United to Combat Racism

Dedicated to the
World Conference against Racism,
Racial Discrimination,
Xenophobia and Related Intolerance

Durban, South Africa,
31 August – 7 September 2001

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Selected articles and standard-setting instruments

Prefaces by

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Dedicated to
the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
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PREFACES

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against Racism, Racial Discrimination, Xenophobia
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Since its very creation, UNESCO has considered that the elimination of racial discrimination is a priority. The Constitution of the Organization affirms in its Preamble that "the denial of the democratic principles of the dignity, equality and mutual respect of men and the propagation, in their place, through ignorance and prejudice, of the doctrine of inequality of men and races" was the main cause of the Second World War. The main aim of UNESCO, as Article 1 of the Constitution stipulates, is to "… contribute to peace and security … in order to further universal respect … for human rights and fundamental freedoms".

In its early years, UNESCO sponsored a vast programme of research in order to reveal the pseudo-scientific character of racist doctrines and theories. Four statements, prepared between 1950 and 1967 by eminent specialists, emphasize that biological differentiation of races is without foundation and that racist theories and racial prejudice have no scientific grounds. UNESCO adopted one of the first international binding instruments specifically aimed at the struggle against discrimination. The Convention against Discrimination in Education adopted in 1960 contains a well-elaborated definition of discrimination as "any distinction, exclusion, limitation or preference, which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth has the purpose or effect of nullifying or impairing equality of treatment in education…". The Declaration on Race and Racial Prejudice adopted by UNESCO in 1978 marked an important step forward in strengthening the legal basis for the struggle against racial discrimination. Over the years, UNESCO has undertaken activities tackling the very roots of racial prejudice and racist stereotypes. Education, research and information have always served as major means to eliminate discrimination.

However, this objective is still far from being achieved. Racial discrimination and racist stereotypes still persist and are causes for violent conflicts in many parts of the world. They have acquired new dimensions and new forms and are becoming increasingly manifest in the economic, social and cultural fields. Young people are still being contaminated with racist and xenophobic attitudes towards those who are different.

UNESCO considers that the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance is an extremely important and pertinent initiative at the beginning of a new century and a new millennium. It will give a new impetus to efforts at national and international levels directed towards creating a world free from racism and racial discrimination. In paying tribute to the United Nations, and in particular to Mary Robinson, the United Nations High Commissioner for Human Rights and Secretary-General of the World Conference, for all the efforts to make the World Conference a breakthrough in the combat against racism, I express the hope that this publication will help to achieve the aims of our common struggle for equal dignity and equal opportunities for all.

Koïchiro MATSUURA

As well as being destructive forces in themselves, racism and xenophobia lie at the root of many of the world's conflicts. It is important that we understand these phenomena fully by tracing them back to their origins and examining the extent of their impact. This collection of perspectives on different aspects of racism is intended to cast light on these issues. I believe that it will perform a very useful function in that regard.

The international community is making a particular effort this year to tackle issues of racism, xenophobia and intolerance. The Durban Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will examine the whole range of issues and seek to devise strategies to combat these evils effectively. This is also the Year of Dialogue Among Civilizations and thus an occasion for more intense dialogue between different civilizations and societies. Much prejudice is based on ignorance so it can only be helpful to increase our understanding of each others' traditions, beliefs and perspectives.

Racism and xenophobia are powerfully present in the modern world. They manifest themselves through intolerance, which is a refusal to accept difference as a gift rather than a threat, and through discrimination which can take many different forms. Racism strikes at the most fundamental principle of human rights – that everyone is born equal in dignity and rights – and undermines the rights of many people: minorities, indigenous peoples, migrants, refugees, asylum seekers and other vulnerable groups. It is the springboard for extreme nationalism and racial and ethnic intolerance. It polarizes societies, pitting community against community. It has led to genocide in Rwanda and mass killings, torture and rape in the former Yugoslavia.

A significant aspect of racism is that no country can claim to be free of its malign influence. Its targets are often women, children and the elderly who may find themselves subject to multiple discrimination. That is why the Durban Conference is so important. It must bring home the reality of racism in all of our societies, renew our determination to implement internationally agreed standards against racism and discrimination, reinforce national human rights institutions and find meaningful remedies for the victims of racism.

I commend Mr. Koïchiro Matsuura and UNESCO for their timely initiative in compiling this important volume of contributions on how we can step up the fight against racism. I hope it has the widest possible readership.

Mary ROBINSON

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Part I THE FIGHT AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA & RELATED INTOLERANCE

The United Nations System Standard Setting Instruments and Programmes to Combat Racism and Racial Discrimination

Janusz Symonides

Introductory remarks

The struggle for the elimination of all forms of discrimination conducted by the United Nations system from the moment of its creation is a very important element in the efforts of the international community to assure full implementation and observance of human rights. Racial discrimination, violation of rights of persons belonging to vulnerable groups, minorities, indigenous people, immigrant workers or aliens should be also seen as the cause for serious conflicts and danger for international peace and stability. As the Preamble of the Universal Declaration of Human Rights states so convincingly: "… recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

The United Nations has been successful in the elimination of such institutional forms of racial discrimination as colonialism and apartheid. Nevertheless racism, racial discrimination, xenophobia and all kinds of related intolerance have not disappeared. They persist in the new century and, as declared by *A Vision for the 21st Century*, they are rooted in fear – fear of what is different, fear of the other, fear of the loss of personal security. The horrors of racism – from slavery to the Holocaust, to apartheid, to ethnic cleansing – are still with us in various forms.

Discrimination – considered as any distinction, exclusion, restriction or preference aimed at the denial or refusal of equal rights and their protection – is the very negation of the principle of equality and an affront to human dignity. It is a flagrant violation of the basic principle, proclaimed by Article 7 of the Universal Declaration of Human Rights, that all human beings "… are equal before the law and are entitled without any discrimination to equal protection of the law".

The Charter of the United Nations, in Articles 1, 55 and 75, speaks three times about "respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion". Article 2 of the International Covenant on Civil and Political Rights obliges States Parties to

respect and to ensure to all individuals their rights: "… 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"[1]. Neither the Universal Declaration of Human Rights nor the International Covenant define 'discrimination'. A definition of this term can only be found in conventions and declarations dealing with specific types or forms of discrimination.

For the purpose of the International Labour Organisation (ILO) Convention (N° 111) concerning Discrimination in Respect of Employment and Occupation, the term 'discrimination' includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

During its 37th session in 1989, the United Nations Human Rights Committee, in its general comment, gave the following definition of discrimination: "… any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms"[2].

The enjoyment of human rights and fundamental freedoms on an equal footing does not mean identical treatment in every instance. Human rights instruments allow in some cases differentiation in the enjoyment of political rights on the grounds of age or citizenship[3]. The UNESCO Convention Against Discrimination in Education of 1960, in Article 2, specifies three situations which lead to differentiation in access to educational institutions[4] and which, under certain conditions, shall not be deemed to constitute discrimination.

Measures undertaken by the United Nations system to combat racism and racial discrimination

Already on 19 November 1946, during its 1st session, the General Assembly adopted resolution 103/1 in which it declared: "… that it is in the higher interests of humanity to put an immediate end to religious and so-called social persecution and discrimination".

Since the adoption of this resolution, United Nations bodies have considered the question of racial discrimination mainly in the context of the struggle against apartheid and of non-self-governing and trust territories. In 1959 and 1960, the outbreak of manifestations of racial prejudice and religious intolerance, which were reminiscent of the crimes and outrages committed by the Nazis prior to and during the Second World War in several European countries, led to a series of resolutions of the General Assembly whereby it condemned manifestations and practices of racial, religious and national hatred

and called upon the governments of all States to take all necessary measures to prevent them.

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

On 20 November 1963, the General Assembly, alarmed by the manifestation of racial discrimination still in evidence in some areas of the world, adopted the United Nations Declaration on the Elimination of All Forms of Racial Discrimination[5]. In the preamble, it states that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and there is no justification for racial discrimination either in theory or in practice.

In Article 1, the Declaration underlines that discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the United Nations Charter and a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration. It is an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples. In Article 4, it calls on all States to take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination where it still exists. It further urges the United Nations, its specialized agencies, States and non-governmental organizations to do all in their power to promote energetic actions which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. As the Declaration is not legally binding, the General Assembly therefore started work on the elaboration of a convention on this subject.

International Convention on the Elimination of All Forms of Racial Discrimination

Two years later, on 21 December 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination[6].

Article 1 of the Convention defines ‘racial discrimination’ as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on a equal footing, of human rights and fundamental freedoms, in the political, economic, social, cultural or any other field of public life.

The achievement of equality not only *de jure* but also *de facto* demands sometimes that an affirmative action be taken by States to diminish or eliminate conditions which cause discrimination of individuals or groups of the population. Such actions may involve preferential treatment. In this respect,

Article 1 of the Convention also provides that any special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requesting such protection as may be necessary in order to ensure their equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination if such measures do not lead to the maintenance of separate rights for different racial groups and are not continued after the achievement of their objectives.

States Parties are obliged not to engage in any act or practice of racial discrimination; not to sponsor, defend or support racial discrimination; to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination. They particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Apart from spelling out the obligations of States Parties the Convention established the Committee on the Elimination of Racial Discrimination (CERD). It was the first treaty body created by the human rights instrument to monitor and review the implementation of the Convention. In accordance with Article 9, States Parties are obliged to submit a report on the legislative, juridical, administrative or other measures which they have adopted and which give effect to the Convention which also provides, in Article 11, for State to State complaints. A third procedure makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint (communication) to the Committee against their State, if this State is a Party to the Convention and has declared that it recognizes the competence of the Committee to receive such complaints. The Convention is now binding for more than 157 States.

Actions of the United Nations aimed at the mobilization of the world public opinion

The International Conference on Human Rights (Tehran, 1968) considered various aspects of the problem of racial discrimination. The Proclamation of Tehran declared: “The peoples of the world must be made fully aware of the evils of racial discrimination and must join in combating them. All ideologies based on racial superiority and intolerance must be condemned and resisted”.

The multidimensional activities of the United Nations against racial discrimination have been intensified within the framework of three Decades for Action to Combat Racism and Racial Discrimination. The first covered the period 1973-1983.Speaking about the goals of the first Decade, in its resolution 3051 (XXVIII) of 2 November 1973, the General Assembly stressed that it should help: “… to promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially by eradicating racial prejudice, racism and racial

discrimination; to arrest any expression of racist policies and to eliminate the persistence of racist policies and to counteract the emergence of alliances based on mutual espousal of racism and racial discrimination".

The First World Conference to Combat Racism and Racial Discrimination was held in Geneva in 1978, at the mid-point of the first Decade. Its Declaration and Programme of Action reaffirmed the inherent fallacy of racism and the threat it posed to friendly relations among peoples and nations. It specifically condemned apartheid as a crime against humanity, an affront to the dignity of mankind and a threat to peace and security in the world. In addition, it recommended that, because of the severe economic inequalities that resulted from racial discrimination, efforts to combat racism should include measures aimed at improving the living conditions of men and women. The Second World Conference to Combat Racism and Racial Discrimination, held in Geneva in 1983, reviewed and assessed the activities undertaken during the Decade and formulated specific measures to ensure the implementation of the United Nations instruments to eliminate racism, racial discrimination and apartheid.

The General Assembly proclaimed the Second Decade for Action to Combat Racism and Racial Discrimination, for 1983-1993. The Programme of Action for the Second Decade focused on the elimination of apartheid, and requested that the Security Council consider the imposition of mandatory sanctions against the Government of South Africa. The Programme called upon the mass media to play a role in disseminating information on methods and techniques to be used in combating racism, racial discrimination and apartheid.

The Third Decade to Combat Racism and Racial Discrimination was proclaimed by the General Assembly on 20 December 1993 for the period 1993-2003. The Plan of Action for the Third Decade foresees activities against racism and racial discrimination at the international, regional and national level, basic research and studies, coordination and reporting and through the regulation of system-wide consultations. The Third Decade takes a broader view of racism, including the realization that all societies in the world are affected and hindered by discrimination. The international community has undertaken to determine the basic roots of racism and to call for the changes necessary to prevent the eruption of conflicts caused by racism or racial discrimination. By necessity, ethnic cleansing and genocide have come under consideration, as well as the institutionalization of xenophobia, as some States practise measures against migrant workers.

