooperation with the UN to achieve this goal (Article 56).

The International Court of Justice has ruled that the human rights provisions of the UN Charter constitute binding obligations on states. In a case regarding South Africa and Namibia, the Court stated that:

“To enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, color, descent or national or ethnic origin which constitute a denial of fundamental human rights *is a flagrant violation of the purposes and principles of the Charter*....”<sup>18</sup>

#### **Genocide Convention**

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) (1948) addresses, as an international crime, the most extreme manifestation of hatred and discrimination on the basis of race, ethnicity, nationality or religion. This treaty defines “genocide” as any of several acts when committed with the intention of destroying, in whole or in part, “a national, ethnical, racial or religious group”. Article II sets out these acts:

- killing or causing serious bodily or mental harm to members of the group;
  - deliberately inflicting on the group conditions of life calculated to bring about the physical destruction of the group, or of part of the group;
  - imposing measures intended to prevent births within the group;
  - forcibly transferring children of the group to another group.
- Not only is genocide punishable under this treaty, but so, under Article III, are:
- conspiracy to commit genocide;
  - direct and public incitement to commit genocide;
  - attempt to commit genocide; and
  - complicity in genocide.

The Genocide Convention requires that those who have committed acts of genocide be brought to trial and punished, either in the state on whose territory genocide was committed, or by an international penal tribunal (Articles IV and VI). States that have ratified the treaty agree to grant extradition in such cases (Article VII). The treaty also provides that states may call upon the UN to take such action as they consider appropriate to prevent and suppress acts of genocide (Article VIII).

### **Convention on the Rights of the Child**

The Convention on the Rights of the Child (1989) sets out a series of civil, political, economic, social and cultural rights of children, and requires that states “respect and ensure” these rights without discrimination of any kind, irrespective of the child’s – or the parent’s or legal guardian’s – “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. In the Convention, a “child” is every human being under the age of 18.

Infant mortality, inadequate health care, lack of basic education, exploitation of children, child labour and the high rate of child victims of armed conflict were among the concerns that led to the drafting and adoption of a convention on children’s rights. One of the four guiding principles for implementation of the Convention is non-discrimination, ensuring equality of opportunity.<sup>19</sup>

States parties have an obligation both to refrain from certain acts (for example, using child labour) and to take action (for example, to protect children from sexual exploitation). To ensure the rights in the Convention, a state must address the acts of both public authorities and private individuals and groups.

### **Rights in the Convention on the Rights of the Child**

All the following rights must be ensured without racial discrimination:

- the right to life (Article 6);
- registration immediately after birth, the right to a nationality, and as far as possible, to know and be cared for by one’s parents (Article 7);
- the right of the child to preserve his or her identity, including nationality, name and family relations (Article 8);
- the right of a child not to be separated from his or her parents against their will (Article 9), in accordance with which “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with . . . in a positive, humane and expeditious manner” (Article 10);
- protection against illicit transfer and non-return of children abroad (Article 11);
- rights to freedom of expression (Article 13), of thought, conscience and religion (Article 14), and to freedom of association and of peaceful assembly (Article 15);
- the right to protection from arbitrary interference with his or her family (Article 16);
- protection from physical and mental violence, injury, or abuse (Article 19);

- measures regarding adoption (Article 21);
- appropriate protection and humanitarian assistance to a child who seeks refugee status or is a refugee (Article 22);
- the right of the mentally or physically disabled child to the enjoyment of a full life in conditions of dignity, and to special care for special needs (Article 23);
- health rights (Article 24), including the right of access to health care, and the obligation of states to take all effective measures to abolish “traditional practices prejudicial to the health of children”, which has been interpreted to include female genital mutilation;
- the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27);
- the rights to education (Articles 28 and 29) and social security (Article 26);
- the right of the child belonging to an ethnic, religious or linguistic minority not to be denied the right to enjoy his or her own culture, practise his or her religion, and use his or her own language (Article 30);
- the right of the child to rest and leisure (Article 31);
- protection from economic exploitation (Article 32), from sexual exploitation and abuse (Article 34), and from abduction, sale and trafficking (Article 35);
- prohibition of torture or cruel, inhuman or degrading treatment or punishment; the obligation of states to ensure that detention of a child be used only as a measure of last resort and for the shortest appropriate period of time (Article 37);
- the obligation of states to respect rules of international humanitarian law in armed conflicts that are relevant to the child (Article 38);
- the obligation of states to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of neglect, exploitation, abuse, torture or any other ill-treatment, or armed conflicts (Article 39);
- rights of the child alleged or recognized to have infringed the penal law (Article 40).

### **Implementation measures**

In all actions, the best interest of the child must be the primary consideration (Article 3). States must undertake all appropriate measures, including legislative and administrative, to implement these rights (Article 4). With respect to economic, social and cultural rights, states are to take measures to the maximum of their available resources, but this does not apply to the requirement of non-discrimination, which must be applied immediately.

#### ***State reports***

Concern over discrimination in every region of the world has been expressed by the Committee on the Rights of the Child (CRC) in reviewing states parties’ reports. Here are some examples from reports reviewed in recent years:<sup>20</sup>

Cambodia – discrimination against children of Vietnamese origin, and in the nationality law, against children of non-Khmer origin.

Costa Rica – concern at manifestations of xenophobia and racial discrimination against immigrants, particularly children belonging to Nicaraguan families residing illegally, and at the marginalization of children belonging to indigenous populations and to the Black Costa Rican ethnic minority.

Hungary – discriminatory practices against the Roma population including Roma children, and unequal access to health services and to the education system.

India – concern over traditional customs such as the caste system, and societal attitudes, such as those towards tribal groups, being an obstacle to efforts to combat discrimination, and compounding poverty, illiteracy, child labour, child sexual exploitation and children living or working on the streets.

Iran – large disparities in the enjoyment of their rights by children in provinces inhabited largely by ethnic minorities, especially in Sistan and Baluchestan, Lorestan, West Azarbaijan, Ardabil and Hormozgan.

Kuwait – discrimination affecting children of the Bedoon minority community and young migrant workers.

Malta – concern at reports that expressions with racial connotations have been used by state officials to refer to children belonging to immigrant families in an irregular situation.

Russian Federation – concern about the living conditions of children belonging to indigenous and ethnic groups.

### **Convention on the Elimination of All Forms of Discrimination against Women**

The Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) (1979) sets out steps that states should take to eliminate discrimination against women by both public authorities and private individuals.

The discrimination a woman faces in some situations results from a combination of her gender and her racial or ethnic identity, or from a combination of these factors with others such as economic status. Moreover, a woman may experience some consequences of ethnic discrimination in ways different from a man because of her gender.

The Women's Convention prohibits discrimination against women in a range of areas, including: participation in political and public life (Article 7), rights to change and acquire nationality (Article 9), education (Article 10) employment (Article 11), the field of health care (Article 12), economic and social life (Article 13), participation in development planning and other areas of particular concern to rural women (Article 14), equality before the law and legal capacity in civil matters including property and contracts (Article 15); freedom of movement (Article 15.4) and marriage and family relations (Article 16). In addition, states are to suppress all forms of traffic in women and exploitation of prostitution of women (Article 6).

Under Article 4, temporary special measures aimed at accelerating equality between men and women in the enjoyment of their rights do not constitute prohibited discrimination.

### **Implementation measures**

States that have ratified the Women's Convention are obliged to embody the principle of equality of men and women in their constitutions and legislation, to adopt legislation prohibiting discrimination against women and include sanctions where appropriate, to ensure that public authorities and institutions do not discriminate against women, and to take all appropriate measures to eliminate discrimination against women "by any person, organization or enterprise" (Article 2).

### **State reports**

The Committee on the Elimination of Discrimination against Women (CEDAW), which monitors implementation of the Convention, regularly notes the particular deprivation of rights experienced by women on account of their race or ethnicity.<sup>21</sup>

In reviewing the report of the UK, for example, CEDAW expressed concern at:

"the disadvantaged situation of women belonging to ethnic minorities, notwithstanding the existence of legislative protection against discrimination on the basis of race and ethnicity. Ethnic minority women continue to experience higher levels of unemployment, lower levels of education and training, lower wages and salaries and fewer benefits than white women. "The Committee recommends that steps be taken to ensure the elimination of direct and indirect discrimination against ethnic minority women, including through positive action in recruitment, awareness campaigns and targeted training, education, employment and health-care strategies."

In examining the report of India, CEDAW noted:

"The Committee is concerned that there is a high incidence of gender-based violence against women, which takes even more extreme forms because of customary practices, such as dowry, sati and the devadasi system. Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment. The Committee urges the Government to implement existing legislation prohibiting such practices as dowry, devadasi and caste-based discrimination".

In reviewing the report of Germany, CEDAW expressed concern about racism and xenophobia faced by foreign women, and proposed a series of steps for the government to take in order to address this problem:



“The Committee is concerned at the often precarious social and economic situation of foreign women living in Germany. It is also concerned at the incidences of xenophobic and racist attacks in the State party and notes the vulnerabilities that foreign women can face on the multiple grounds of sex, ethnicity and race.

“...The Committee calls on the Government to improve the collection of data and statistics disaggregated by sex and race/ethnicity of victims of violence motivated by xenophobia and racism, to put in place adequate protection mechanisms and to ensure that foreign women victims of such attacks are made aware of their rights and have access to effective remedies. It also urges the Government to strengthen its efforts for the social integration of foreign women through educational and employment services, and through awareness-raising of the population. It also recommends that steps be taken to combat domestic violence and violence within the family and to increase foreign women’s awareness about the availability of legal remedies and means of social protection.”

In reviewing the report of China, CEDAW expressed concern about the disproportionate persistence of illiteracy among women, especially women in rural and remote areas, and among ethnic and religious minority women. In light of the diversity of the country and population, CEDAW repeated its earlier request that the government include in its reports information on ethnic minorities, particularly the Uyghur and Tibetan peoples.