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in June 1993, considered the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid, or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community. It also called upon the United Nations organs and specialized agencies to strengthen their efforts to implement the Programme of Action relating to the Third Decade. The World

Conference also appealed to the international community to contribute generously to the Trust Fund for the Decade.

In 1993, the Commission on Human Rights appointed a Special Rapporteur to study both institutional and indirect forms of racism and racial discrimination against national, ethnic, linguistic and religious minorities and migrant workers throughout the world[7].

In resolution 1999/78 on racism, racial discrimination, xenophobia and related intolerance[8], the Commission expressed its deep concern that, despite continuing efforts, racism, racial discrimination, xenophobia and related intolerance, as well as acts of racist violence, persisted and were even growing in magnitude, incessantly adopting new forms, including new tendencies to establish policies based on racial, religious, ethnic, cultural and national superiority or exclusivity. It expressed its unequivocal condemnation of all forms of racism and racial discrimination and asked all governments, intergovernmental and non-governmental organizations to supply information to the Special Rapporteur.

Declaration on Race and Racial Prejudice

UNESCO's stand against racism was already determined by its Constitution which declares in its Preamble: "… the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place though ignorance and prejudice, of the doctrine of the inequality of men and races".

In 1948, the United Nations Economic and Social Council (ECOSOC) urged UNESCO to adopt a programme concerning racist doctrines designed to remove racial prejudice. In response to this appeal, the Organization undertook a number of studies which brought to light the completely unscientific foundations of racism.

UNESCO convened several meetings of specialists to consider various manifestations and aspects of racism. In 1950, a group of eminent experts prepared a Statement on Race, followed in 1951 by a Statement on the Nature of Race and Race Differences. Both statements emphasized that biological differentiation of races is without foundation, and unequivocally rejected theories of racial superiority. In 1964, Proposals on Biological Aspects of Race were elaborated. This text emphasized the predominance of historical, social and cultural factors in the explanation of differences between populations living in different geographical areas of the world. The fourth Statement on Race and Racial Prejudice was drawn up in 1967 and elucidated racist theories and racial prejudice.

In 1972, the UNESCO General Conference called for the preparation of a declaration which would take into account the findings of the Statements and present a set of universally applicable principles which could be recommended

to Member States. Consequently, the General Conference, at its 20th session in 1978, solemnly adopted, by acclamation, the Declaration on Race and Racial Prejudice which states that all human beings belong to a single species and are descended from a common stock; that they are born equal in dignity and rights and all form an integral part of humanity. Racial prejudice, historically linked with inequalities in power and reinforced by economic and social differences between individuals and groups, is qualified by this instrument as being totally without justification.

The Declaration proclaims that the diversity of life styles and the right to be different may not in any circumstances serve as a pretext for racial prejudice. The State has prime responsibility for ensuring human rights and fundamental freedoms and it should take all appropriate steps to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid.

Since the adoption of the Declaration, the Director-General has submitted five reports on its implementation to the General Conference at its 1980, 1983, 1987, 1991 and 1995 sessions. These reports are based on information provided by Member States.

Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War

The mass media, radio, television, newspapers may and should play an important role in the efforts aimed at the consolidation of peace, in the elimination of all forms of discrimination, in the promotion of human rights and fundamental freedoms, in the shaping of behavioural patterns. This idea led to the adoption in 1978, by the General Conference, of the UNESCO Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War.

Work on the Declaration started in 1970 and continued in an atmosphere of controversy concerning, in particular, the problem of governmental control of the media. After a number of drafts and projects elaborated by intergovernmental meetings of experts and the UNESCO Secretariat, it became possible to arrive at a text which, seen by some as '… the least objectionable of a series of bad alternatives' or as '… an honorary compromise' by others, was in the end unanimously adopted.

In its Preamble, the Declaration recalls the provisions of international conventions[9] which oblige States Parties to adopt immediate and positive measures assigned to eradicate all incitement to, or acts of, racial discrimination,

and agree to prevent any encouragement of the crime of apartheid and similar segregation policies or their manifestations.

Article I states that the strengthening of peace, and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. As formulated in Article III, the mass media, by disseminating information on the aims, aspirations, cultures and needs of all peoples, contribute to eliminating ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals.

The Declaration does not call for State control of the media and does not speak about governmental responsibilities. It stresses that it is indispensable, with due respect for constitutional provisions and for the applicable international instruments, to create and maintain throughout the world conditions which make it possible for organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration. Therefore it should be considered rather as a help in the application of a code of ethics by professional organizations, educators, journalists and other agents of the mass media and those who assist them in performing their functions.

United Nations system instruments against discrimination of persons belonging to vulnerable groups

In its General Recommendation XXIV concerning Article 1 of the Convention, the Committee on the Elimination of Racial Discrimination stated that: "… according to the definition given in Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples" [10].

Persons belonging to minorities

Neither the protection of minorities nor the rights of persons belonging to minorities were mentioned in the United Nations Charter. In 1947, the United Nations Secretariat took the view that the League of Nations minority system had been replaced by a new universal and individualistic conception of human rights. Nevertheless, the protection of minorities was not completely forgotten as ECOSOC authorized the Commission on Human Rights to make a recommendation on this subject.

The United Nations General Assembly, in resolution 217C(III), whilst declaring that the United Nations cannot remain indifferent to the fate of minorities, added that: "... it is difficult to adopt a uniform solution to this complex and delicate question, which has special aspects in each State in which it arises".

In a memorandum entitled *Definition and Classification of Minorities* submitted by the Secretary-General to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1950, a classification based on eight criteria comprised nearly thirty different groups.

On 10 December 1948, the General Assembly invited the Commission on Human Rights to make a thorough study of the problem of minorities so that the United Nations might take effective measures for their protection. In accordance with this request, between 1948 and 1955, the Sub-Commission undertook a number of studies concerning the status and classification of minorities.

In 1977, the Special Rapporteur of the Sub-Commission prepared a study on the rights of persons belonging to ethnic, religious and linguistic minorities[11]. The study analysed concept of a minority; presented the international protection of persons belonging to ethnic, religious and linguistic minorities since 1919; their position in the society in which they live, as well as the application of the principles set forth in Article 27 of the International Covenant on Civil and Political Rights.

The Sub-Commission decided to prepare a report on national experiences regarding peaceful and constructive solutions of problems involving minorities[12]. The Special Rapporteur presented the final report in 1993.

Though the protection of minorities was not recognized in normative instruments adopted by the United Nations system, the rights of persons belonging to minorities are mentioned in several of them. The first international convention adopted after 1945 which contains provisions *expressis verbis* relating to the rights of persons belonging to minorities was the UNESCO Convention against Discrimination in Education of 1960. The States Parties to the Convention agreed in Article 5, paragraph 1(c): "… it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language".

The International Covenant on Civil and Political Rights is of particular importance in this context as its Article 27 states: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

This provision gives, if the conditions foreseen by the Optional Protocol to the International Covenant on Civil and Political Rights are fulfilled, the possibility for individuals to present communications to the Human Rights Committee concerning the violation of their rights. The implementation of Article 27 is also verified through the reporting system.

Article 27, with a small modification, was incorporated in the Convention on the Rights of the Child of 1989 which, in its Article 30, stipulates: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”. The implementation of this provision is subject to the verification procedure based on reports presented to the Committee on the Rights of the Child.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

On 18 December 1992, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly[13]. Thus the work which had been started by the Commission on Human Rights in 1978 by the establishment of a working group came to a successful conclusion. The Declaration formulates the obligation of States to protect the existence and identity of minorities within their respective territories.

Among the rights of persons belonging to minorities it lists: the right to enjoy their own culture; to profess and practice their own religion; to use their own language; to participate effectively in cultural, religious, social, economic and public life, as well as in the decision-making process concerning the minority to which they belong; to establish and monitor their own associations; to establish and maintain without any discrimination, free and peaceful contacts with other members of their group or other citizens of other States to whom they are related by national or ethnic, religious or linguistic ties. To eliminate any misinterpretation, it provides *expressis verbis* that nothing in its text may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

The Declaration foresees a number of measures to be taken by States to ensure that persons belonging to national minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law and to enable them to express their characteristics and develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. Adequate opportunities to learn their mother tongue should be provided. States should, where appropriate, take measures to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory as this is important for assuring non-discrimination and to enable them to participate fully in economic progress and development in their country.

Vienna Declaration and Programme of Action

In its paragraph 19, the Vienna Declaration stresses the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live. The World Conference on Human Rights reaffirmed that States are obliged: "... to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities".

The Commission on Human Rights authorized the Sub- Commission to establish an inter-sessional Working Group to promote the rights of persons belonging to minorities. The Working Group held its first session in 1995. In 1999, the Commission affirmed that specific measures and the creation of favorable conditions for the protection of persons belonging to minorities which ensure effective non-discrimination and equality for all, contribute to the prevention and peaceful solution of human rights violations and situations involving minorities[14].

Indigenous people

In 1971, the Sub-Commission was authorized by ECOSOC to make a study of the problem of discrimination against indigenous populations. A world-wide review carried out by the Special Rapporteur discovered their considerable discrimination and called for a series of measures aimed at. the improvement of this situation. In 1982, the Sub-Commission established a working group to prepare a draft declaration on the rights of indigenous peoples. The draft, completed in 1993, was transmitted for comments to governments and non-governmental organizations and, subsequently, to the Commission on Human Rights. Due to the fact that some articles of the draft declaration concerning, *inter alia*, the right to self-determination or land rights are controversial, the Commission has not yet transmitted it to the General Assembly for adoption.

The World Conference on Human Rights recognized the inherent dignity and the unique contribution of indigenous people to the development and plurality of society. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them and should take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination.

The General Assembly, as requested by the World Conference proclaimed an International Decade of the World's Indigenous People (1994-2004)[15] and adopted a Programme of Action for it[16]. The General Assembly affirmed that a major objective of the Decade is the adoption of a Declaration on the Rights of Indigenous People.

As the elaboration of such a Declaration by the Commission on Human Rights and the General Assembly will take some time, the only normative instrument on this subject is Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries[17], adopted by the ILO in 1989. It provides: "Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination ..." and adds that: "Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the people concerned".

Migrant workers and their families

The question of maltreatment and discrimination of migrant workers and their families was included on the agenda of ILO after the Second World War[18] and, since the 1970s, on the agenda of the United Nations[19]. In 1972, ECOSOC adopted resolution 1706(LIII) in which it expressed deep concern over unlawful treatment of migrant workers which was close to slavery or forced labour. A few months later, the General Assembly reiterated this concern and, noting the discrimination of which foreign workers were the victims in certain countries of Europe, called upon the governments concerned to end this discriminatory treatment. It requested the Commission on Human Rights to consider the exploitation of labour through illicit and clandestine trafficking. The question was then presented to the Sub-Commission which decided to deal with illicit and clandestine operations and discriminatory treatment of migrant workers in host countries. A special report on these aspects was prepared and discussed by the Sub-Commission. From 1976 to 1979, the General Assembly adopted a series of resolutions on measures to improve the situation and ensure the human rights and dignity of all migrant workers and called upon the Commission on Human Rights and ECOSOC to consider the question of migrant workers.

In 1979, the General Assembly decided to create a working group on the drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. After ten years, the group elaborated a very detailed draft of a Convention comprising 93 articles which, in 1990, was adopted by the General Assembly.

In Article 2, the Convention explains that the term 'migrant worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Part II deals with non-discrimination with respect to their rights and obliges States Parties to undertake in accordance with the international human rights instruments, to respect and to ensure to all migrant workers and members of their families the rights provided for by the Convention without distinction of any kind. Part III, in twenty-eight articles (8-35), enumerates their human rights starting with the right to leave any State, including their State of origin. Article 11 provides that no migrant worker or member of his or her family shall be held in slavery or servitude. For the purpose of reviewing, the application of the Convention fore-

sees the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Their Families comprising fourteen experts.

The Convention has not yet entered into force. It demands twenty ratifications to become binding (by the middle of 2001, it had only received 15 ratifications). The Commission on Human Rights, calls systematically upon all Member States to consider the possibility of signing and ratifying or acceding to the Convention as a matter of priority. It also urges countries of destination to review and adopt, as appropriate, measures to prevent the excessive use of force and to ensure that their police forces and competent migration authorities comply with the basic standards relating to the decent treatment of migrant workers and their families, *inter a1ia*, throughout the organisation of training courses on human rights.

Aliens

In 1972, during its 29th Session, for the first time the Commission on Human Rights discussed violations of human rights of individuals who are not citizens of the country in which they live. A year later ECOSOC requested the Commission and its Sub-Commission to consider as a matter of priority the problem of the applicability of existing human rights standards to individuals who are not citizens of the country in which they live and to suggest which measures in the field of human rights, including the drafting of a declaration, are desirable.

In accordance with this request, the Sub-Commission appointed a Special Rapporteur to carry out the study and to prepare a report which was submitted to the Sub-Commission in 1976. It contained a manifold analysis of the status of aliens and, in Annex 1, a draft Declaration on the Human Rights of Individuals Who are not Citizens of the Country in which They Live. The Sub-Commission examined the report and requested the Secretary-General to submit the draft declaration to governments for consideration and comments. The Special Rapporteur, taking into account the views of governments, prepared a revised version which was transmitted to the Commission on Human Rights in 1978 and then, through ECOSOC, to the General Assembly.

A final version of the draft Declaration was elaborated by a working group established by the General Assembly, and The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live was adopted by the General Assembly on 13 December 1985[20]. In its Preamble, the Declaration proclaims that the protection of human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live. As stipulated in Article 4, aliens shall enjoy in particular the following rights: to life and security of person; to protection against arbitrary or unlawful interference with privacy, family, home or correspondence; to be equal before the courts; to choose a spouse, to marry, to found a family; to freedom of thought, opinion, conscience and religion; to retain their own language, culture and tradi-

tions; to transfer abroad earnings, savings or other personal monetary assets. Subject to such restrictions as presented by law and which are necessary in a democratic society, aliens shall also enjoy the right to leave the country, the right to freedom of expression, the right to peaceful assembly and the right to own property alone as well as in association with others. However, the Declaration does not contain however any provision concerning its implementation.

Prohibition of advocacy of hatred, prejudice and intolerance in United Nations instruments

The acceptance by the United Nations of a general principle prohibiting hatred, prejudice and intolerance against nations, peoples, groups or cultures is the result of a long process. The United Nations was born of the tragic experiences of the Second World War to protect future generations from the scourge of war. Therefore, an early emphasis was placed quite naturally on the prohibition of war propaganda, genocide and racism.

At present, when the world is faced with a wave of new forms of racism and xenophobia and when armed conflicts are of an internal character, the prevention and eradication of hatred between various groups – ethnic or national, religious and linguistic – are taking on new dimensions and urgency. In this context, the duty to refrain from the advocacy of hatred, prejudice and intolerance not only between States but also groups and individuals has become one of the most important obligations established by international human rights law.

The Convention on the Prevention and Punishment of the Crime of Genocide was proposed by the *Ad Hoc* Committee on Genocide which met at Lake Success in 1948 and prepared a draft taking into account resolution 96 (I). On 9 December 1948, the General Assembly approved the Convention and opened it for signature and ratification[21]. In Article 1, the Contracting States: "… confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish". From the point of view of the prohibition of advocacy of hatred, Article 3 is the most relevant and, among punishable acts, enumerates: "(c) Direct and public incitement to commit genocide;"

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination contains two articles which can be seen as an important step in the establishment of the prohibition of hatred, prejudice and intolerance. Article 9 stresses that: "… All incitement to or acts of violence against any race or group of persons of another colour or ethnic origin shall be punishable under law… States shall take immediate and positive measures including legislative and other measures to prosecute or outlaw organizations which promote or incite to racial discrimination…".

Similar provisions, but this time fully binding ones, are enshrined in the International Convention on the Elimination of All forms of Racial Discrimination. While repeating the main elements of Article 9 of the Declaration, Article 4 of the Convention not only speaks about racial discrimination but also mentions *racial hatred* and adds to the list of measures to be taken by States Parties that they: "[c] shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination".

The adoption by the General Assembly of the International Covenant on Civil and Political Rights was a landmark in the acceptance of a general principle prohibiting the advocacy of hatred, prejudice and intolerance. In Article 20, paragraph 2, the Covenant declares: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Not only advocacy of racial hatred but also national and religious hatred should be outlawed. Moreover, not only hatred which leads to discrimination but also hatred which incites hostility and violence should be prohibited. This article requests States Parties to reflect broadly these provisions in their legislation [22].

The State obligation to educate for human rights, friendship, tolerance and to combat through education racism and racial discrimination

A number of universal human rights instruments formulate general objectives and goals of education. The Universal Declaration of Human Rights was the first among these instruments. In Article 26, paragraph 2, it provides: " Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

Adopted by the General Assembly in 1959, the Declaration on the Rights of the Child, in Principle 10, unequivocally demands: "The child shall be ... brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood …". The formulation that the child "shall be brought up" means that the declaration addresses this request not only to education understood in a formal sense but also, broadly, to all social actors which influence or create the systems of values and behavioural patterns of the child: family, religion, mass media and youth organizations.

An important step forward was taken when the UNESCO Convention against Discrimination in Education of 1960 repeated literally, in its Article 4, the formulation of the Universal Declaration of Human Rights concerning the objectives of education. The States Parties to this Convention not only agreed with this objective but undertook obligations to take all necessary measures to

ensure its application. Moreover, in Article 7, they agreed that they shall in their periodic reports submitted to the General Conference of UNESCO, on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other actions which they have taken for the application of the convention[23].

A binding agreement concerning the goals of education was reached by the United Nations in 1966 when the General Assembly adopted the International Covenant on Economic, Social and Cultural Rights. In Article 13, it stipulates that States Parties: "... agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace".

Although this formulation repeats Article 26 of the Universal Declaration of Human Rights, it nevertheless contains several important additions. Thus it speaks about human dignity, formulates democratic requirements that education 'shall enable all persons to participate effectively in a free society' , and refers to racial and religious as well as ethnic groups among which understanding, tolerance and friendship shall be promoted .The importance of this addition can be fully evaluated today when ethnic conflicts and violence lead to a new wave of racial discrimination.

The Convention on the Rights of the Child of 1989 further developed the goals of education. In Article 29, States Parties agreed that the education of the child shall be directed to: "… [b] the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; … [d] The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".

Among instruments which *expressis verbis* speak about elimination through education of racial discrimination and prejudices, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963 should be mentioned. It stresses in Article 8 that: "All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups".

A similar provision, but this time fully binding, is enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (1965). As stipulated by Article 7, "States Parties undertake to adopt immediate and effective measures particularly in 'the fields of teaching, education, culture and information, with a view to combating prejudices which

lead to racial discrimination …". This wording is broader and stronger than that of the Declaration.

In the revised general guidelines concerning the form and content of reports by the States Parties,[24] the Committee on the Elimination of Racial Discrimination asks them to report in relation to Article 7 on immediate and effective measures taken in the fields of teaching, education, culture and information with a view to: combating prejudice which leads to racial discrimination; promoting understanding, tolerance and friendship among nations and racial or ethnic groups; propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration and International Convention on the Elimination of All Forms of Racial Discrimination.

The Declaration on Race and Racial Prejudice, in Article 5, paragraph 2, underlines that: "States, in accordance with their constitutional principles and procedures, as well as all other competent authorities and the entire teaching profession, have a responsibility to see that the educational resources of all countries are used to combat racism, more especially by ensuring that curricula and textbooks include scientific and ethnical considerations concerning human unity and diversity and that no invidious distinctions are made with regard to any people …".

A similar provision is contained in the ILO Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries of 1989. In Article 31, it demands that: "Educational measures shall be taken among all sections of the national community ... with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

The Recommendation concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human rights and Fundamental Freedoms, adopted at the 18th session of the General Conference of UNESCO in 1974, calls upon Member States to take steps to ensure that the principles of the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination become an integral part of the developing personality of each child, adolescent, young person or adult, by applying these principles in the daily conduct of education of each level and in all its forms[25]. Member States should encourage a wider exchange of textbooks, especially those concerning history and geography, and should adopt measures for the reciprocal study and revision of textbooks and other educational materials in order to ensure that they are accurate, balanced, up-to-date, without prejudice, and enhance mutual knowledge and understanding between different peoples.

The Intergovernmental Conference on Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights

and Fundamental Freedoms, held in Paris in 1983, recommended extending the scope of the 1974 Recommendation to the whole of the education system, including non-formal and higher education. In accordance with the decision taken by the General Conference during its 23rd session in 1985, the permanent system of reporting on steps taken by Member States to apply the Recommendation was adopted.

On 23 December 1994, the General Assembly proclaimed the ten-year period beginning 1st January 1995 the United Nations Decade for Human Rights Education. It appealed to all governments to contribute to the implementation of the Plan of Action for the Decade and requested the United Nations High Commissioner for Human Rights to coordinate its implementation.

The Plan of Action for the United Nations Decade for Human Rights Education contains the most comprehensive definition of human rights education. It stipulates that human rights education shall be defined as "training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes …" [26]. Five directions of human rights education are listed, namely: "(a) The strengthening of respect for human rights and fundamental freedoms; (b) The full development of the human personality and the sense of its dignity; (c) The promotion of understanding, tolerance, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; (d) The enabling of all persons to participate effectively in a free society; (e) The furtherance of the activities of the United Nations for the maintenance of peace".

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A culture of human rights can be achieved not only through access to and knowledge of values but also by imparting and moulding attitudes and skills. In line with such an assumption, human rights education is a much wider concept than the study of international and internal human rights standards, procedures and institutions. It must be understood not as an instruction about human rights, but as education in human rights and for human rights. This means that educational institutions should become open, ideal places for the exercise of tolerance, respect for human rights, the practice of democracy, and learning about the diversity and worth of cultural identities.

A universal culture of human rights has to embrace and be built on the rejection and eradication of all forms of racism, xenophobia, racial prejudice and racial discrimination. It is a long-term goal which can be achieved through the establishment of a comprehensive system of education, training and public information aimed at all groups of people, especially women, children, minorities and indigenous people, embracing all levels of education, formal and non-formal. Although education has to be seen as a cornerstone in the construction of a culture of human rights, it cannot be built without the participation of the media which

at present exert a predominant influence on the forging of attitudes, judgments and values, that create images and often determine the relation to 'others': individuals, groups, religions or cultures.

A culture of human rights, a culture of understanding, non-discrimination, tolerance and friendship cannot be constructed without the participation of all social actors and the whole of civil society. Building such a broad coalition of partners for human rights education is without a doubt an important goal in common efforts to eradicate discrimination.

Notes

1. Prohibited grounds for discrimination are mentioned in Article 7 of the International Covenant on Economic, Social and Cultural Rights.
2. *United Nations Compilations of General Comments and General Recommendations adopted by Human Rights Bodies*, HRI/GEN/1/Rev 4, 7 February 2000, pp. 104-105.
3. Article 25 of the International Covenant on Civil and Political Rights. Article 6 prohibits the death sentence to be imposed on persons below eighteen years of age or on pregnant women.
4. The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes; the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions; the establishment or maintenance of private educational institutions.
5. General Assembly resolution 1904/XVIII.
6. General Assemble resolution 2106 A/XX.
7. The Special Rapporteur was required to report on racist acts of violence and to examine incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-semitism and related intolerance.
8. Resolution adopted on 28 April 1999 at the 55th session of the Commission on Human Rights. *Inter alia*, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.
9. *Inter alia*, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression of the Crime of *Apartheid*.
10. Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev. 4, 7 February 2000, p. 152.
11. Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York.
12. Resolution 1989/44.
13. General Assembly resolution 47/135.
14. Resolution 1999/48.
15. By its resolution 45/164 of 18 December 1990, the General Assembly had proclaimed 1993 as International Year for the World's Indigenous People with the aim to strengthen international co-operation for the solution of their problems.
16. The Programme is contained in the annex to the General Assembly resolution 50/157.
17. The Convention (N° 169), a revised version of the Convention (N° 107) on the Protection of Indigenous and Tribal Populations, entered into force on 5 September 1991.