### **Convention against Torture**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) (1984) sets out steps states parties are required to take in order to eliminate torture. An act of torture within the meaning of the Convention is the intentional infliction of severe pain or suffering, whether physical or mental, for various purposes including “any reason based on discrimination of any kind”, when inflicted or instigated by someone acting in an official capacity, or with the consent or acquiescence of such a person (Article 1). If someone is tortured because he or she is a member of a particular racial or ethnic group, the provisions of the Convention apply, if the torture is inflicted by, or with the consent or acquiescence of, a public official.

### **Implementation measures**

States are required to take legislative, administrative, judicial and other measures to prevent acts of torture (Article 2), and to ensure that all acts of torture are offences under their criminal law accompanied by appropriate penalties that take into account their grave nature (Article 4).

In addition, states must:

- prohibit expulsion, *refoulement* (forcible return) or extradition to a state where there are “substantial grounds” for believing the person “would be in danger of being subjected to torture” (Article 3);
- ensure a “prompt and impartial investigation” where there is reasonable ground to believe an act of torture has been committed (Article 12);
- ensure the right of anyone who has been tortured to complain to competent authorities and have the case promptly and impartially examined (Article 13);
- ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of the complaint (Article 13);
- ensure the right of torture victims to redress and to adequate compensation, including the means for as full rehabilitation as possible; if the victim dies as a result of torture, the dependants are entitled to compensation (Article 14);
- prohibit the use as evidence of any statement made as a result of torture (Article 15).

A review of the annual reports of the Committee against Torture reveals little attention given to the racial and ethnic discrimination that is often the basis for torture and ill-treatment in some countries. One instance in which it did address discrimination was prompted by information received from sources other than the government, which demonstrates the importance of NGOs submitting information to the Committee. In reviewing the report of the UK in 1995, the Committee against Torture expressed concern about allegations of discrimination in the treatment of black citizens in the UK by police and immigration authorities.<sup>22</sup>

## **International Labour Organisation Conventions**

The International Labour Organisation (ILO) is a UN specialized agency whose mandate is to promote social justice and internationally recognized labour rights as well as other related human rights. The ILO formulates Conventions establishing minimum standards in the area of labour rights, which includes freedom of association, the right to organize, collective bargaining, abolition of forced labour, abolition of child labour, and equality of opportunity and treatment. In addition to these treaties, the ILO also formulates standards regulating conditions across a broad spectrum of work-related issues.

Equality of opportunity and treatment is one of the fundamental objectives of the ILO. The ILO Constitution (1919) states that this principle is among those that are “of special and urgent importance” that should guide the policy of the organization. In its Declaration of Philadelphia, adopted in 1944, the ILO affirms that “all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.

The ILO has engaged in activities against racial discrimination for many years. Recent ILO activities have addressed a broad range of topics, including a program launched in 1993 to combat discrimination against immigrant workers and ethnic minorities in the world of work. Aimed primarily at industrialized countries that receive migrant or immigrant workers, the program is designed to make legislative measures and training activities more effective in fighting discrimination. Information about the program is available on the ILO web site.

Several important ILO conventions and declarations are useful in addressing racial discrimination:

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) requires states parties to pursue a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment. Specific steps are set out for states to take in implementing this goal.
- The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) is an important new instrument that addresses the challenges of globalization and declares that economic growth must be accompanied by a number of social ground rules. Although it is not a treaty subject to ratification, the Declaration constitutes a renewed commitment by the ILO and its member states to respect, promote and realize four fundamental principles and rights, including the elimination of discrimination in employment and occupation.<sup>23</sup> Part of the plan for implementation of these principles and rights is a series of annual reviews.
- The Migration for Employment (Revised) Convention, 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), recognize that migrants and ethnic minorities experience discrimination on grounds of their nationality, colour, race or ethnic origin.

Additional relevant ILO conventions are mentioned here because of the discriminatory practices faced by members of some racial and ethnic groups in these areas of labour:

- Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105);
- Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182);
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Direct access to ILO procedures is limited to the three groups that make up its three-part structure: governments, trade unions and employers' associations. Indirect access, however, is available to individual complainants and to NGOs and other advocates.

## **Reports by states**

The Constitution of the ILO requires states parties to submit reports to the International Labour Office on what measures they have taken to give effect to any ILO convention they ratify. States must also submit copies of their reports to the organizations that represent employers and workers at the ILO.

These organizations may also submit their own observations on implementation of ILO Conventions. There is even a periodic reporting mechanism for states that are members of the ILO but have not ratified a particular ILO convention. These members must report to the Director-General of the International Labour Office about their laws and practice regarding the matters dealt with in ILO Conventions they have not ratified. The Director-General presents each year to the International Labour Conference a summary of the reports communicated by states.

### **Enforcement**

A key player in the ILO's enforcement mechanism is its Committee of Experts on the Application of Conventions and Recommendations. This Committee reviews states' reports, relevant laws and publications, and information contained in comments made by employers' and workers' organizations. The Committee may issue "Observations" on government reports; make recommendations to the government on how better to comply with the conventions' provisions; and make "Direct Requests" to governments for reply. Another mechanism that has been used by governments wishing to avoid public criticism is "direct contacts", through which an ILO official or individual expert, at the request or with the consent of the government, discusses problems the government is facing in implementing an ILO convention, and assists in addressing those problems.

### **Complaints procedures**

Three ILO procedures exist for filing complaints or representations that a state is not in compliance with a convention it has ratified.

"Article 24 representations", which refer to Article 24 of the ILO Constitution, allow any national or international workers' organization to make a representation that a state has failed to comply with any ILO convention it has ratified.

"Article 26 complaints" are complaints that may be filed against a state alleging that it has not applied an ILO convention that it has ratified; the complaint may be brought by a state that has ratified that convention, by any delegate to the International Labour Conference, or by the ILO Governing Body itself.

In addition, the ILO has special procedures on freedom of association, which are the most widely used of the ILO complaint mechanisms. The Committee on Freedom of Association examines complaints brought by governments, workers' or employer's associations alleging that an ILO member state is not respecting the basic principles of freedom of association, whether or not the state has ratified the ILO conventions on the subject. A Fact-Finding and Conciliation Commission examines infringements of trade union rights that are referred to it by the ILO's Governing Body.

The complaint procedures are not available to individuals or human rights organizations. However, NGOs can have an influence by working in cooperation with designated workers' organizations, which are all listed on the ILO web site. In addition, NGOs can use domestic venues to press a state to honour its obligations under the ILO conventions it has ratified.

### **International Convention on the Protection of the Rights of All Migrant Workers**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) seeks to protect the human rights of migrant workers worldwide. Under this treaty, which is not yet in force, migrant workers are entitled to enjoy their human rights throughout the migration process. When it comes to working conditions, they are entitled to the same conditions as those enjoyed by nationals of the state in which they are living; this includes the right to join trade unions, to social security, and to emergency health care. The Convention includes a non-discrimination provision (Article 7) that requires both receiving and sending states to ensure that migrant workers and their family members are able to enjoy the rights set forth in the Convention without discrimination of any kind such as race, colour, or ethnic or social origin.

To enter into force, the Convention needs 20 ratifications; as of February 2001 it had gained only 16. In March 1998, a campaigner's handbook to promote the ratification and entry into force of this Convention, entitled *Achieving dignity*, was produced by the International Migrants Rights Watch Committee, now called Migrant Rights International.

## Chapter 7: Non-treaty standards

### Universal Declaration of Human Rights

The Universal Declaration of Human Rights, proclaimed in 1948 as “a common standard of achievement for all peoples and all nations”, remains one of the foundations of the international human rights system. Non-discrimination is one of the general principles of the Declaration, which begins by stating in Article 1 that “all human beings are born free and equal in dignity and rights”. The non-discrimination requirement is then spelled out in Article 2, which states that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The non-discrimination principle is further elaborated in Article 7, which provides that:

“All are equal before the law and are entitled without any discrimination to equal protection of the law.”

“All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

#### Box

The equal protection clause may be invoked, for example, when a state fails to provide to members of a particular racial group equal protection of the law in respect of the right to life (Article 3) or the right not to be subjected to torture or ill-treatment (Article 5) or the right to work (Article 23), to food and housing (Article 25) and to education (Article 26), or any other right in the Universal Declaration of Human Rights.

END BOX

Prohibition of racial discrimination is again explicitly mentioned in Article 16, which guarantees the right of men and women:

“without any limitation due to race, nationality or religion . . . to marry and to found a family . . . Marriage shall be entered into only with the free and full consent of the intending spouses.”

#### BOX

A state fails to fulfill the right to marry under Article 16 of the Universal Declaration of Human Rights when it protects women and girls of some ethnic groups against forced marriage, but does not protect women and girls of other ethnic groups against forced marriage. In such situations the state often tries to justify its inaction on the ground of respect for other cultures, but religion and culture are not accepted under international human rights law as justifications for violating basic rights.

END BOX

Article 21 of the Declaration recognizes the right of equal access to public service and to universal and equal suffrage in elections.

Article 26 of the Declaration states that education “shall promote understanding, tolerance and friendship among all nations, racial or religious groups...”

When taking an issue regarding racial discrimination before the UN Commission on Human Rights (see Chapter 8), it is the articles of the Universal Declaration of Human Rights that should be cited as the source of the rights being invoked.

### United Nations Declaration on the Elimination of All Forms of Racial Discrimination

The UN Declaration on the Elimination of All Forms of Racial Discrimination, adopted in 1963, was the first instrument adopted by the UN to focus specifically on racial discrimination. The Declaration laid the groundwork for the adoption two years later of the legally binding treaty, the Convention against Racial Discrimination. The Declaration remains an important source of international standards to rely upon when raising issues of racial discrimination in countries that have not ratified the Convention against Racial Discrimination.