18. The ILO Convention (N° 97) concerning Migration for Employment (Revised) was already adopted in 1949.
19. See *Human Rights, The Rights of Migrant Workers*, Fact Sheet N° 24, United Nations, Geneva, 1996.
20. General Assembly resolution 40/144.
21. Entered into force on 12 January 1951 and ratified or acceded to by 129 States Parties.
22. Thus, for example, Section 283 of the Penal Code of Austria states: "Anyone who requests or induces others publicly … to commit hostilities against a group of persons distinguished by belonging to a race, nation, ethnic group or State, shall be punished by imprisonment of up to one year". Section 281.2 of the Criminal Code of Canada of 1970 provides: "Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty…". Article 295 [2] of the Criminal Code of Cuba states: "Anyone who disseminates ideas based on racial superiority or hatred or commits or engages in incitement to acts of violence against any race or group… shall be liable to the same penalty." In France, Act N° 75-546 of 1972, foresees: "Those who … stir up discrimination, hatred or violence against a person or a group of persons because of their origin or their adherence or non-adherence to a determined ethnic group, nation, race or religion shall be liable to imprisonment…" Section 130 of the German Penal Code declares: "Whosoever attacks the human dignity of others in a manner liable to disturb the public peace by (1) inciting hatred against certain groups in the population … shall be punished." Section 135(a) of the Norwegian Penal Code states: "Anyone who threatens, insults or exposes any person or group of persons to hatred, persecution or contempt on account of their religion, race, colour or national or ethnic … shall be punished."
23. The Recommendation concerning the Status of Teachers, adopted by UNESCO on 5 October 1966, states in III. Guiding Principles: "3. Education from the earliest years should be directed to the all-round development of the human personality … as well as to the inculcation of deep respect for human rights and fundamental freedoms; within the framework of these values the utmost importance should be attached to the contribution to be made by education to peace and to understanding, tolerance and friendship among nations and among racial or religious groups".
24. General guidelines regarding the form and contents of reports to be submitted by States Parties under Article 9, paragraph 1, of the Convention. UN Doc. CERD/C/70/Rev.3, 23 July 1993.
25. See paragraph 11 of the Recommendation in: *UNESCO and Human Rights*. J. Symonides and V. Volodin (eds.), Second Edition, UNESCO, Paris, 1999, p.179.
26. Appended to UN Doc. A/51/506/Add.1, 12 December 1996.

The Elimination of Racial Discrimination: Achievements and Challenges

Rüdiger Wolfrum

The prohibition of racial discrimination in international law

Although the United Nations Charter does not contain a catalogue of human rights and fundamental freedoms and instead entrusts the General Assembly with the task of promoting the development of the relevant instruments, it does formulate the rule of non-distinction as a directly binding principle [1]. The United Nations Charter expressly mentions only four criteria which must not be used as an excuse for differential treatment: race, sex, language and religion [2]. These criteria were considerably enlarged by the Universal Declaration of Human Rights of 1948 which adds "colour, political or other opinions, national or social origin, property, birth or other status" to the catalogue. The Universal Declaration further states that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.

All international human rights instruments dealing with the protection of human rights, either on the universal or the regional level, contain a provision prohibiting racial discrimination. Compared to the International Convention on the Elimination of All Forms of Racial Discrimination, they either cover specific aspects only or are of a more general nature.

The first international treaty to deal with one particular aspect of racial discrimination was the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. According to its Article II, genocide means specific acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. However, there have been only a few occasions so far in which the Genocide Convention has been invoked on the international or national level. This may change when the International Criminal Court, which will deal with violations of humanitarian law, has taken up its functions. Since discrimination in respect of employment and occupation is a common practice, the International Labour Organisation (ILO), in its Declaration of Philadelphia of 1944, affirmed that all human beings, irrespective of race,

creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. This principle was transformed into an international treaty by ILO Convention (N° 111) Concerning Discrimination in Respect of Employment and Occupation of 1960. It prohibits any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The Convention against Discrimination in Education, adopted on 14 December 1960 by the UNESCO General Conference, follows the approach adopted by the ILO Convention N° 111 and prohibits any discrimination based on race, colour, sex, language, economic condition or birth which has the purpose or effect of nullifying or impairing equality of treatment in education. Further specific aspects of racial discrimination are dealt with in the International Convention on the Suppression and Punishment of the Crime of Apartheid, and in the International Convention against Apartheid in Sports. Finally, the prohibition of racial discrimination is enshrined in: Article 3 of the Convention relating to the Status of Stateless Persons, 1954; Article 3 of the Convention relating to the Status of Refugees, 1951; Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1984; Article 2 of he Convention on the Rights of the Child, 1989; and in Article 85, para. 4, of the Additional Protocol (Protocol I) to the Geneva Conventions of 12 August 1949 on the Protection of Victims of International Armed Conflicts, 1977.

The two International Covenants on Human Rights of 1966 follow a more general approach. They copied the catalogue of the Universal Declaration *verbatim*; States Parties to the Covenants undertake to guarantee that the rights enunciated in them will be exercised without discrimination of any kind as to race, colour, sex, language, etc.

The elaboration of the International Convention on the Elimination of All Forms of Racial Discrimination is the reaction to particular phenomena. On 12 December 1960, the General Assembly in reacting to acts of anti-semitism, particularly in Germany, condemned all forms of racial, religious and national hatred in political, economic, social, educational and cultural affairs as a violation of the United Nations Charter and the Universal Declaration of Human Rights[3]. In the subsequent Declaration on the Elimination of All Forms of Racial Discrimination[4], the General Assembly stated that discrimination between human beings on the grounds of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the United Nations Charter and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. The Declaration of 1963 formed the basis of the International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature by the General Assembly only two years later.

In spite of the attempts which have been made to abolish policies and practices based upon or promoting xenophobic and racist motivations and to counter theories based upon or endorsing such practices, these theories, policies and practices are still in existence or are even gaining ground or taking new forms [5]. A serious new form of racism is reflected in the so-called policy of "ethnic cleansing".

Since the manifestation of racism and xenophobia is gaining ground, the international community has renewed its efforts to combat racism, racial discrimination, xenophobia and related forms of intolerance [6]. The World Conference on Human Rights has called for the elimination of racism and racial discrimination as a primary objective for the international community [7]. The General Assembly of the United Nations has proclaimed a Third Decade to Combat Racism and Racial Discrimination, from 1993 to 2003 [8]. It has adopted a programme [9] to achieve measurable results in reducing and eliminating discrimination through specific national and international actions. It has further proclaimed 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance [10]. The Commission on Human Rights has decided to appoint a Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and related Intolerance [11]. Subsequently the Commission made the mandate of the Special Rapporteur more explicit by requesting him to examine incidents of contemporary forms of racism, racial discrimination, any form of discriminations against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-semitism, and related intolerance [12]. The reason for this action is the "growing magnitude of the phenomena of racism, racial discrimination, xenophobia and related intolerance in segments of many societies and the consequences for migrant workers." Finally, the Sub-Commission on the Promotion and Prevention of Human Rights suggested that a world conference be held against racism, racial and ethnic discrimination, xenophobia and other contemporary forms of intolerance [13], which the General Assembly endorsed[14]. The conference will be held in South Africa from 31 August to 7 September 2001.

In general, more effective and sustained measures at the national and international level are necessary to fight all forms of racism and racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination is just one element within this struggle. It has to adjust its working methods to the new challenges; steps have been taken to that effect [15]. Further steps have to be taken in particular by the High Commissioner for Human Rights and the Commission on Human Rights, namely to more effectively co-ordinate the efforts to combat racism in all its forms. The establishment of the Special Rapporteur referred to above has been undertaken without consulting the Committee on the Elimination of Racial Discrimination (CERD). Nor does the Special Rapporteur co-operate with CERD even with respect to States dealt with by both. Given the limited resources set aside for the protection of human rights such duplication of efforts should be avoided.

The prohibition of racial discrimination according to the International Convention on the Elimination of All Forms of Racial Discrimination

According to Article 2, States Parties to the Convention are under an obligation to pursue a policy of eliminating racial discrimination in all its forms. States Parties are obliged not to engage in acts or practices of racial discrimination, not to sponsor or support racial discrimination by any persons or organizations and to review governmental, national and local policies with a view to eliminating any laws, regulations or practices of a discriminatory nature or effect. In accordance with this fundamental obligation, States Parties guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and in the enjoyment of civil, political, economic, social and cultural rights as referred to in Article 5 of the Convention. Further, States Parties have undertaken to bring to an end, by all appropriate means, racial discrimination by any persons, groups or organizations. Certain offences have to be declared as an offence punishable by law[16]; organizations which promote and incite racial discrimination are to be prohibited and the participation therein is to be punished. States Parties have further undertaken to adopt measures in the field of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination. Finally, the Convention opens the possibility of affirmative actions vis-à-vis ethnic groups.

The core provision of the Convention is Article 1, para. 1 defining the notion of racial discrimination; paras. 2 and 3 of the same article define cases when the Convention does not apply. Para. 4 deals with temporary measures and in that respect overlaps with Article 2, para. 2, of the Convention.

CERD has so far not made an attempt to further specify what is meant by the notion of race as referred to in Article 1, para. 1, of the Convention ("... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin ...")[17]. In general, it was felt that there was no need to do so since the terms of reference in Article 1, para. 1, of the Convention are broad enough to cover all situations the Convention attempts to eliminate. In particular the Committee can resort to descent or national or ethnic origin. However, occasionally States Parties questioned whether the Convention was applicable to them at all or whether it was appropriate to refer to a particular group as falling under the scope of the Convention. For example, Mr. Lamptey asserted that nations of the Democratic Republic of Congo (former Zaïre) were all of the same stock and there existed no racial or ethnic differences in that State Party[18]. This approach was rejected by the majority of the Committee which looked upon ethnic diversity as a means of enriching cultural life. Developments in 1998 drastically proved how wrong it was to accept the approach advanced by the Government of the Democratic Republic of Congo that the population of this country was ethnically homogenous. The same

approach was taken by the representative of Mexico at the 49th session of CERD in 1995, for example, and by other States Parties particularly from Latin America and Asia, and by the representative of Burundi at the 50th session in 1996. They all alleged that their population was mixed and that one could not speak of differences as of race. In particular the representative of Burundi held that the differentiation between Hutu and Tutsi was introduced by the colonial powers and did not reflect the realities of life. When India stated in its report[19] that the caste system did not fall under the jurisdiction of CERD, the majority of experts argued that since one became member of a caste by birth this was a matter of descent and therefore fell under Article 1, para. 1, of the Convention. At the 50th Session, Iraq objected to questions concerning the Arabs living in the marshes since they were Arabs and belonged to the majority of the population.

CERD has in its majority never accepted such statements. It has referred to the broad wording of Article 1, para. 1, of the Convention and its General Recommendation VIII (1990) according to which individuals are generally identified as being members of a particular racial or ethnic group by way of self-identification[20]. Thus they do not depend upon objective criteria. A group may also be identified as such by the dominant population in a country although it does not regard itself as being ethnically or racially different. Apart from that, reference has been made in this context by CERD to the linguistic differences or to the affiliation to a distinct religion serving as indicators for the existence of particular groups.

States Parties claiming ethnic conformity or denying the existence of particular ethnic groups often do so in order not to endanger a national policy of integration. Such integration may often take the form of enforced assimilation to a dominant group or groups which would violate the objective of the Convention.

As far as indigenous peoples are concerned, many States of Latin America now rediscover the cultural heritage of their indigenous populations. CERD has frequently emphasized that it is particularly concerned with their status and prospect of development. At its 51st session in 1997, CERD adopted a General Recommendation on Indigenous Peoples adding new elements concerning their protection. Its operative part reads:

> "..... The Committee calls in particular upon States Parties to:
> (a) recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;
> (b) ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
> (c) provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
> (d) ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions

directly relating to their rights and interests are taken without their informed consent;

(e) ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

CERD especially calls upon States Parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

It further calls upon States Parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

At its August session in 2000, CERD devoted a full day to deal with the situation of Sinti and Roma, a minority which traditionally faces discrimination in Europe. The reason for this unprecedented step was that over the years, CERD had been frequently faced with discrimination of members of this minority or of the minority as such. It regards that problem as being of a general nature.