Article 1 of the Declaration states that “discrimination between human beings on the ground of race, colour or ethnic a denial of the principles of the Charter of the United Nations...” Article 2 declares that states, institutions, groups and individuals “shall not make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the grounds of race, colour or ethnic origin”. The Declaration then sets out a series of steps that should be taken in order to eradicate racial discrimination by public and private entities and individuals, including special measures (affirmative action), condemnation of hate propaganda, and numerous other preventive and protective measures.

## **Chapter 8: The UN Commission on Human Rights**

The UN Commission on Human Rights (CHR) is the UN’s principal human rights body. It may address the human rights situation in any country that is a member of the UN. The mechanisms of the CHR can be used to provide an avenue for publicity and pressure on a government even if the state has not ratified the international human rights treaties described above.

The CHR is composed of 53 members, put forward by their governments and elected by the Economic and Social Council of the UN (ECOSOC) on a regional basis. It meets once a year in Geneva for six weeks in March and April. It has also held special sessions, such as in 1994 to address the situation in Rwanda, in 1999 to discuss East Timor, and in 2000 to address the situation in Israel and the Occupied Territories.

The CHR has a broad mandate to discuss any issue related to the protection of human rights. It holds discussions in both public meetings and under its confidential procedure.<sup>24</sup> It also commissions studies and adopts resolutions. It has focused on standard-setting, examining violations of human rights related to particular themes (such as torture and ill-treatment, or arbitrary detention) or in particular countries, and ways to promote and ensure respect for human rights. The CHR itself does not usually consider individual cases. However, it has established special mechanisms that do examine individual cases, which are described below.

In contrast with the treaty bodies discussed earlier, the CHR is essentially a political body whose members represent their governments. The political dynamics amongst the governments influences the discussions and the outcome of debates. Nonetheless, the procedures under the CHR provide opportunities for advocates to raise concerns about racial discrimination, and indeed, the CHR has addressed the subject on numerous occasions over the years in resolutions, studies and recommendations.

### **BOX**

Resolutions adopted by the CHR in 2000 containing references to racial or ethnic discrimination included the following:

- Racism, racial discrimination, xenophobia and related intolerance (Resolution 2000/14)
- The right to freedom of opinion and expression (Resolution 2000/38)
- The incompatibility between democracy and racism (Resolution 2000/40)
- Human rights of migrants (Resolution 2000/48)
- Tolerance and pluralism as indivisible elements in the promotion and protection of human rights (Resolution 2000/50)
- Rights of persons belonging to national or ethnic, religious and linguistic minorities (Resolution 2000/52)
- Internally displaced persons (Resolution 2000/53)
- Human rights and mass exoduses (Resolution 2000/55)
- Rights of the child (Resolution 2000/85)

END BOX

### **Using the Commission on Human Rights to address racial discrimination**

Access to some CHR procedures for non-governmental organizations (NGOs) depends on having consultative status with ECOSOC. This status is granted annually by ECOSOC following the

recommendations of its NGO Committee. However, all NGOs – including those without consultative status with ECOSOC – may contribute to and use the CHR special procedures explained below.

- ▶ Only NGOs with consultative status with ECOSOC may participate in the annual CHR sessions. Representatives of NGOs without such status may be able to join or work with a delegation from an NGO with this status.
- ▶ Work out a strategy to raise your concerns before and during the CHR session. Consider whether to try to generate resolutions that reflect these concerns. Lobby individual members of the CHR to include these concerns in their statements.
- ▶ Consider making written or oral statements under relevant items of the CHR agenda. Because of the overlap of racial discrimination with other human rights violations, concerns about racial discrimination will be relevant under many of the agenda items in addition to item 6 on racism, racial discrimination, xenophobia and all forms of discrimination. These other agenda items include: item 9 on human rights in any part of the world; item 10 on economic, social and cultural rights; item 11 on civil and political rights; item 13 on the rights of the child; item 14 on specific groups and individuals (including 14a, migrant workers, 14b, minorities, and 14c, mass exoduses and displaced persons), and item 15 on indigenous issues.

### **Suggested action under specific CHR agenda items**

- ▶ NGOs can make statements under the relevant agenda item that point to trends, policies and practices showing racial discrimination, or the lack of commitment to protecting against such discrimination.
- ▶ Under agenda items on specific human rights violations, NGOs can further develop understanding of when and how racial discrimination underlies these violations.
- ▶ NGOs can help develop the understanding of how human rights violations are often triggered by discrimination on multiple grounds, such as race and sex discrimination. This can be done, for example, through statements on situations of multiple discrimination, for example under item 12a on violence against women or item 13 on the rights of the child.

Further information is available on attendance at the CHR, on its agenda, on NGO consultative status, on making statements, on communicating with the press, on obtaining lists and texts of resolutions, and on current documents and reports on previous sessions (see Section Three). The web site of the Office of the High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)) also includes an information note for NGOs under the yearly session item on the CHR. For texts of resolutions in electronic form, see [www.unhchr.ch/documents/Charter-based bodies database](http://www.unhchr.ch/documents/Charter-based%20bodies%20database), *Commission on Human Rights, resolutions*. Information can be found in such publications as the *Orientation Manual*, *the UN Commission on Human Rights, its Sub-commission, and related procedures*, published by the Minnesota Advocates for Human Rights and International Service for Human Rights, and the *Human Rights Monitor* produced by the International Service on Human Rights, which also publishes an annual review of the CHR session.

### **Using the CHR's country-specific procedures**

#### **Country resolutions**

Each year the CHR adopts a number of resolutions dealing with particular countries. Country situations may also be addressed in “statements of the Chairperson”, an option sometimes taken instead of a resolution in politically sensitive situations.

Country resolutions adopted by the CHR express concern about human rights violations in the country and can bring pressure to bear on the authorities in the country to cease such violations. Even though some states manage to manipulate the political process at the CHR to avoid being the subject of a critical resolution, the countries that have been the subject of CHR resolutions have generally been places where human rights violations were taking place on a massive scale.

During the CHR session held in 2000, country-specific resolutions explicitly expressing concern about aspects of racial or ethnic discrimination were adopted on Afghanistan, Cambodia, the Democratic Republic of the Congo, Iraq, Myanmar, the Federal Republic of Yugoslavia, the Republic of Croatia and Bosnia and Herzegovina.

### **Suggested action using country resolutions**

- ▶ NGOs should lobby for their concerns about racial discrimination to be included in relevant country resolutions.
- ▶ If the CHR adopts a country resolution that includes concerns about racial discrimination, it can be used in approaches made to the government in question, and in approaches to third parties that might have some influence on that government.

### **BOX**

#### **Human rights in Myanmar**

The CHR session in the year 2000 adopted a resolution on the “Situation of human rights in Myanmar” (CHR Res. 2000/23) stating, among other things, that it:

*“Expresses its grave concern... that the composition and working procedures of the National Convention do not permit either members of Parliament-elect or representatives of the ethnic minorities to express their views freely”*

*“Deplores... the continuing pattern of gross and systematic violations of human rights in Myanmar, including extrajudicial, summary or arbitrary executions, particularly in areas of ethnic tension,... and the imposition of oppressive measures directed in particular at ethnic and religious minorities, including systematic programmes of forced relocation, destruction of crops and fields, the continued widespread use of forced labour, including for work on infrastructure projects, production of food for the military and as porters for the army;*

*“the continued violations of the human rights of, and widespread discriminatory practices against, persons belonging to minorities, including extrajudicial executions, rape, torture, ill-treatment and the systematic programmes of forced relocation directed against ethnic minorities*

*“the continuing violations of the human rights of women, in particular forced labour, trafficking, sexual violence and exploitation, often committed by military personnel, and especially directed towards women who are returning refugees, internally displaced or belong to ethnic minorities or the political opposition” and “the continuing violations of the rights of children through [amongst other things] discrimination against children belonging to ethnic and religious minority groups”.*

*“Strongly urges the Government of Myanmar” to undertake a series of steps including:*

*“To take urgent and meaningful measures to ensure the establishment of democracy in accordance with the will of the people” and “to engage immediately and unconditionally in a genuine and substantive dialogue with the leaders of political parties, including Aung San Suu Kyi, and of ethnic minorities with the aim of achieving national reconciliation and the restoration of democracy”*

*“to protect all civilians, including children, women and persons belonging to ethnic or religious minorities, from violations of humanitarian law”*

### **END BOX**

#### **Country-specific rapporteurs**

The CHR has established a number of country-specific “special rapporteurs”, “special representatives” and “experts”, who are empowered to study the human rights situation in a particular country and report back annually to the CHR and sometimes also the General Assembly.<sup>25</sup> Usually, the human rights situation in these countries is particularly grave. They engage in dialogue with the government of the country, make specific recommendations to improve human rights, and, with the permission of the government, may undertake fact-finding visits. They may receive written information from any individual or NGO – not just those with consultative status with ECOSOC. They can also issue urgent appeals to express specific concerns to governments about individuals imminently at risk.

### **Suggested action with country rapporteurs**

- ▶ NGOs can submit to the relevant country rapporteur information on racial discrimination, whether consisting of individual cases, patterns, laws or policies. As with submissions to other mechanisms, the information should be specific and well-documented.

### **Using the thematic mechanisms of the CHR**

In order to deal in more depth with specific areas of human rights concern, the CHR has over the years also developed a number of “thematic mechanisms”. Some theme mechanisms focus on specific rights, such as adequate housing, or food, or education; others focus on specific violations, such as torture or arbitrary detention; yet others focus on specific groups of people because of the incidence of human rights abuse experienced by members of that group, such as migrants, or internally displaced persons, or women. Many thematic mechanisms can be useful in addressing racial discrimination, especially when such discrimination triggers or contributes to the human rights violations the mechanism covers.