Although religious discrimination does not fall under the purview of the Convention, CERD has dealt with it arguing that a particular religion may be an essential element in forming a particular ethnic group. This, however, is a very sensitive issue on which the opinions of the experts differ. Whereas the often discriminatory treatment of Muslims in European countries is frequently referred to, the same experts object to questions concerning the status of Christians in Muslim States. There exists however some justification for the different approaches. Muslims in Europe are by their majority immigrants or descendants of immigrants, although Christians in Iraq, Egypt, etc. have always been nationals of these States.

As already stated, the Convention prohibits not only intentional, but also unintentional discrimination. CERD adopted a General Recommendation to emphasize this point[21]. According to CERD, a distinction is contrary to the Convention if it either has the purpose or the effect of impairing particular rights and freedoms. CERD stated that a differentiation of treatment would not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, were legitimate or fell within the scope of Article 1, para. 4, of the Convention.

CERD has never dealt with affirmative action in depth. The Convention does not consider affirmative action to constitute discrimination as long as it intends to establish equality amongst the groups concerned and as long as it does not lead to the maintenance of separate rights for separate groups.

CERD has frequently dealt with the treatment of non-citizens although according to Article 1, para. 2, of the Convention, it does not apply to "distinctions, exclusions, restrictions or preferences" between citizens and non-citizens. However, CERD has held that a State Party may not discriminate against any particular nationality. Experts have questioned, in this context, the special treatment citizens from a European State receive in other European States and the special treatment given in some Gulf States to citizens from other Arab countries. More generally CERD is concerned with the non-application of civil, economic, social and cultural rights to non-citizens although such application is provided for in international human rights instruments[22]. In General Recommendation XI (1993), CERD emphasized that at least the reporting obligation applies to non-citizens[23]. It further emphasized that Article 1, para. 2, of the Convention must not detract from rights and freedoms granted to non-citizens in other international instruments. In spite of this interpretation, Article 1, para. 2, of the Convention limits the possibilities of CERD to react efficiently against xenophobic tendencies and policies. The Committee still has to develop a working method concerning the elimination of xenophobia and related phenomena.

The implementation system in general

The implementation of international human rights instruments is the responsibility of the States Parties themselves. This is equally true for the International Convention on the Elimination of All Forms of Racial Discrimination which, however, provides, through Part II (Articles 8-16)[24], a system for the review of the fulfilment of their obligations by the States Parties. This system is commonly referred to as the implementation system. When drafted for the Convention, such a system was regarded not only as an essential part but also as a major step in the progressive development of instruments for the implementation of human rights.

However, the implementation system is less effective than those enshrined in the European Convention on Human Rights or in the ILO system[25]. Specifications to the implementation system are contained in the Rules of Procedure of CERD[26], namely Rules 63-96. These Rules have been changed considerably over time with a view to increasing the effectiveness of CERD and keeping the implementation procedure in line with comparable developments in other human rights treaty bodies. Generally speaking, the developments within the human rights treaty bodies concerning implementation procedures have stimulated each other and have gained momentum since the chairpersons of the human rights treaty bodies meet on a regular basis[27].

The implementation system created by the Convention consists essentially of three procedures: a reporting procedure[28] obligatory for all States Parties (Article 9, Rules 63-68); a procedure of State-to-State complaints[29] which is open to all States Parties (Articles 11, 12, 13 and 16, Rules 69-79)[30] and the right of petition – communications in the language of Article 14 – by individuals

or groups of individuals within the jurisdiction of States Parties claiming to be victims of a violation by that State of any of their rights set forth in the Convention (Article 14, Rules 80-97). In addition, Part II of the Convention assigns to CERD certain advisory responsibilities relating to the attainment of the principles and objectives of the Convention in Trust and Non-Self-Governing Territories and all other territories to which Article 15 of General Assembly resolution 1514 (XV)[31] of 14 December 1960 applies as well as the duty to report on all its activities, including its opinions, suggestions and general recommendations, to the General Assembly of the United Nations. Until now, CERD has devoted the majority of its work to examining States' reports received under Article 9 which focuses on the reporting system and its development. As of the end of 2000, the Committee has received no formal inter-State and only few individual communications.

In general, the system of receiving and examining reports as applied by the other treaty bodies is quite similar to that described for the International Convention on the Elimination of All Forms of Racial Discrimination. The same is true with respect to individual communications, although the Human Rights Committee established under Article 28, para. 1, of the International Covenant on Civil and Political Rights, was more successful in establishing a practice in dealing with and examining individual communications[32].

Committee on the Elimination of Racial Discrimination (CERD)

The monitoring functions concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination are entrusted to CERD which comprises 18 experts of "high moral standing and acknowledged impartiality" elected by the States Parties from amongst their nationals (Article 8). The word "experts" is used in a broad sense as referring to expertise in racial discrimination and related fields[33]. Thus it is of consequence when Article 8, para. 1, states that they serve in their personal capacity only, meaning that they are not agents or representatives of any government. They may not seek instructions nor must governments attempt to influence them[34]. However, States Parties wield some influence upon the composition of the Committee since its members may only be elected from a list of persons nominated by States Parties (Article 8, para. 2). Nevertheless, CERD is, according to the letter and spirit of the Convention, to act as an expert body detached from the political interests of the States Parties having nominated them[35]. In the election of the members of the Committee, consideration is given to equitable geographical distribution and to "... the representation of the different forms of civilization as well as of the principal legal systems". The intention of this para., as of similar provisions in other international instruments[36], is that the experts should represent as many geographical regions and as many legal systems and cultures as possible[37]. In fact, the criterion of equi-

table geographical distribution prevails. As of 2000, the geographical distribution of experts was as follows: Africa 3; Asia 4; Latin America 3; Eastern Europe 2; Western Europe and others 6. The principle of equitable geographical distribution also applies to the composition of the Bureau (a chairperson, three vice-chairpersons and a rapporteur)[38]. The Western European and others group is clearly over-represented, whereas Africa is under-represented.

Reporting system

Under Article 9, para. 1, of the Convention: "States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties".

This provision does not adequately reflect the practice of the Committee any more. In dealing with the reports submitted by States Parties, the Committee had to address over the years several issues and, by gradually deciding upon them, further developed and refined the reporting system. These issues included the question whether a State Party should be present when its own report is discussed; how to deal with overdue reports; the content of reports; the appointment of Country-Rapporteurs; the information which may be used by the experts when considering the reports of States Parties and whether the Committee should formulate concluding observations after having finished the examination of a report. These issues are not just of a technical nature. The Committee's approach in addressing them and thereby further developing the reporting system reflects and reveals changes in the Committee's perception of the objectives pursued through the reporting system.

Article 9, para. 1, of the International Convention on the Elimination of All Forms of Racial Discrimination describes the responsibility of States Parties towards the Convention, whereas Article 9, para. 2, states CERD's subsequent reporting duties vis-à-vis the General Assembly. By separating these sets of obligations into two paragraphs, the Convention indicates that CERD's work is to proceed through two stages: first, fact-finding; and, secondly, making suggestions or general recommendations.

As far as the expected content of the reports is concerned, the Convention provides little guidance to the States Parties. According to its Article 9, para. 1, States Parties have to report on "... legislative, judicial, administrative and other measures which they have adopted and which give effect to the provisions of this Convention". Unfortunately, the Convention does not authorize CERD to issue a questionnaire as a basis on which States could prepare their reports[39]. It has instead produced guidelines describing the desired content of the reports.

While the original guidelines did not follow the Convention's system[40], they have since been rewritten so as to refer systematically to the various articles[41]. In addition, the revised guidelines[42] request or invite information on, *inter alia*, the demographic composition of the population (in connection with the general scope of the Convention); the existence of diplomatic, economic or other relations with racist regimes (Article 3); the implementation of the provision prohibiting activities that incite racial hatred (Article 4); and the documentation requested by the Committee (such as the texts of relevant laws and judicial decisions).

As far as the demographic composition is concerned, the Guidelines also refer to General Recommendation IV in requesting "States Parties to endeavour to include in their reports ... information on the demographic composition of the population ..."[43]. However, CERD quite often faces opposition regarding this information. Some States Parties do not recognize the concept of "national" or "ethnic" groups. Others consider an investigation into ethnicity to be inherently discriminatory and thus do not request such details in national censuses. CERD has, however, insisted in obtaining such information[44] and on various occasions has had to be satisfied with estimates. It has countered the objections raised by the States Parties by arguing that it would be impossible for them to fulfil the obligations under Article 1, para. 4, Article 2, para. 1(e) and especially Article 2, para. 2, of the Convention if no information existed as to the demographic composition of the population.

Equally unsatisfactory are in practice the reports on Article 4. According to this provision, States Parties are under an obligation "... to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof".

Further, under sub-para. (b) of this provision, States Parties "... shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law".

Several of the States Parties have not enacted relevant legislation, arguing that no such activity existed and, hence, legislation was unnecessary. Most of the reports contain little if any reference to court rulings concerning the prosecution of persons in accordance with Article 4 of the Convention. Those reports which provide such information often lack details concerning the facts of the cases and the sentences rendered. Thus CERD felt it necessary to remind States Parties of their obligations under Article 4 and to ask for more detailed information[45]. Such a move is of particular relevance taking into account the emergence of new forms of racism and xenophobia in Europe. It remains to be seen whether CERD will increasingly focus its attention upon the implementation of this provision.

Finally, Article 7 which obliges States Parties to undertake measures in the fields of education and teaching with a view to combating racial prejudice, presents particular reporting difficulties. CERD complained that the reporting on these obligations has been unsatisfactory[46] and to remedy this situation, it asked UNESCO to help draft reporting guidelines. The response consisted of an extensive list of more than 90 questions[47]. On the basis of UNESCO's draft and other proposals, the Committee issued a short text which defines (with examples) the State's reporting duties with respect to each of the distinct topics of Article 7: education and teaching, culture and information[48]. However, this had little effect on the reports of States.

The Convention and the Rules of Procedure give little indication about the procedure to be followed by CERD in examining reports. Over the years, it has developed the following practice. Before the report of a State is scheduled for consideration, one member is designated as Country-Rapporteur and is expected to undertake a detailed analysis of the report. He/she does not speak on behalf of CERD but, following his/her nomination to act as a Country-Rapporteur, he/she is expected to avoid extreme statements.

The examination of reports usually begins with an introductory statement by the representative of the reporting State. This statement only needs to consist of general remarks, although in practice new substantive information is often provided. This introduction is followed by the presentation of the Country-Rapporteur and the questions asked or suggestions and opinions voiced by the experts. After the members of CERD have completed their observations and questioning, the State's representative is once again invited to take the floor. This may be followed by another round of questions and remarks from the experts and a reply from the representative of the State Party concerned. The examination of each report is then concluded by the "Concluding Observations" which are formulated in the absence of the representative of the reporting State, although in public meeting. The development of this procedure was undertaken gradually. Some of its important elements met with resistance and it was only possible to introduce them after considerable debate.

The decision to allow representatives of States Parties to be present when their reports are discussed was only taken upon recommendation of the General Assembly[49]. Only this decision has made it possible to establish a constructive dialogue between the experts and the representatives of States Parties. Hence it has to be regarded as one of the most important innovations concerning the working methods of CERD. In drafting its Rules of Procedure, the Human Rights Committee included a similar provision for having representatives of States Parties attend its meetings[50].

The introduction in 1988 of the system of Country-Rapporteurs is another major change in the procedure of CERD. Such a system has been used by the ILO for decades and influenced CERD's decision. Proposals for appointing Country-Rapporteurs were first advanced in 1974 and repeated at a closed meeting in 1986[51]. In 1988, CERD was confronted with a substantial backlog of reports awaiting consideration. It was proposed that the Committee divide

into smaller working groups to speed up consideration[52]. A working group was appointed which recommended the appointment of rapporteurs[53]. This was adopted on a trial basis[54]. Six members volunteered to serve in this capacity and were allocated reports by the Bureau[55]. The Convention's annual report for 1988, in paras. 21 and 24(b), described the responsibilities of a Country-Rapporteur as being to prepare "a thorough study and evaluation of each State report, to prepare a comprehensive list of questions to put to the representatives of the reporting State and to lead the discussion in the Committee".