Thematic mechanisms consist of working groups or individual special rapporteurs or representatives who have a mandate to receive and analyse information, correspond with governments and report to the CHR on issues related to that topic. They may undertake on-site visits to countries, with the permission of the government. They report annually to the CHR and some also report directly to the UN General Assembly. The members of the working groups and special rapporteurs and representatives are appointed to serve as independent experts. Like the country rapporteurs, they are serviced by staff at the Office of the UN High Commissioner for Human Rights in Geneva.

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has a mandate which focuses entirely on racism and racial discrimination, but numerous other special rapporteurs have mandates that relate to some of the consequences of racism. Addressing the right to education, for example, entails addressing reasons for deprivation of that right, which in some cases is racial or ethnic discrimination. The same holds true for those rapporteurs whose mandates focus on groups, such as children, or internally displaced persons, when those individuals experience deprivation of rights because of race or ethnicity in addition to membership in that group.

Because the thematic mechanisms can take action on cases regardless of whether a state is party or not to an international human rights treaty, they can be particularly useful as, unlike the country rapporteurs, they cover all countries in the world. Moreover, in addition to gathering information, many have an urgent appeals procedure under which they can raise the cases of individuals in imminent danger of human rights violations with the governments concerned.<sup>26</sup> Requests for urgent appeals may be sent at any time.

Although each special rapporteur has a particular area of focus, their mandates can sometimes overlap, as for example with the Special Rapporteurs on racism and on religious intolerance, or the Special Rapporteurs on violence against women and on racism when it comes to double discrimination. They attempt to avoid overlap, and so will refer information to another rapporteur when it falls more in that person’s mandate. They may also make joint appeals. All the special rapporteurs are periodically requested by the CHR to pay particular attention to certain areas, as for example when they were asked to pay particular attention to the situation of indigenous peoples.

Some rapporteurs have incorporated information on racism underlying violations of the rights they report on, and others plan to do so. Others are conducting studies relating to racial discrimination within the context of their mandates. For example, the Special Rapporteur on education has stated that she is planning to analyse jurisprudence relating to the orientation and content of educational curricula and textbooks, with a view to ensuring their conformity with the requirement of elimination of all forms of discrimination. She is in communication with the Committee on the Elimination of Racial Discrimination, as well as with the Special Rapporteur on racism.

### **Thematic mechanisms of the CHR that may address racial discrimination**

As of February 2001, the following mechanisms were in place that may be of use in combating racial discrimination:

- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on the right to education
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
- Special Rapporteur on the right to food
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on torture



- Independent Expert on human rights and extreme poverty
- Independent Expert on the right to development
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights
- Special Rapporteur on the sale of children, child prostitution and child pornography
- Special Rapporteur on the independence of judges and lawyers
- Representative on internally displaced persons
- Special Rapporteur on violence against women, its causes and consequences
- Special Representative on the situation of human rights defenders
- Special Rapporteur on the use of mercenaries
- Special Rapporteur on religious intolerance
- Independent Expert on structural adjustment policies and foreign debt
- Working Group on Arbitrary Detention
- Working Group on Enforced or Involuntary Disappearances

### **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

Concern about the rise of racism and xenophobia in the developed world, particularly in Europe and the USA, prompted the establishment in 1993 of a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racism). The following year, concern about the situation in the Middle East was reflected in the wording of the special rapporteur's mandate, which includes "any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism and related intolerance". The special rapporteur in his reports has addressed discrimination against Jews, Arabs and Muslims, although he has sought not to overlap with the Special Rapporteur on religious intolerance.

The annual reports of the Special Rapporteur contain a summary of his/her activities that year. They include field missions, replies sent by governments in response to requests for information or in response to allegations transmitted to them, and follow-ups to field visits on legislative, judicial and other measures taken by governments. The reports also recount incidents of racism and have addressed discrimination against Blacks and Arabs, anti-Semitism, xenophobia, discrimination against women and migrant workers, discrimination against Roma and against indigenous peoples. The reports end with a section containing conclusions and recommendations.

### **BOX**

In his annual report to the CHR session held in the year 2000, the Special Rapporteur reported the following:

- Field visits to Hungary, the Czech Republic and Romania.
- Replies in response to his requests for information from Belarus, Cyprus, Costa Rica, Indonesia and Iraq.
- Replies to allegations transmitted to Germany, Australia, Canada, Spain, the USA, the Russian Federation, India and Iran.
- In the section on Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance:
  - A. Discrimination against Blacks (negrophobia), reporting on racial discrimination in the application of the death penalty in the USA;
  - B. Anti-Semitism, reporting on the incidence of anti-Semitic activity around the world;
  - C. Discrimination against the Roma, with a focus on the denial of asylum to Roma asylum-seekers in Western Europe under procedures that may be discriminatory.
- Follow-up to field visits: measures taken by the governments of South Africa, France and Kuwait.

END BOX

By February 2000, the Special Rapporteur had undertaken visits to 11 countries: the USA, Brazil, Germany, France, the United Kingdom, Colombia, Kuwait, South Africa, Hungary, the Czech Republic and Romania. The reports on each of these missions is available via the UN web site and from the Office of the High Commissioner for Human Rights in Geneva.

#### **Suggested action with CHR thematic mechanisms**

- ▶ Throughout the year NGOs can submit to the relevant thematic mechanisms (through the Office of the UN High Commissioner for Human Rights in Geneva) well-documented information regarding specific human rights violations in any country;
- ▶ NGOs can ask a thematic mechanism to appeal to a government on a particular and pressing case of a violation of an individual's rights which relates to the mechanism's mandate;
- ▶ NGOs should obtain copies of the reports of the thematic mechanisms, which are public and are presented annually to the CHR, and use the information in publicizing concerns and lobbying a government for change.

Further information on the mandates of each mechanism can be found on the UN web site at [www.unhchr.ch/html/menu2/xtraconv.htm](http://www.unhchr.ch/html/menu2/xtraconv.htm) and through the HR-Documentation DH series of the International Service for Human Rights.

#### **The Sub-Commission on the Promotion and Protection of Human Rights**

The Sub-Commission on the Promotion and Protection of Human Rights is a subsidiary body of the CHR and reports annually to the CHR; the CHR must approve important Sub-Commission decisions. In contrast with the CHR, whose members are government representatives, the 26 members of the Sub-Commission are appointed to be independent experts. Political influence is nonetheless present in that Sub-Commission members are elected by the CHR, and some Sub-Commission members have also been part of their government's delegations to the CHR. The Sub-Commission meets annually for three weeks in August, in Geneva. States and NGOs attend its meetings as observers.

The Sub-Commission's main role has been to initiate studies on human rights questions, often leading to new international standards. Early studies of the Sub-Commission included papers on discrimination in political rights (1962) and on racial discrimination in political, economic, social and cultural fields (1966). In the past it has also taken up human rights issues in specific countries, but this mandate was limited by the CHR in 2000. The Sub-Commission also adopts resolutions and decisions, which, depending on their content, are then submitted to the CHR for consideration.

BOX

#### **Papers before the Sub-Commission in 2000**

Studies, reports and papers submitted to the Sub-Commission directly related to racial discrimination in 2000 included:

- The concept and practice of affirmative action Commentary to the declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities
- The relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples
- Indigenous populations and their relationship to land
- The human rights problems and protection of the Roma
- Several papers on slavery and slavery-like practices.

END BOX

BOX

#### **Resolutions adopted by the Sub-Commission in 2000**

Resolutions adopted by the Sub-Commission in 2000 which are relevant to racial discrimination include:

- The rights of non-citizens (Resolution 2000/103)
- The concept and practice of affirmative action (Resolution 2000/04)
- Discrimination based on work and descent (Resolution 2000/4)

- Draft principles and guidelines for the protection of the heritage of indigenous peoples (Resolution 2000/107)
- The human rights problems and protection of the Roma (Resolution 2000/19)
- The rights of minorities (Resolution 2000/16)

END BOX

### **Suggested action with the Sub-Commission**

Only NGOs with consultative status with ECOSOC may participate in the annual Sub-Commission sessions. Representatives of NGOs without such status may be able to join a delegation of an NGO with this status.

- ▶ NGOs can make written and oral statements with specific information about racial discrimination under relevant agenda items. In the 2000 agenda relevant agenda items included:
  - comprehensive examination of thematic issues relating to the elimination of racial discrimination for migrant workers and members of their families (item 3-a);
  - the realization of the right to education (item 4-d);
  - contemporary forms of slavery (item 6);
  - human rights of indigenous peoples (item 7);
  - the administration of justice and human rights – application of international standards concerning the human rights of detained juveniles (item 9-b);
  - freedom of movement – human rights and population displacements (item 10-5);
  - the promotion, full realization and protection of the rights of children and youth (item 11).
- ▶ Participants in the meeting can lobby Sub-Commission members to ensure that specific concerns about racial discrimination receive serious and sustained consideration. They can urge the inclusion of appropriate wording in Sub-Commission resolutions.
- ▶ NGOs can invite interested members of the Sub-Commission to seminars on racial discrimination.

### **Role of the UN High Commissioner for Human Rights**

The UN General Assembly established the post of High Commissioner for Human Rights in 1993, with a mandate to promote and protect all human rights and to be the UN official with principal responsibility for UN human rights activities. The High Commissioner, Mary Robinson, has frequently addressed the problems of racial discrimination and called for increased action to combat racism and related discrimination at national and sub-national levels. She has also helped to bring international attention to the particular problems of multiple discrimination, such as that based on race, sex and sexual orientation. Information about the activities of the High Commissioner for Human Rights and the texts of her statements are available on the UN web site.

### **Seminars and other UN activities against racial discrimination**

The UN has undertaken a broad range of activities to address the problem of racism and racial discrimination. This Handbook focuses on specific UN human rights mechanisms that may be used by advocates in raising concerns about racial discrimination, but UN activities on racism take place in many fora and important documents have been produced by the UN in the context of specific initiatives to combat racism.

The UN is now in its Third Decade for Action to Combat Racism and Racial Discrimination, launched by the UN General Assembly in 1993. A number of expert seminars have been held by the UN as part of its program of action for this decade. The following reports and papers from these seminars are a useful source of information and analysis:

- Seminar on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with particular reference to articles 4 and 6 [prohibition of racist speech, organizations and activities, and obligation to ensure effective protection and remedies], UN Doc. E/CN.4/1997/68/Add.1
- Seminar on the role of the Internet in light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. E/CN.4/1998/77/Add.2

- Seminar on immigration, racism and racial discrimination, UN Doc. E/CN.4/1998/77/Add.1
- Seminar of Experts on Racism, Refugees and Multi-ethnic States, UN Doc. A/CONF.189/PC.1/9
- Expert seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in this field, UN Doc. A/CONF.189/PC.1/8

The UN has also issued Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation against Racial Discrimination, UN Doc. HR/PUB/96/2. This model legislation has sections on definitions, general principles, and offences and penalties. In the area of offences particular attention is given to discrimination in employment, education, housing and the provision of goods, facilities and services; the protection of victims of racial discrimination; and protection against the obstruction of efforts by victims to obtain redress.

## **SECTION TWO: USING THE REGIONAL HUMAN RIGHTS SYSTEM TO COMBAT RACIAL DISCRIMINATION**

### **Chapter 9: Regional human rights systems – Europe**

#### **A. Council of Europe standards and mechanisms**

##### **Convention for the Protection of Human Rights and Fundamental Freedoms**

Adopted by the Council of Europe<sup>27</sup> in 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) sets forth a number of substantive rights and freedoms, and is supplemented by additional Protocols (treaties) that states parties to the Convention may also ratify. The Convention and its substantive Protocols focus primarily on civil and political rights, but they also cover such rights as education, equality of rights in marriage and protection against arbitrary deprivation of one's property. The Convention requires all states parties to "secure" to all within their jurisdiction the rights and freedoms in the Convention (Article 1). This requirement imposes an obligation on states to act with respect to both public and private action.

The exercise of the rights in the European Convention on Human Rights must, according to Article 14, be guaranteed "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth or other status." Article 14 does not provide a free-standing right of non-discrimination, as it only prohibits discrimination in the enjoyment of rights set out in the Convention. Thus, there is no recourse under the Convention if one is discriminated against in conditions of work, for example, or pay, or any other area not covered by the Convention. However, Article 14 has the potential to provide protection for people with respect to the important rights that are covered by the Convention, which reach acts or omissions by both public authorities and private individuals. This includes not only the rights to life, liberty, freedom of expression and the like, but also the important right in Article 13 to an effective remedy before a national authority if one's rights under the Convention have been violated.

A general prohibition of discrimination is established in Protocol 12 to the European Convention on Human Rights which, unlike Article 14, is not limited to discrimination in respect of the rights in the Convention. This Protocol provides that the enjoyment of any right set forth by law must be secured without discrimination on any ground such as race, sex, colour, or any of the other grounds that also appear in Article 14. Protocol 12 also requires that no one shall be discriminated against on any ground by any public authority. This relatively new Protocol (opened for signature and ratification in November 2000) only binds those states that have ratified it, and none had done so as of February 2001. Once ratified by 10 states the Protocol will enter into force and will become an important new tool for achieving legal protection against racial discrimination under the European Convention on Human Rights.

At least two other articles are relevant to addressing racism under the European Convention on Human Rights: Articles 3 and 17. Article 3 prohibits torture and other inhuman or degrading treatment; racist treatment may constitute degrading treatment under this article.

BOX

Discrimination on the basis of race may itself, under certain circumstances, constitute degrading treatment in violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment.

In the case of *East African Asians v. the United Kingdom*, the European Commission on Human Rights found that legislation that imposed restrictions on admission to the UK of UK citizens and Commonwealth residents, who held UK passports, in East Africa discriminated against people of Asian origin on the ground of race. The Commission determined that this constituted an interference with their human dignity that amounted to “degrading treatment” within the meaning of the term in Article 3.<sup>28</sup>  
END BOX

Article 17 is designed to prevent the abuse of the rights in the European Convention on Human Rights. It establishes that one may not use the rights in the Convention to engage in any act aimed at destroying the rights in the Convention, thereby allowing the prohibition of hate speech.

BOX

The conviction of white supremacists for possessing racist leaflets with the intent to distribute them does not violate their right to freedom of expression, in light of Article 17.

The European Commission on Human Rights stated in a case challenging such a conviction in the Netherlands that if the state authorities had allowed these individuals to proclaim their views without penalty, that “would certainly encourage the discrimination prohibited” in the European Convention on Human Rights.<sup>29</sup>  
END BOX

### **European Court of Human Rights / European Commission on Human Rights**

The European Court of Human Rights monitors implementation of the European Convention on Human Rights and rules on complaints brought, after all domestic remedies have been exhausted, by individuals claiming a violation of rights in the Convention. The European Court of Human Rights became a permanent body in November 1998 and took on the role previously played by the European Commission on Human Rights, which ceased operations in October 1999.

### **The European Social Charter**

The European Social Charter (first adopted in 1961 – a 1996 revised Social Charter came into force in 1999) guarantees social and economic human rights. The revised European Social Charter establishes in Article E (Part V) that “the enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status”.

States parties to the European Social Charter have to present reports every two years. The Additional Protocol to the European Social Charter of 1995 allows the presentation of collective complaints alleging violations of the Charter. These are examined by a Committee of Independent Experts on the basis of which, in the most serious cases, the Committee of Ministers may make recommendations to state parties to change their laws or practices.<sup>30</sup>

### **Framework Convention for the Protection of National Minorities**

The Framework Convention for the Protection of National Minorities, which entered into force in 1998, also provides protection against racial discrimination. States parties report to the Committee of Ministers of the Council of Europe on measures taken to give effect to the Framework Convention. The Committee of Ministers makes public its review of these reports.

### **European Commission against Racism and Intolerance**

In addition, the Council of Europe has established a European Commission against Racism and Intolerance (ECRI) whose mandate is to combat racism, xenophobia, anti-Semitism and intolerance at a pan-European level. ECRI analyses the situation with regard to racism and intolerance in each of the

member states of the Council of Europe. ECRI also generates suggestions and proposals as to how to overcome the obstacles identified.

## **B. European Union anti-racism standards and mechanisms**

One of the treaties under which the European Union (EU)<sup>31</sup> operates contains an important non-discrimination clause. Article 13 of the Treaty on European Union empowers the EU to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

To develop Article 13, a Directive to combat racial discrimination was adopted in June 2000 and a Directive to combat discrimination in employment on several grounds, including race, was adopted in November 2000.

In addition to these legally binding standards, Article 21(1) of the Charter of Fundamental Rights, adopted in 2000, prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Anti-discrimination provisions of EU law are applicable in all member states of the EU. They take precedence over any other legislative provisions, including national constitutions. Any country applying for membership of the EU has to implement them, and they have considerable value in setting standards for the whole of the European region.

The enforcement of these anti-discrimination provisions is the responsibility of both national and EU institutions:

- Member states have a legal obligation to ensure that any provisions contrary to the principle of equal treatment are abolished.
- Both national courts and the European Court of Justice have jurisdiction to ensure compliance with these provisions.
- The Commission of the EU reports on the implementation of the Directives by member states every five years.
- The European Parliament monitors the performance of member states in this field in its Annual Report on Human Rights in the EU.
- The European Ombudsman may receive complaints of maladministration and submits an Annual Report to the European Parliament with the results of its inquiries.

Further possibilities for action to combat racism are provided by Article 29 of the Treaty on European Union (TEU), which provides a framework for EU member states to take common action to create a high level of safety in the EU by, inter alia, preventing and combating racism and xenophobia through co-operation on judicial and criminal matters.

The **European Monitoring Centre on Racism and Xenophobia (EUMC)** was established in 1997 by the EU as an independent body to help combat racism, xenophobia and anti-semitism throughout Europe. The EUMC has the task of reviewing the extent and development of the racist, xenophobic and anti-semitic phenomena in the EU and promoting “best practice” among the member states. It publishes an Annual Report, which can be downloaded from <http://www.eumc.eu.int>.

## **Chapter 10: Regional human rights systems – the Americas**

### **The American Declaration and the American Convention on Human Rights**

Both the American Declaration on the Rights and Duties of Man (American Declaration) and the American Convention on Human Rights contain non-discrimination provisions, as does the Charter of the Organization of American States (OAS) itself. In the Charter, member states of the OAS “proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex” (Article 3).

The American Declaration, adopted in 1948 by the OAS seven months before the UN adopted the Universal Declaration of Human Rights, sets forth a broad range of civil and political rights as well as economic, social and cultural rights. Racial discrimination is explicitly addressed in Article II, which declares that all persons are equal before the law and have the rights established in the Declaration “without distinction as to race, sex, language, creed or any other factor”.

While the American Declaration applies to all member states of the OAS, the American Convention on Human Rights (1969) applies just to those OAS member states that have ratified the Convention. The treaty sets forth in more detail many of the rights mentioned in the Declaration. A non-discrimination requirement appears in Article 1, under which states parties to the Convention must respect the rights in the Convention and ensure that people enjoy these rights “without any discrimination for reasons of race, color, sex, language, status, birth, or any other social condition”. This provision requires states to take measures that reach both public and private conduct.

Hate propaganda and violence are addressed in Article 13.5. In the only provision of the Convention that explicitly sets out what constitutes a punishable offence, this article states:

“Any . . . advocacy of national, racial or religious hatred that constitutes incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

Racial and ethnic discrimination in regulating marriage and family is prohibited under Article 17. This article recognizes the right of women and men to marry and raise a family if they meet the conditions required by domestic law, but only “insofar as such conditions do not affect the principle of nondiscrimination established in this Convention”.