Later, the Chairpersons' meeting[56] recommended that treaty bodies consider the appointment of rapporteurs. The Convention reviewed its Country-Rapporteur system, as it stood in 1989. Its annual report, in paras. 24 and 26(d), indicated that the introduction of the system had been successful in terms that have been recapitulated in the 1990 report (para. 34), the 1991 report (para. 37) and the 1992 report (para. 41)[57].

The Country-Rapporteur procedure has facilitated a division of labour between members of CERD. Apart from that under the new procedure, CERD has often experienced commentaries of a quality which was rarely achieved under the previous procedure.

Non-governmental organizations (NGOs) do not have a formal standing under the reporting procedure. However, they follow the deliberations of the Committee and prepare background material which the members use intensively. The work of NGOs is co-ordinated by the Anti-Racist Information Service (ARIS) which has made the NGO impact more effective.

The Convention does not give clear guidance as to how CERD may react either to reports which do not meet its reporting requirements or the Guidelines, or when a State Party has been found to have not fully met its obligations concerning the implementation of the Convention. CERD has changed its policy in this respect over the years.

First of all, the Convention does not specify which information the experts may use to assess the reports. Some experts have argued that CERD should make suggestions and general recommendations in accordance with Article 9, para. 2, of the Convention solely on the basis of information submitted by that State Party[58]. Eventually CERD decided that Article 9, para. 2, permits the consideration of any official documents of the reporting State, including legislation, government declarations and parliamentary papers (which might include speeches by the government's opponents) – whether or not these are quoted in the State's report[59]. Over a long period, CERD did not accept information provided by NGOs or by the mass media[60]. This policy, however, has been changed following the example of other human rights treaty bodies[61].

The chairpersons of the human rights treaty bodies have focused on the need for their committees to have at their disposal a wide range of information if they are to function effectively. Accordingly, they have recommended: "To assist it in the fulfilment of its responsibilities, each of the treaty bodies should have access to all of the sources of information that it feels it needs in

order to be effective. In this regard, information provided by non-governmental organizations can be of major importance. The treaty bodies should also take full advantage of the expertise and experience of the specialized agencies and other United Nations bodies whenever appropriate"[62].

CERD has adopted this recommendation[63]. It was felt that it was incompatible with the status of an independent expert to be restricted in the use of whatever information he or she felt appropriate. This change of procedure has considerably deepened the level of consideration of reports in CERD and has moved the reporting system more in the direction of fact-finding.

As to the reaction to reports following its examination, the Convention does not provide CERD with the power to reject a report. It may only "request further information" (Article 9, para. 1) and may make "suggestions and general recommendations" (Article 9, para. 2). Theoretically two different decisions may be taken by CERD: first, that the information provided for was not sufficient to enable it to carry out its function and, second, that the State Party concerned has failed to fully implement the obligations assumed under the Convention. CERD has paraphrased these two possible reactions to a report in procedural terms. Rule 67, para. 1, of its Rules of Procedure states in part that: "When considering a report submitted by a State Party under Article 9, the Committee shall first determine whether the report provides the information referred to in the relevant communications of the Committee. If a report of the State Party to the Convention, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish additional information".

In applying this rule, CERD evaluates each State's report with respect to the formal reporting guidelines, taking account of that State's previous reports. The members seek to determine: whether the information requested in earlier reports has been delivered; whether information missing in previous reports is included in the report under consideration; whether questions initially incompletely answered have now been responded to fully; and whether new developments in the reporting country give rise to a need for additional information.

During its early years CERD did not fully distinguish between these two possible decisions. It would conclude its examination of reports by qualifying them as satisfactory or unsatisfactory, without indicating whether unsatisfactory reports lacked sufficient information or whether the reporting State had failed to comply with its substantive obligations under the Convention[64]. In 1972, CERD amended its Rules of Procedure (now Rule 67), in order to distinguish more clearly the two phases of its evaluation. In addition to paras. 1 and 2 of Rule 67, it introduced Rule 67, para. 3, which provides that: "... if, on the basis of its examination, the reports and information supplied by the State Party, the Committee determines that some of the obligations of that State under the Convention have not been discharged, it may make suggestions and general recommendations in accordance with Article 9, para. 2, of the Convention".

However, in its most recent practice, CERD has also asked for additional information in cases where it felt that a State Party had not fully discharged the obligations under the Convention, thus closing again the distinction between the two stages of examining reports. In this respect, requesting further information was regarded as a kind of verdict concerning the situation in the given State Party.

Another means for CERD to express its opinion upon the situation in a given State Party are "Concluding Observations". At its 891st meeting, CERD discussed possible improvements in the style and content of its report to the General Assembly, following upon the criticism in the Alston report[65] and upon the argument in that report for "concluding observations" to be made by individual experts. The discussion took up a desire voiced earlier[66] for it to agree to a collective assessment of a report rather than list a set of individual assessments. The outcome was described in the annual report for 1991 in para. 31[67], which stated that the relevant section of the report would contain: "... concluding observations on the report and the comments made by the State Party concerning the situation regarding racial discrimination in the country concerned".

At its 39th session, CERD decided that the adoption of the Country-Rapporteur procedure enabled it to go further towards the adoption of a common statement embodying a collective opinion. After the representative of the reporting State has replied to questions and left the committee table, the Chairman invites the Country-Rapporteur to propose a conclusion about progress in the implementation of the Convention in the State in question. Other members of CERD may then suggest additions or modifications to it. Since the 43rd session, the Secretariat prepares the concluding observations as in the practice of the Human Rights Committee. They are then submitted to CERD.

CERD adopted concluding observations in 1991 regarding sixteen reporting and thirteen non-reporting States and, in 1992, regarding nine reporting and nine non-reporting States. Since 1992, the procedure for drafting these observations is that the Country-Rapporteur is asked to circulate a draft within CERD, to take account of the comments of colleagues and then to present at a later session a draft which could be adopted by consensus. Some of the observations adopted in that year made reference to particular general recommendations by CERD.

The Human Rights Committee concludes its examination of reports by "concluding observations of individual members". These contain an assessment of the human rights situation prevailing in the respective State Party on which concern on specific issues may be expressed[68]. At its 43rd and 44th sessions, the Human Rights Committee reviewed its methods of work as far as reports are concerned[69]. It decided that comments would be adopted reflecting the views of the Human Rights Committee as a whole at the end of each State Party report. These comments are not meant to replace comments made by members; they are more detailed than the concluding observations of CERD and, in general, cover the following points: positive aspects; factors and difficulties impeding the application of the Covenant; principal subjects of concern; and

suggestions and recommendations. In adopting this procedure the Human Rights Committee has emphasized its monitoring functions.

In recent years, all human rights treaty bodies, and particularly CERD, have encountered the problem that States parties do not meet their reporting requirements[70]. This endangers the monitoring functions of the human rights treaty bodies.

These problems were identified by the General Assembly and the Commission on Human Rights as well as by the treaty bodies. Several suggestions have been made and implemented to remedy the situation, so far however with little success.

The General Assembly decided to include on its agenda an item on the reporting obligations of States Parties under United Nations human rights instruments in its resolution 37/44 of 3 December 1982. At the General Assembly's request[71], the Secretary-General prepared an analysis of the reporting system based on observations made by States Parties. The report proposed an extension of the periodicity from two to four years, the convening of periodic meetings of the chairpersons of the major human rights supervisory bodies and the intensification of technical assistance provided for States Parties in the form of seminars, training programmes and expert advice[72]. In March 1984, CERD supported the latter suggestion but opposed the first. CERD noted that the extension of the required periodicity would only have a negative effect, since it would weaken the obligations assumed by States. It also noted that internal rules of procedure provided for a degree of flexibility which could readily be used to ease the burden on States experiencing temporary difficulties with their reporting[73]. The General Assembly has continued to consider and express its concern at problems relating to the reporting obligations under the various human rights instruments, as well as their effective monitoring by the bodies created under those instruments, at each of its sessions and has adopted relevant resolutions[74]. In making its procedural recommendations, the General Assembly has based itself upon the suggestions voiced in the meetings of the chairpersons of the treaty bodies[75]. Equally the Commission on Human Rights has adopted resolutions reflecting its concerns and recommendations[76].

The reasons for delaying reports are different in kind. They may result from a lack of personnel of States, a lack of political will or excessive international reporting obligations. The measures taken by CERD to improve reporting had to reflect the diversity of reasons which cause delay in submission of reports.

CERD has taken various steps in respect of States Parties whose reports are overdue. When reports are late, CERD sends reminders to governments through the Secretary-General and a list of these reminders appears in its annual report to the General Assembly. If such reminders are ignored, letters are written to heads of governments, direct contacts undertaken with the State delegations at UN Headquarters and Secretariat advice is offered to the State concerned[77].

CERD decided at its 39th session (March 1991) to review the implementation of the Convention in those States Parties whose periodic reports were excessively overdue. The annual report for that year states that, in the case of reports excessively overdue, CERD "... agreed that this review would be based upon the last reports submitted by the State Party concerned and their consideration by the Committee"[78]. In 1991, CERD wrote in these terms to thirteen States[79]. This action has been taken in respect of States whose periodic reports are six years overdue. Several of the States Parties addressed requests for postponements. CERD, however, agreed only to postpone until its following session the consideration of reports of those States which undertook to submit their overdue reports in the interim. Since then identical letters have been sent to States whose reports are overdue, inviting them to designate a representative to participate and to furnish relevant information.

CERD felt such practice to be in conformity with Article 9, para. 2, of the Convention which entrusts the Committee "... to make suggestions and general recommendations based on the examination of the reports and information received from States Parties ...". These words do not restrict CERD to only review the most up-to-date information. However, this practice will fail vis-à-vis States Parties which have not even submitted an initial report. The respective practice of the Committee on Economic, Social and Cultural Rights in this respect is somewhat more forthcoming.

So far, the practice of CERD has turned out to be quite successful. Several reviews have been undertaken on the basis of previous reports. In some cases the States Parties concerned have taken the opportunity to submit their report. Apart from that, an increasing number of States Parties have participated in the review and have thus resumed the dialogue with CERD.

At its 47th session, the General Assembly recommended that other treaty bodies adopt measures similar to the practice of CERD to proceed with the examination of the situation in States Parties whose reports were long overdue, on the basis of existing information[80]. It was further recommended that each treaty body follow, as a last resort and to the extent appropriate, the practice of scheduling for consideration the situation in States Parties which have consistently failed to report or whose reports are long overdue. This recommendation was based upon the consideration that a persistent and long-term failure to report should not result in the State Party concerned being immune from supervision, while others which have reported are subject to careful monitoring.

Taking into account that the delay in reporting may result from the States Parties being overburdened by increasing reporting obligations, CERD has attempted to facilitate this procedure. In 1988 it agreed that after submission of an initial comprehensive report, States Parties might on the next occasion submit a brief updated report[81]. Comprehensive reports shall be submitted every four years with updated reports on the intervening occasion. Further, it has agreed to permit States Parties to submit several overdue reports in one comprehensive document and, where a government has explained the reason for the delay in its report, it will abstain from sending reminders. Finally, the

chairpersons recommended that the States Parties elaborate a "core document" containing background information on the political, factual and legal situation relevant for the consideration of reports of States Parties in the human rights treaty bodies. It was suggested that particular attention be paid in such a document to information concerning the political system, the main features of the legal order, the legal status of international instruments within the national legal system, the recourse procedures for the protection of human rights, demographic data and other relevant economic, social and cultural data. This procedure has been increasingly accepted in practice. Apart from facilitating the task of the States Parties, such a procedure helps to ensure that all treaty bodies receive the same information. This may harmonize the assessment of the human rights situation prevailing in the States Parties through the treaty bodies.