Another important provision in addressing racial discrimination is Article 24, which guarantees the right to equal protection of the law “without discrimination”. In addition, the right to recourse to a tribunal for protection against acts that violate one’s fundamental rights is guaranteed in Article 25. As with all other rights in the Convention, this right must be guaranteed without racial discrimination, according to Article 1.

### **Inter-American Commission on Human Rights and American Court of Human Rights**

*“The problems of social, racial, and ethnic marginalization are not being adequately addressed in the states of the Hemisphere, as the Commission has been noting in its reports. In this regard, it is noted that the principle of non-discrimination is one of the main pillars of the inter-American system.”*

Chair of the Inter-American Commission on Human Rights, May 200032

The Inter-American Commission on Human Rights (IACHR) is responsible for monitoring implementation of the American Declaration and the American Convention on Human Rights. The IACHR applies the American Declaration in examining communications alleging human rights violations by OAS member states that have not ratified the American Convention on Human Rights. The American Convention on Human Rights is the source of law the IACHR applies in handling complaints against states that have ratified that treaty. In addition, the American Court of Human Rights has jurisdiction to adjudicate claims of a violation of the Convention brought against those OAS member states that have consented to the jurisdiction of the Court.

### **Country reports by the Inter-American Commission on Human Rights**

Concerns about racial discrimination as well as recommendations for addressing it appear in country reports prepared by the IACHR on the human rights situation in individual OAS member states. The IACHR addresses racial discrimination in a broad spectrum of human rights – civil, cultural, economic, political and social.

### **BOX**

#### **The human rights of Afroecuadoreans**

The IACHR report on Ecuador contains a chapter on “The Human Rights of Afroecuadoreans” in which it relates hearing from representatives of Afroecuadorean society that:

“they were subject to pervasive discrimination from both the state and from civil society as a whole. . . . that only one Afroecuadorean has ever served as a political representative, and few if any have served in high office in the Executive or military. With respect to the role of the State, the Commission was told that the attitude of the Government toward the Afroecuadorean population could be characterized as one of complete indifference... The insufficiency of the educational opportunities for Afroecuadoreans generally was cited as a major obstacle to opportunities for work and improved standards of living. . . .

“The existence of racism in the private sector was cited as a severe impediment to the ability of Afroecuadoreans to realize their rights and freedoms. Particular issues cited included widespread discrimination in private employment, and the utilization and perpetuation of negative stereotypes.”<sup>33</sup>

The Commission recommended that Ecuador take a number of measures including collecting and reporting data on the socioeconomic situation of Afroecuadoreans and other minority groups in the country, promoting participation in decision-making by members of these groups, developing initiatives through public institutions, especially in the area of education, training and culture, encouraging action in the private sphere to combat the prejudices which cause racial discrimination, and adopting any additional measures necessary to ensure that race-based discrimination is treated as a human rights violation subject to legal sanction whenever it occurs.

END BOX

### **Multiple discrimination experienced by women**

The IACHR has pointed out the multiple discrimination experienced by women on grounds of sex, race and ethnicity in its country reports and theme reports. For example, in its 1998 Report on the Status of Women in the Americas, the IACHR stated that “Poverty and armed conflict have a disproportionate negative effect on women. In addition, women belonging to indigenous groups and ethnic minorities are the subject of further grave violations resulting from their specific situation.”

BOX

### **Human rights in Brazil**

In its report on the human rights situation in Brazil, the IACHR found that ethnic and racial discrimination “is often reflected in flagrant abuses of human rights, particularly as to equality, nondiscrimination, and the right to dignity”. The IACHR stated:

“For the population overall, black women suffer more from discrimination and have the heaviest burden to bear. Thirty-seven percent of black women are the primary source of income for their families, whereas the percentage is only 12 per cent amongst white women. Average monthly income for black women is just one third that of white women heads of household. Compared with her white counterpart with similar education and experience, the black woman can expect to lose more children from illness, to die younger, and to earn less.”

END BOX

### **Individual complaints**

Another role of the IACHR is to examine individual complaints alleging that an OAS member has violated the rights they have pledged to protect. Several complaints examined by the IACHR have involved racial discrimination.

BOX

### **Racial bias in jury trial in the USA**

In a death penalty case arising from the USA, the IACHR found evidence of racial bias present during the trial of William Andrews, who was convicted and executed. The Commission determined that, because the trial court failed to conduct an evidentiary hearing of the jury regarding this evidence, the USA had violated William Andrews’ rights under the following articles of the American Declaration:

- Article I, the right to life;
- Article II, the right to equality before the law;
- Article XXVI, the right to an impartial hearing and the right not to receive cruel, infamous or unusual punishment.<sup>34</sup>

END BOX

### **‘Precautionary measures’**

When a petition appears to reveal life-threatening circumstances, the IACHR may ask the Inter-American Court of Human Rights to adopt what are called “precautionary measures” – a



temporary protective order – against the state in question to protect the safety of the petitioners or witnesses. These orders are frequently requested by the Commission and granted by the Court.

BOX

#### **Death threats against human rights defenders**

When human rights defenders active in the Council of Ethnic Communities Runujel Junam (CERJ) in Guatemala received death threats, the Inter-American Commission asked the Inter-American Court of Human Rights to adopt precautionary measures to protect 14 people, a request provisionally granted by the Court, which resolved “to request the Government of Guatemala to adopt promptly any measures necessary for the protection of the right to life and to personal integrity of (the number indicated) in strict compliance with the obligation to respect and guarantee the human rights to which they are committed by virtue of Article 1.1 of the Convention.”<sup>35</sup>

END BOX

#### **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women**

An additional treaty relevant to addressing racial discrimination is the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as the “Convention of Belem Do Para”. Article 9 of this treaty directs states parties to “take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background”. The Inter-American Commission on Human Rights is responsible for monitoring implementation of the Convention.

### **Chapter 11: Regional human rights systems — Africa**

#### **African Charter on Human and Peoples’ Rights**

The African Charter on Human and Peoples’ Rights (African Charter), adopted in 1981, establishes a broad set of civil, political, economic and social rights of individuals, as well as a series of rights of peoples, including the right of all peoples to determine their political status, to pursue their economic development, and to develop their natural resources.

Non-discrimination on the basis of race and ethnicity is addressed under Article 2 of the Charter. This states in language nearly identical to corresponding provisions in the two UN Covenants on human rights that everyone is entitled to enjoy the rights in the Charter “without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status”. Although this clause is limited to discrimination in respect of the rights in the Charter and is not a general prohibition of racial discrimination, the African Commission has stated that the general theme of the Charter condemns racial discrimination.

Equality of the individual before the law and equal protection of the law are required in Article 3. In addition, the Charter states that all peoples are equal and entitled to the same rights, and that “[n]othing shall justify the domination of a people by another” (Article 19).

Another provision explicitly addressing racial discrimination is Article 12.5, which prohibits mass expulsion of non-nationals, and defines such expulsion as “that which is aimed at national, racial, ethnic or religious groups”. The African Commission on Human and Peoples’ Rights has noted that mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations “constitute a special violation of human rights”.

#### **African Commission on Human and Peoples’ Rights**

The African Commission on Human and Peoples’ Rights is charged with overseeing implementation of the African Charter. A protocol to the African Charter was adopted in 1998 that will create an African Court on Human and Peoples’ Rights. The Court, which will come into being once 15 states have ratified the protocol, will have jurisdiction to adjudicate claims of a violation of the Charter.

The Guidelines for the Submission of State Reports, issued by the African Commission, state that because of the long history of racial discrimination to which Africa has been subjected, the the task

of the African Commission and of states parties would not be complete if they did not seek to dismantle racial discrimination. States are called upon to refer for guidance to the Convention on the Elimination of All Forms of Racial Discrimination and to report on steps taken to ensure compliance with that treaty. In addition, the Guidelines request states parties to submit reports on efforts made to eliminate the system not only of apartheid but also of similar practices of racial segregation and discrimination.

BOX

#### **Discrimination in wrongful deportation**

The African Commission noted ethnic discrimination evident in a case submitted by Amnesty International on behalf of someone who had been wrongfully deported from Zambia,<sup>36</sup> alleging discrimination on the basis of ethnic origin and political opinion, as well as violations of a number of other rights in the African Charter. The petition alleged that the complainant was blindfolded and drugged, driven by Zambian immigration service and para-military police officers across the border into Malawi, and dumped at a police station. The Commission found numerous violations of the African Charter, and stated: “The manner in which he was treated was demeaning of the dignity and status of somebody of his standing in society. It appears that he was singled out for action because of his ethnic origin, which incidentally, is also found in Zambia.”

END BOX

#### **Country reports**

Although states parties to the African Charter are required to submit reports on their implementation of the Charter, the African Commission has never issued public comments on these reports. As a result, the racial or ethnic discrimination that exists in some of the states reviewed has gone without public comment by the African Commission.

#### **Human rights promotion**

One of the most significant activities of the African Commission is the promotion of human rights. In this context it has organized a number of seminars together with NGOs and the UN. These seminars have been held on such subjects as “Impunity in Africa” and “Prison Conditions in Africa”.

► NGOs may wish to consider approaching the African Commission about convening a seminar on the issue of racial and ethnic discrimination within Africa.

#### **Commission decision on the genocide in Rwanda**

Several communications alleging serious and massive violations of human rights in Rwanda were submitted to the African Commission by NGOs from 1989 to 1993.<sup>37</sup> These communications detailed widespread massacres, extrajudicial executions and arbitrary arrests; they alleged violations both against the Tutsi ethnic group and against individuals on account of their membership of the Tutsi ethnic group or on the basis of their being Burundian nationals. The Commission found there was “considerable evidence that the violations of the rights of individuals had occurred on the basis of their being Burundian nations or members of the Tutsi ethnic group. The denial of numerous rights to individuals on account of their nationality or membership of an ethnic group clearly violates Article 2” (the non-discrimination requirement in the Charter). The Commission then went on to make reference to Article 2 in finding violations targeting Tutsi or Burundians, including arbitrary deprivation of the right to life (Article 4), inhuman and degrading treatment (Article 6), arbitrary expulsion (Article 12.3), mass expulsion (Article 12.5) and deprivation of the right to a hearing (Article 7.1).<sup>38</sup>

Although it is significant that the Commission stated these conclusions, the delay of several years in making a decision on what escalated into the horrific crime of genocide demonstrates some of the drawbacks in the current procedures of the organization for addressing mass human rights violations.

#### **African Charter on the Rights and Welfare of the Child**

An additional African regional treaty that may be used to address racial discrimination is the African Charter on the Rights and Welfare of the Child. This treaty, which came into force in late 1999, sets

out the rights of the child, defined as every human being below the age of 18 years. The non-discrimination clause, Article 3, provides that these rights must be guaranteed “irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status”. Under Article 26 on “Protection Against Apartheid and Discrimination”, states parties undertake both individually and collectively “to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization” (Article 26.2).

The body that monitors implementation of the African Charter on the Rights and Welfare of the Child is the newly formed African Committee of Experts on the Rights and Welfare of the Child.

### **SECTION THREE: FURTHER INFORMATION**

#### **APPENDIX 1 – Summary of UN human rights treaty body membership, meeting schedules, and state party reporting requirements**

##### **Committee on the Elimination of Racial Discrimination (CERD)**

*Composed of:* 18 experts elected by states parties to four-year terms.

*Meetings:* In Geneva, twice a year (March and August) in three-week sessions.

*Reports due from states parties:* Within one year of ratifying, then comprehensive reports due every four years, with brief updates at intervening two-year periods.

##### **Committee on Economic, Social and Cultural Rights (CESCR)**

*Composed of:* 18 experts, elected by states parties to four-year terms.

*Meetings:* In Geneva, twice a year (April and November) in three-week sessions. (In August 2000 and 2001, extraordinary three-week sessions were held.)

*Reports due from states parties:* Within one year of ratification and every five years thereafter.

##### **Human Rights Committee (HRC)**

*Composed of:* 18 experts, elected by states parties to four-year terms.

*Meetings:* Three times a year — in New York in March, and in Geneva in July and November.

*Reports due from states parties:* Within one year of ratification and every five years thereafter.

##### **Committee on the Rights of the Child (CRC)**

*Composed of:* 10 experts, elected by states parties to four-year terms (an amendment to the Convention to increase the membership to 18 had received 93 of the required 120 ratifications as of 10 November 2000).

*Meetings:* In Geneva, three times a year (January, May, September).

*Reports due from states parties:* Within two years of ratification and every five years thereafter.

##### **Committee on the Elimination of Discrimination against Women (CEDAW)**

*Composed of:* 23 experts, elected by states parties to four-year terms.

*Meetings:* In New York, twice a year (January and June) in three-week sessions.

*Reports due from states parties:* Within one year of ratification and every four years thereafter.

##### **Committee against Torture**

*Composed of:* 10 experts, elected by states parties to four-year terms.

*Meetings:* In Geneva, twice a year (May and November) in two-week sessions.

*Reports due from states parties:* Within one year of ratification and every four years thereafter.

##### **Schedule of review of periodic reports**

The schedule of when states parties will next be reviewed by each treaty body is given on the web at:

<http://www.unhchr.ch/html/menu2/convmech.htm>

#### **APPENDIX 2 – Contact details of human rights mechanisms**

##### **United Nations Human Rights Mechanisms**

##### **Office of the UN High Commissioner for Human Rights**

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9000

Fax: +41-22-917 9016

E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

<http://www.unhchr.ch/>

The UN High Commissioner for Human Rights web site is the central web site locator for UN human rights material. Here you will find the text of treaties, an up-to-date list of ratifications, lists and explanations of all the UN human rights programs, reports of states to the treaty bodies as well as reports of those treaty bodies, reports of the Charter bodies such as the Commission on Human Rights, calendars of UN human rights meetings and press releases.

### **Committee on the Elimination of Racial Discrimination**

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9000

Fax: +41-22-917 9022

E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

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### **Human Rights Committee**

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CH 1211 Geneva 10, Switzerland

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E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

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### **Committee on the Rights of the Child**

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9000

Fax: +41-22-917 9022

E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

<http://www.unhchr.ch/>

### **Committee on the Elimination of Discrimination against Women**

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CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9000

Fax: +41-22-917 9022

E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

<http://www.unhchr.ch/>

### **Committee against Torture**

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9000

Fax: +41-22-917 9022

E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

<http://www.unhchr.ch/>

### **UN Special Rapporteurs**

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Tel: +41-22-917 9006

Fax: +41-22-917 0099  
E-mail: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)  
<http://www.unhchr.ch/>

**International Labour Organisation**

4 route des Morillons  
CH 1211 Geneva 22  
Switzerland  
Tel: +41-22-799 6111  
Fax: +41-22-798 8685  
E-mail: [ilo@ilo.org](mailto:ilo@ilo.org)  
<http://www.ilo.org/>

**Office of the High Commissioner for Refugees (UNHCR)**

Case Postale 2500  
CH 1211 Geneva 2 depot  
SWITZERLAND  
Fax: +41 22-739 8111  
[www.unhcr.ch](http://www.unhcr.ch)

**NGO Liaison officer for the UN in Geneva**

(responsible for NGO accreditation to UN meetings in Geneva)  
Ms Raymonde MARTINEAU  
Palais des Nations, Room 155  
CH 1211 Geneva 10  
SWITZERLAND  
Tel: +41 22-917-2178/2127  
Fax: +41 22-917 0583  
E-mail: [UNGENEVA.NGOLIAISON@UNOG.CH](mailto:UNGENEVA.NGOLIAISON@UNOG.CH)  
E-mail: [rmartineau@unog.ch](mailto:rmartineau@unog.ch)  
[www.unog.ch](http://www.unog.ch) then go to UN and the NGOs

**NGO Liaison officer for the UN in New York**

(responsible for NGO accreditation to UN meetings in New York)  
NGO Section /DESA  
Room DC1-1477  
One UNITED NATIONS Plaza (at first avenue and 44th street)  
New York, NY 10017  
UNITED STATES OF AMERICA  
Fax: +1- 212 963-4116 or 9248  
Tel: +1- 212 963-8652  
E-mail: [desangosection@un.org](mailto:desangosection@un.org)  
[www.un.org/desa/coordination/ngo](http://www.un.org/desa/coordination/ngo)

**UN Liaison office - Vienna:**

NGO Liaison Officer  
P.O. Box 500 - VIC  
A-1400 Vienna (AUSTRIA)  
Tel: + -431- 26060-4136  
Fax: + -431- 26060-5929

**Regional Human Rights Mechanisms**

**European Court of Human Rights**

Registrar

European Court of Human Rights

Council of Europe

F - 67075 Strasbourg-Cedex

France

Tel: +33-3-88 41 20 18

Fax: +33-3-88 41 27 30

<http://www.echr.coe.int>

**European Union**

EU Information and materials can be accessed at <http://europa.eu.int>

**Inter-American Commission on Human Rights**

Inter-American Commission on Human Rights

1889 F St., NW

Washington, D.C. 20006, USA

Tel: +1-202-458 6002

Fax: +1-202-458 3992

E-mail: [cidhoea@oas.org](mailto:cidhoea@oas.org)

<http://www.cidh.oas.org/>

**Inter-American Court of Human Rights**

Inter-American Court of Human Rights

Apdo 6906-1000

San José, Costa Rica

Tel: + 506-234 0581 or +506-225 3333

Fax: +506-234 0584

E-mail: [corteidh@sol.racsa.co.cr](mailto:corteidh@sol.racsa.co.cr)

<http://www.umn.edu/humanrts/iachr/iachr.html>

<http://www.unige.ch/humanrts/iachr/iachr.html>

**African Commission on Human and Peoples' Rights**

Kairaba Avenue, P.O. Box 673

Banjul, The Gambia

Tel: +220-392 962

Fax: +220-390 764

E-mail: [achpr@achpr.gm](mailto:achpr@achpr.gm)

**APPENDIX 3 – Other sources of information and advice****Anti-Racism Information Service (ARIS)**

14, avenue Tremblay, 1209 Geneva, Switzerland

Tel: 41 22 740 3530

Fax: 41 22 740 3565

E-mail: [aris@antiracism-info.org](mailto:aris@antiracism-info.org)

Website: <http://www.antiracism-info.org>

**Human Rights Internet**

<http://www.hri.ca>

**Interights**

<http://www.interights.org/search.asp>

(extensive on-line library of human rights jurisprudence from UN and regional tribunals)

**International Service for Human Rights**

PO Box 16, 1 rue de Varembe  
1211 Geneva, 20 CIC, Switzerland  
Tel: 41 22 733 5123  
Fax: 41 22 733 0826  
Website: <http://www.ishr.ch>

**Migrants Rights International**

Website: <http://www.migrantsrights.org>

**Minnesota Advocates for Human Rights**

Suite 1050  
400 Second Avenue South  
Minneapolis, Minnesota 55402  
USA  
Tel: +1-612-341-3302  
Fax: +1-612-341-2971

**Minority Rights International**

MRI, 379 Brixton Road  
London, SW9 7DE, UK  
Telephone: ++44 020 7978 9498  
Fax: ++44 0207 738 6265  
E-mail: [minority.rights@mrgmail.org](mailto:minority.rights@mrgmail.org)

**University of Minnesota**

Human Rights Library  
[www.umn.edu/humanrts/](http://www.umn.edu/humanrts/)  
(The site contains currently more than 6,500 documents, and links to over 2,500 other sites).