Finally, CERD has suggested that advisory services be provided to States Parties whose reports are overdue[82]. It suggested organizing a series of workshops and seminars at the national level for the purpose of training those involved in the preparation of State reports[83].

When assessing the reporting system, it has to be stated that it has undergone significant changes. In introducing such changes, CERD has altered the objective of the reporting system. At the beginning when representatives of States Parties were not allowed to present orally the reports, CERD was not in a position to engage in a dialogue with the respective State Party. It could only collect information and, on this basis, make general recommendations to the General Assembly concerning the elimination of racial discrimination. Hence, in this early period, the reporting system only provided rudimentary means to monitor the implementation of the Convention, greater emphasis being placed upon CERD as an expert body which provided the General Assembly with information which would enable the latter to discuss the elimination of racial discrimination. This element of the reporting system has receded into the background, as reflected by the fact that the topic "elimination of racial discrimination" no longer plays a prominent role in the deliberations of the General Assembly. Instead, by involving representatives of the reporting States, by allowing CERD to use information other than that provided by the reporting State Party and by formulating "concluding observations", CERD focuses more heavily upon the monitoring of the situation in the States Parties. Nevertheless, it does not work and is not intended to work as a court. Quite frequently experts point out that they are primarily interested in establishing and upholding a dialogue with the States Parties. This is why there is considerable effort to convince States Parties whose reports are overdue to resume co-operation with CERD.

There exists one further facet to the reporting system, which was emphasized by the General Assembly in its resolution 43/115: "The effective implementation of instruments of human rights, involving periodic reporting by States Parties to the relevant treaty bodies [...] not only enhances international accountability in relation to the protection and promotion of human rights but also provides States Parties with a valuable opportunity to review policies

and programmes affecting the protection and promotion of human rights and to make any appropriate adjustments".

This point, namely that the reporting should be used to initiate an evolutionary process with a view to fostering the implementation of the Convention, is further emphasized by Alston[84]. He states: "It is all too often forgotten (or ignored) that the monitoring role played by the international treaty bodies is, for the most part, only a secondary or catalytic one. The primary role in the procedure should, and indeed must, if the process is to be truly effective, be that played by all of the relevant actors at the national level".

However, in reality, the States Parties have almost complete control over the preparation of their reports. There exists no obligation to involve non-governmental organizations in their preparation. Equally, States Parties are not bound to publish their reports nationally. Nevertheless, by making their reports as well as the human rights instruments widely public, the States Parties could make a contribution to a more effective implementation system.

Equally, CERD could work in that direction. In spite of the fact that the International Convention on the Elimination of All Forms of Racial Discrimination is silent as to the publicity of the work of the Committee, improvements have been suggested by the chairpersons of treaty bodies: "Particular importance should be attached to the dissemination at the national level of the report of the relevant State Party and details of its examination by the Committee, especially to those sectors which have direct responsibility for the implementation of human rights, such as the judiciary, the legal profession, appropriate ministries and national human rights bodies. For that reason, each United Nations information office should, on a routine basis, make available all reports submitted to the treaty bodies by the State in whose territory it is located, along with the summary records relating to the examination of the reports. The Secretary-General should be requested to report on the implementation of this recommendation in due course".

In reality it proves to be quite difficult to increase the coverage of mass media on human rights issues. The mass media are interested in grave violations of human rights and the exchange of political statements and not in the unspectacular assessment of State reports.

Inter-State complaints

Articles 11-13 of the Convention authorize CERD to deal with complaints submitted by States alleging discriminatory practices on the part of other States Parties. Article 11, para. 1 provides: "If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or

statements clarifying the matter and the remedy, if any, that may have been taken by that State".

Although the International Covenant on Civil and Political Rights also provides for inter-State complaints, these procedures apply only between States which have specifically recognized the relevant competence of the Human Rights Committee[85]. In contrast, the procedure of the International Convention on the Elimination of All Forms of Racial Discrimination applies automatically to all States Parties.

As it reads now, Article 11 permits informal procedures: it does not even require, as does Article 41, para. 1(a), of the International Covenant on Civil and Political Rights, that inter-State communications be written[86]. Some CERD members have argued that such informality leads to the conclusion that, when States include inter-State information in their Article 9 reports, they automatically initiate Article 11 proceedings. In such a case, CERD is required to transmit the communication to the State Party concerned.

Past reports on Article 9 have contained various forms of disguised inter-State disputes[87]. Several States have reported that part of their territory has been occupied by another State Party and that the latter is not giving effect to the provisions of the Convention. A series of reports by the Syrian Arab Republic have made such claims with respect to Israel's occupation of the Golan Heights. When Israel became a Party to the Convention, some members of CERD refused to accept Syria's claim under Article 9[88]. However, Syria clearly was unwilling to initiate an Article 11 proceeding[89]. Though several members of the Convention considered the serious information regarding Israeli racial discrimination acceptable under Article 9, on the basis of political, moral or ethical concerns, CERD in this case did not table a draft decision to condemn Israel for its practices in the occupied territory. Recently, it has slightly altered its policy as far as the occupied territories are concerned. In dealing with the report of Iraq, CERD expressed its grave concern on the situation of citizens in the occupied territory of Kuwait. It was stated that Iraq was under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in the Convention[90]. The same approach was then taken in respect of the territories occupied by Israel[91].

The practice of States Parties concerning inter-State complaints is unsatisfactory. When dealing with the reports of some States Parties bordering former Yugoslavia, the respective representatives have been asked by members of CERD why no attempt has been made to initiate an appropriate procedure. The answer was evasive. Obviously there is a reluctance to resort to such a procedure, although it has been used under the European Convention for the Protection of Human Rights and Fundamental Freedoms. Since States did not hesitate recently, in cases of grave and persistent violations of human rights, to involve the Security Council, the reluctance to use the inter-State complaint procedure cannot result from an excessive respect for the sovereignty of the States concerned.

Individual complaints

Within the United Nations human rights system three treaty-based procedures exist providing for the possibility for individuals to submit petitions directly to the respective supervisory committees. These are the optional Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the International Covenant on Civil and Political Rights and optional Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The two former procedures require the specific acceptance of ten States and the latter of five States to become effective. Receiving these acceptances took much longer for Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination than for the Protocol[92]. Although the three procedures are similar, they are not fully identical.

Article 14 differs from the Protocol and the Convention against Torture in that it provides that groups of individuals as well as individuals may present communications to CERD. All the three procedures require the alleged victim to present *prima facie* evidence of personal involvement, which excludes the procedure being used as *actio popularis*. However, the Human Rights Committee did agree to consider communications submitted "on behalf" of alleged victims by others, even without formal mandate or power of attorney, when it appeared that the victim was "unable to submit the communication himself"[93]. In practice, the Human Rights Committee has accepted communications only from persons showing a close family connection with the alleged victim. According to Rule 91 of the Rules of Procedure, CERD is satisfied with communications submitted by the individual himself or by his relatives or designated representatives and, in exceptional cases, submitted by others when it appears that the victim is unable to submit the communication himself. The procedures under the Protocol and under the International Convention on the Elimination of All Forms of Racial Discrimination require as a condition of admissibility that all available domestic remedies be exhausted. Some case law exists in this respect from the Human Rights Committee indicating that extraordinary and ineffective remedies need not be employed[94]. According to Article 14, para. 7(a), of that Convention, the principle does not apply where the application of remedies is unreasonably prolonged. Article 22, para. 5(b), of the Convention against Torture is even more liberal. All instruments contain clauses empowering the respective treaty bodies to reject complaints which are an abuse of the right to submit communications. In the case law of the Human Rights Committee, this verdict applies, for example, to repetitive complaints[95]. Furthermore, a communication may be declared inadmissible when it is not compatible with the provisions of the Convention[96]. This clause is meant to exclude petitions invoking rights not granted by the relevant human rights instrument. However, this clause has been used in the Human Rights Committee to blur the distinction between the consideration of communications concerning

their admissibility and their merits, thus introducing the concept of inadmissibility of a communication for being manifestly ill-founded[97].

The limited practice of CERD, however, has upheld this two-stage procedure and has objected to declaring a communication to be manifestly ill-founded and therefore inadmissible. After having found a communication admissible, the Human Rights Committee may consider the matter in the light of written information made available to it by the individual and by the State Party concerned, which excludes oral examination and cross-examination on written evidence. Under the International Convention on the Elimination of All Forms of Racial Discrimination and under the Convention against Torture the respective Committees may request oral statements. Furthermore, these two Committees may request, through the Secretary-General, further information from United Nations bodies or the specialized agencies which may assist in the case[98]. The application of this rule may lead to a considerable enlargement of the evidence. The procedures in all the three cases conclude with a non-binding decision. Nevertheless, the respective decisions have so far been very specific, leaving no doubt about the reasoning of the treaty body and how, in its view, the violation of the individual rights was most appropriately remedied.

Up to date CERD has received only few individual communications. A decision on the merits of the first was taken in 1988; additional ones followed in 1991, 1994 and in 1999[99].

CERD decided that, in appropriate cases and with the consent of the parties concerned, it could decide to deal jointly with the question of admissibility and the merits of a communication. This would apply when the State Party does not raise objections as to admissibility and has already provided the necessary information and observations on the merits and it is satisfied that the conditions for admissibility are met and that it already has before it all the necessary information to permit it to formulate its opinion on the merits of the communication.

As a consequence of the above modifications in its methods, CERD adopted at its 977th meeting, on 16 March 1993, several changes in its Rules of Procedure[100]. The role of the Special Rapporteur is to review new communications, with a view to giving the necessary instructions to the Secretariat as to whether such communications should be forwarded to States Parties under Rule 92. Until a Special Rapporteur is appointed, the Chairman of CERD will exercise this function.

CERD's Opinion, together with any suggestions and recommendations it may wish to make, is communicated to the State Party and the complainant. Further, the State Party is invited to inform CERD in due course of the action it takes in conformity with its Opinion.

Preventive action, including early warning and urgent procedure

CERD at its 43rd Session adopted a paper on preventive action, including early warning and urgent procedures as a guide for its future work, concerning possible measures to prevent and more effectively respond to violations of the Convention[101]. Under the same title a permanent item was included in the agenda of its future sessions and its successive annual reports to the Secretary-General of the United Nations summarize the working paper[102].

Similar steps have been taken and implemented by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. However, as far as conceptuality and the implementation of such procedure are concerned, the International Convention on the Elimination of All Forms of Racial Discrimination has developed the most systematic and far-reaching practice[103].

Like the other human rights treaty bodies, CERD was particularly induced to establish such a procedure by the events in former Yugoslavia and in the Great Lakes region of Central Africa. Its members felt that the regular monitoring of the human rights situation in States Parties through the reporting system[104] had proven to be inadequate to prevent the occurrence or recurrence of such man-made disasters[105].

Preventive actions of CERD shall include early warning measures to address existing structural problems which might escalate into conflicts. Such a situation calling for early warning exists, in the view of CERD, *inter alia*, when the national implementation procedures are inadequate or there exists the pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials. To formulate such early warning, CERD will have to make full use of its sources of information and of its expert capacity to assess them.

The criterion for initiating an urgent procedure, according to the decisions of CERD, is the presence of a pattern of massive or persistent racial discrimination. In nearly all cases dealt with by CERD, so far, one expert took the initiative and made a reasoned suggestion to have a particular situation dealt with under this procedure. In all cases such a suggestion was accepted after a brief discussion.

The reactions in its preventive function and in response to problems requiring immediate attention are similar, although under the early warning procedure CERD will first exhaust its advisory functions vis-à-vis the respective State Party. CERD may address its concern, along with recommendations for actions, to all or any of the following: the State Party concerned, the Special-Rapporteur established under a Commission on Human Rights resolution, the Secretary-General; and all other human rights bodies. The information addressed to the Secretary-General may, in the case of urgent procedure, include a recom-

mendation to bring the matter to the attention of the Security Council. In the case of urgent procedures CERD may designate a Special-Rapporteur.