**Europe:****Commission of the European Communities**

200 Rue de la loi  
B-1049 Bruxelles  
BELGIUM  
Fax: + 32-2-296 3115

**European Commission Against Racism and Intolerance**

<http://www.ecri.coe.int/>

**European Monitoring Centre on Racism and Xenophobia**

Raglgasse 3  
A-1060 Vienna  
AUSTRIA  
[www.eumc.at](http://www.eumc.at)

**European Parliament**

Plateau de Kirchberg  
L-2929 Luxembourg  
Fax: + 352 437009  
[www.europar.eu.int](http://www.europar.eu.int)

## **Organization for Security and Co-operation in Europe**

Office of the High Commissioner on National Minorities (HCNM)

Prinsessegracht 22

NL-2514 AP

The Hague

NETHERLANDS

Fax: + 31-70-363-5919

## **Further Reading**

### **How to use the UN and regional human rights mechanisms**

Hannum, Hurst, ed. *Guide to International Human Rights Practice* (3rd edition 1999).

Atsuko Tanaka with Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, International Movement Against All Forms of Discrimination and Racism and Minority Rights Group International, 2001.

Camille Giffard, *The Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre, University of Essex, 2000. Available from the Human Rights Centre, University of Essex, Wivenhoe Park, Colchester CO4 3SQ, UK; <http://www.essex.ac.uk/torturehandbook>

### **On the international law on racial discrimination**

Banton, Michael, *International action against racial discrimination* (1996).

Bayefksy, Anne, *The Principle of Equality or Non-Discrimination in International Law*, 11 Human Rights Law Journal 1 (1990).

Boyle, Kevin and Baldacinni, Anneliese, *A Critical Evaluation of International Human Rights Approaches to Racism*, Academy of European Law, Collected Courses (Eleventh Session) (European University Institute, OUP, 2001).

Farrior, Stephanie, *Molding the Matrix: The Historical and Theoretical Foundations of the International Law Concerning Hate Speech*, 14 Berkeley Journal of International Law 1 (1996).

Fottrell, Dierdre, *Ever Decreasing Circles: Affirmative Action and Special Measures* under International Law, in Dierdre Fottrell and Bill Bowring (eds), *Minority and Group Rights in the new Millennium* 183 (1999).

Koufa, Kalliopi, *Elimination of Racial Discrimination and the Role of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, International Geneva Yearbook (1996).

Nowicki, Marek Antoni, *The European Convention on Human Rights: Prohibition of Discrimination*, 1999 Saint Louis-Warsaw Transatlantic Law Journal 17 (1999).

Lerner, Natan, *The U.N. Convention on the Elimination of All Forms of Racial Discrimination* (2nd ed. 1980).

McKean, Warwick, *Equality and Discrimination Under International Law* (1983).

Meron, Theodor, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Discrimination*, 79 American Journal of International Law 283 (1985).



Partsch, Karl J., *The Committee on the Elimination of Racial Discrimination*, in Alston, P. (ed.), *The United Nations and Human Rights – A Critical Appraisal* 339 (1992).

Schwelb, Egon, *The International Convention on the Elimination of All Forms of Discrimination*, 15 *International and Comparative Law Quarterly* 998 (1966).

van Boven, Theo, *The Petition System under the International Convention on the Elimination of All Forms of Racial Discrimination*, 4 *Max Planck Yearbook of United Nations Law* (2000).

APPENDIX 4 – Chart of Treaty Ratifications and of Acceptances of Individual Petition Procedures  
The UN Convention on the Rights of the Child has been ratified by all UN member states with the exceptions of Somalia (which has no functioning government) and the United States of America.

TABLE TO COME

## ENDNOTES

1. As of February 2001, there were 157 states parties to the Convention against Racial Discrimination and 191 states parties to the Convention on the Rights of the Child.
2. The Committee on the Rights of the Child has developed suggestions for NGO submissions (see Appendix 2), and there are detailed guidelines in *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, Atsuko Tanaka with Yoshinobu Nagamine, International Movement Against All Forms of Discrimination and Racism and Minority Rights Group International, 2001.
3. These can be contacted at the Office of the UN High Commissioner for Human Rights in Geneva.
4. NGOs planning to provide information to the Committee on the Elimination of Racial Discrimination, which supervises implementation of the Convention against Racial Discrimination, should contact the Country Rapporteur assigned by the Committee to prepare the examination of that particular country situation. Country Rapporteurs may be contacted via the CERD Secretariat in the Office of the UN High Commissioner for Human Rights in Geneva. The Country Rapporteur should be able to advise NGOs about timing and substantive matters, and whether or not it may be possible for the Country Rapporteur to visit the country to be examined.
5. A detailed account of how to access the CERD is provided in *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, Atsuko Tanaka with Yoshinobu Nagamine, International Movement Against All Forms of Discrimination and Racism and Minority Rights Group International, 2001.
6. UN Doc. A/51/18 (1996).
7. Concluding Observations Croatia, para. 169.
8. U.N. Doc. A/48/18 (1993).
9. U.N. Doc. A/49/18 (1994).
10. CERD General Recommendation XXV (2000).
11. Communication No. 17/1999, UN Doc. CERD/C/390, page 83.
12. Quoted in Michael Banton, *International Action Against Racial Discrimination* (1996), page 59.
13. UN Doc. CERD/C/70/Rev.3 (23 July 1993). Another useful document is CERD's Joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. E/CN.4/Sub.2/1998/4 (10 June 1998).
14. UN Fact Sheet 16 (Rev. 1) - The Committee on Economic, Social and Cultural Rights.
15. UN Doc. E/C.12/1996/6.
16. UN Doc. E/1998/22.
17. The examples come from the following reports: UN Doc. A/55/40 (2000) (Congo, Hong Kong, Guyana); A/54/40 (1999) (Chile, Japan, Romania); A/53/40 (1998) (Finland, Iraq, Israel).

18. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* notwithstanding Security Council Resolution 276 (1970), ICJ Reports (1971) page 57 (italics in quote added).

19. The other three are:

- giving the best interests of the child prime consideration when authorities of a state take decisions affecting the child;
- the right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development; and
- children should be free to express their opinions, and such views should be given due weight taking the age and maturity of the child into consideration.

20. The examples are taken from the following reports: UN Doc. CRC/C/94, March 2000 (Costa Rica, India); CRC/C/97, July 2000 (Cambodia, Iran, Malta); CRC/C/90, December 1999 (Russian Federation); CRC/C/80, October 1998 (Kuwait); CRC/C/79, July 1998 (Hungary).

21. Examples related here come from UN Doc. A/55/38 (2000) (Germany, India) and A/54/38/Rev.1 (1999) (China, United Kingdom).

22. UN Doc. A/51/44 (1996).

23. The other three are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour.

24. The “1503 procedure” was established to examine, in confidence, evidence of a consistent pattern of gross violations of human rights in a country.

25. As of February 2001, these covered Afghanistan, Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, Burundi, Cambodia, Democratic Republic of the Congo, Equatorial Guinea, Haiti, Iran, Iraq, Myanmar, Palestinian Occupied Territories, Rwanda, Somalia and Sudan.

26. Those with an urgent appeals procedure are: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the independence of judges and lawyers; the Special Representative on the situation of human rights defenders; the Working Group on Arbitrary Detention; and the Working Group on Enforced or Involuntary Disappearances.

27. The Council of Europe is an intergovernmental organization established in 1949 whose aims are to promote human rights pluralist democracy and the rule of law. Any European country may become a member provided it accepts the principles of human rights and the rule of law. As of March 2001 there were 43 member states. The governing body is the Committee of Ministers; the deliberative body is the Parliamentary Assembly, whose members are appointed by national parliaments; the Congress of Local and Regional Authorities of Europe is a consultative body representing local and regional authorities.

28. *East African Asians v. United Kingdom*, 14 Dec. 1973, Appl. Nos. 4403/70 et al., reproduced in 3 European Human Rights Reports 76.

29. *J. Glimmerveen and J. Hagenbeek v. Netherlands*, App. Nos. 8348/78 and 8406/78 [1980] 23 Yearbook of the Eur. Conv. on Human Rights 366 (italics in quote added).

30. In 1999 a complaint was presented against France regarding the application of Article E (*Syndicat national des professions du tourisme v. France*). France was found in breach of this provision.

31. The European Union (EU) is a 15-member organization whose aims include promoting economic and social progress, maintaining and building on EU law and introducing EU citizenship. Several institutions run the EU, including the European Parliament, the Council, the Commission and the Court of Justice. Directives, such as the one on combating racial and ethnic discrimination, are binding on all member states. The EU operates under the 1992 Treaty on European Union and the 1957 Treaty on the Establishment of the European Community.

32. Statement made on presenting the 1999 Annual Report of the IACHR to the Committee on Juridical and Political Affairs of the OAS Permanent Council 11 May 2000.

33. <http://www.cidh.org/countryrep/ecuador-eng/chaper%2010.htm>

34. IACHR, Andrews case, Report N° 57/96, Case 11.139 (United States) Dec. 6, 1996.

35. IACHR Annual Report 1991.

36. 212/98 Amnesty International / Zambia (Decided 5 May 1999), in Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights, 1998 - 1999, Annex V.

37. Communications 27/89, 46/91, 49/91, 99/93, *Organisation Mondiale Contre la Torture*; *Association Internationale des Juristes Démocrates*; *Commission Internationale des Juristes (CIJ)*; *Union Interafricaine des Droits de l'Homme/Rwanda*, (decided October 1997).

38. In its decision the Commission did not address whether the rights of "peoples" (in articles 19-24 of the Charter) had been violated by virtue of attacks on the Tutsi ethnic group as a whole. This reflects the thinking expressed by one Commissioner during examination of the state report of Rwanda in 1991, who, regarding the term "peoples" in the Charter expressed the view that "in Africa, it is not meant to recognise the identity of the various ethnic groups comprising States", but instead was intended to refer to colonized peoples or peoples which were under "racial domination". This approach does not take account of peoples suffering ethnic domination.