As already indicated the attempt to improve CERD's functions, as far as its response to serious, massive or persistent patterns of racial discrimination is concerned, or the upcoming threat thereof, was very much influenced by the situation in the former Yugoslavia. In consequence Bosnia Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) belonged to the States Parties that were placed under the early-warning procedure. Others were or still are Rwanda and Burundi, Papua New Guinea, with regard to the serious violations of human rights in Bougainville, Mexico with regard to the ethnic conflict involving the indigenous population of the Chiapas, the Russian Federation concerning the massive loss of life in Chechnya and Liberia, Afghanistan as well as the Democratic Republic of Congo (former Zaïre) concerning the situation brought about by civil war. Other cases dealt with under this procedure were States Parties where serious incidents caused concern in CERD as to the implementation of the Convention and where it feared the aggravation of the situation. These incidents included amongst others the massacre committed by an Israeli settler against Palestinian worshippers, the racist terrorist acts against Jews in Buenos Aires and in London in 1994, the clashes that took place in Cyprus in 1996, and the terrorist attacks in Algeria in 1994 and 1995. The last situation taken up under this agenda item (1998/99) was in Australia, for the deterioration of the legal situation for aborigines [106].

The action taken by CERD differed widely depending on the extent to which the respective State Party was willing to co-operate. In the case of the Federal Republic of Yugoslavia (Serbia and Montenegro) an intensive dialogue commenced at an early stage which resulted in sending a good offices mission of three experts (H. Ahmadu, I. Reshetov and. R. Wolfrum) to Belgrade and Kosovo to promote a dialogue between the Albanians in Kosovo and the Government of the State Party. The dialogue broke off due to the ill-advised decision of the meeting of States Parties to exclude the Federal Republic of Yugoslavia (Serbia and Montenegro) from its deliberations[107]. In spite of that, unofficial contacts were maintained between CERD members and the representative of the Federal Republic of Yugoslavia with a view to resuming the dialogue. Croatia invited one CERD member (Mr. M. Yutzis) to give technical advice as to the drafting of the report.

The response of Israel was less co-operative. The Permanent Representative of Israel informed the United Nations of the establishment by the government of a Commission of Inquiry and agreed, while questioning CERD's competence, to transmit a copy of the findings to the Committee. However, it refused to submit a special report that CERD had asked for. It finally submitted the reports (7th, 8th and 9th in one) at the 52nd Session (in March 1998). In the introduction of the report the delegation of Israel questioned whether Israel was receiving fair and equal treatment.

Representatives of Algeria, Burundi and Rwanda took the opportunity to address CERD, whereas no reaction was received from Afghanistan, the Democratic Republic of Congo, Liberia and Papua New Guinea, when they were informed that CERD intended to deal with the situation under its early warning and urgent procedure and were asked to provide for information. The Russian Federation provided the required information in its periodic report and, in particular, in the dialogue following the submission of such report.

Australia provided the information requested while challenging CERD's competence. However, CERD upheld its view that the legal status of aborigines was weakened by the Australian Federal Government and that the change of policy in respect of them constituted a violation of the Convention.

Considering CERD's experience with this new procedure, so far, the overall assessment is positive[108]. The focus of this procedure should be less on such States in the situation of a civil war[109], but rather on States Parties where tension is building up or might build up or where civil war has ended and the State Party concerned needs all assistance for restructuring its legal, judicial and administrative system.

Conclusions

In spite of all efforts undertaken on the international and national level, racism, racial discrimination and xenophobia continue to be an important element in the policy of some States and in contemporary human interaction. The main mechanism to combat racism, racial discrimination and related forms of intolerance is the International Convention on the Elimination of All Forms of Racial Discrimination. Its definition of "racial discrimination" is quite comprehensive and CERD has used it effectively to face new developments. It is necessary, though, for CERD to focus more strongly on discriminatory practices in private interactions than the Convention provides for.

The main lacuna in combating racial discrimination more effectively lies in the present implementation system, although it has been considerably improved by the human rights treaty bodies over the years. However, it is doubtful whether further improvements are possible without completely altering the existing approach. This is especially true for the reporting system, the progressive development of which may have reached its inherent limits. Under this system, as it stands at present, the human rights treaty bodies have some possibility for fact-finding; however, they have no means of effectively reacting to established violations of international standards to match their fact-finding functions. It is even doubtful whether the establishment of such functions, *de lege ferenda* transforming the human rights treaty bodies more into court-like institutions, would enhance the implementation of international standards on prevention and elimination of racial discrimination. Such a transformation might curtail the willingness of States Parties to enter into a constructive dialogue with the human rights treaty bodies which are at the moment regarded as the

prime means of the implementation system. The only option still open for consideration is the further development of the fact-finding capabilities of the human rights treaty bodies. This could be achieved by further pooling their information basis. The ultimate solution might be to merge the human rights treaty bodies into one or two institutions while at the same time transforming them into bodies which meet more often and for expanded periods.[110] This would, as a side effect, reduce the multiple and overlapping reporting obligations[111] of States Parties which are one of the reasons why the obligation to report is not met. Apart from this, the fact-finding capabilities of human rights treaty bodies could be enhanced if they had the right to send experts or a working group to a country. Such fact-finding could be co-ordinated with similar measures such as the "advisory services"[112].

Whereas the reporting system does not leave much room for innovative improvement, the significance of the individual complaint procedure for the implementation of the international standards on prevention and elimination of racial discrimination could be enhanced. Examining such individual complaints constitutes an important part of the work of the Human Rights Committee but not, however, of the other human rights treaty bodies. The situation will only improve if more States Parties accept the relevant procedure and the information on the availability of this procedure is disseminated more widely in the States Parties. For example, Ecuador, Peru and Uruguay have made a declaration recognizing CERD's competence under Article 14. However, no communication has yet been transmitted from these States Parties. This does not reflect the human rights situation prevailing in these States. Any enhancement concerning the individual complaint procedure is dependent upon the States Parties concerned; the treaty bodies can do little more than voice respective appeals.

It is doubtful whether the inter-State communication will ever play a significant role in implementing international human rights standards. There seems to exist a deep-rooted reluctance on the side of the States Parties to make use of that instrument. Hence it does not seem very productive to discuss possible improvements of this procedure[113].

All the three procedures mentioned so far suffer from one decisive shortcoming. They open the possibility for action of the respective treaty body only after human rights violations have occurred. However, and this is especially true for racial discrimination, violation of the international standards is often preceded by a build-up of tensions or prejudices. Although this is reflected in Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, it is possible to enhance the effectiveness of the human rights treaty bodies by providing them with or strengthening their existing preventive functions[114]. That is where the major challenges lie for the future work of the human rights treaty bodies.

However, it is necessary to distinguish more clearly between preventive measures and urgent ones. It is doubtful whether CERD could play a meaningful role in Rwanda after the massacres had started. This situation is to be

dealt with by the Security Council, although the latter will only become effective if it intervenes in cases other than those where the interests of one of its permanent members are at stake and none of the others objects.

There is a further area, though, where CERD could and should play a major role, namely in the post conflict period. Respective procedures still have to be established which make effective use of the expertise assembled in CERD.

Notes

1. Article 1, para. 3 of the Charter, the International Court of Justice has stated that "... to establish [...] and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, decent 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" (Opinion on the presence of South Africa in Namibia, *ICJ Reports* 1971, para. 131).
2. In Article 1, para. 3, Article 13, para. 2(b), Article 55, sub-para. c and Article 76, sub-para. c.
3. A/Res./1510(XV).
4. A/Res./1904(XVIII), 20 November 1963.
5. Reports for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance are contained in Conference Papers A/CONF. 189/PC. 1/3.
6. The proclamation of the First Decade on Action to Combat Racism and Racial Discrimination coincided with the 25th anniversary of the Universal Declaration of Human Rights (A/Res./2919 (XVII) of 15 November 1972). In launching the First Decade, the General Assembly defined the goals to be the promotion of human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially by eradication of racial prejudice, racism and racial discrimination. In A/Res./38/14 of 22 November 1983 the General Assembly approved the Programme of Action for the Second Decade. On the Decades see Theodor van Boven, "United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives", UN Doc. E/CN. 4/1999/WG. 1/BP. 7, 26 February 1999.
7. A/Conf. 157/24 (Part I), Chapter III.
8. A/Res./48/91 of 20 December 1993; by its Resolution 49/146 of 23 December 1994, the General Assembly revised the Programme of Action for the Third Decade; see further Report of the Third Committee of the UN on Elimination of Racism and Racial Discrimination, UN Doc. A/54/603.
9. See A/Res./54/154 of 17 December 1999 on the implementation of the Programme of Action.
10. A/Res./53/132, sect. III.
11. CHR Resolution 1993/20 of 2 March 1993.
12. CHR Resolution 1994/64 of 9 March 1994; see also report of the Special Rapporteur, Doc. E/CN. 4/1995/78, para. 3. In his report A/49/677 to the General Assembly, the Special Rapporteur defined the terms of his mandate as follows: "Racism is a product of human history, a persistent phenomenon that recurs in different forms as societies develop, economically and socially and even scientifically and technologically and in international relations. In its specific sense, racism denotes a theory, which purports to be scientific, but is in reality pseudo-scientific, of the immutable natural (or biological) inequality of human races, which leads to contempt, hatred, exclusion

and persecution or even extermination". (6/7). Defining "racial discrimination" the Special Rapporteur refers to Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (8). "Xenophobia is defined as a rejection of outsiders... Xenophobia is fed by such theories and movements as 'national preference', 'ethnic cleansing', by exclusions and by a desire on the part of communities to turn inward and reserve society's benefits in order to share them with people of the same culture or the same level of development". (9). "Negrophobia is the fear and rejection of Blacks... The African slave trade and colonization have helped to forge racial stereotypes..." (9). "anti-Semitism ... can be considered to be one of the root causes of racial and religious hatred..." (10); see also his reports E/CN. 4/2000/15 and 16, each with Add. 1 and 2; on the Special Rapporteur see Note of the Secretary-General of the United Nations of 8 September 1998, UN Doc. A/54/347.

13. Recommendation 1994/2.
14. A/Res. 52/111 of 12 December 1997; for its provisional agenda see A/Conf. 189/PC. 1/1 of 23 February 2000 with Add. 1 and 2; see also the report of the open-ended working group of the Commission of Human Rights E/CN. 4/1999/16.
15. See report of CERD to the General Assembly Doc. A/48/14, 126-127; Report of the Secretary-General, Efforts made by the United Nations Bodies to prevent and combat racism, racial discrimination, xenophobia and related intolerance, Doc. E/CN. 4/Sub. 2/1994/12 of 25 July 1994.
16. See Article 4, para. (a), of the International Convention on the Elimination of All Forms of Racial Discrimination.
17. Banton, *International Action Against Racial Discrimination*, 1996, pp. 76 *et seq.* makes an attempt to give some sociological clarification to the notion of race.
18. See Banton, (Note 17), p. 251.
19. CERD/C/299/Add. 3
20. HRI/Gen./1/Rev. 2, 1996, 92.
21. General Recommendation XIV (1993), HRI/GEN/1/Rev. 2, 1996, 95.
22. R. Wolfrum, "International law on migration reconsidered under the challenge of new population movements", *German Yearbook of International Law*, 38; 1995, pp. 191 *et seq.*
23. HRI/GEN/1/Rev. 2, 1996, 94.
24. For a description of the earlier system, see: *Proceedings of the Nobel Symposium on International Protection of Human Rights*, 1967; K.J. Partsch, *Racial Discrimination: The United Nations Convention and its Functioning*, United Nations, 1971, pp. 1-8 and 46-53; Schwelb, "Civil and political rights: the international measures of implementation", *American Journal of International Law*, 62, 1968, pp. 827 et *seq.*; E. Schwelb, "Some aspects of the measures of implementation of the International Covenant on Economic, Social and Cultural Rights, *Human Rights*, 1-3, 1968, pp. 377 *et seq.*; the most recent detailed analysis is to be found in K.J. Partsch, "The Committee on the Elimination of Racial Discrimination" in P. Alston (ed.) *The United Nations and Human Rights*, 1992, pp. 339-368; a detailed analysis of the implementation system of all human rights treaties is contained in the report of P. Alston, "Effective implementation of international instruments on human rights, including reporting obligations under international instruments of human rights: interim report on updated study". A/Conf.157/PC/62 Add.11/Rev.1.
25. N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Alphen aan den Rijn, Sijthoff and Noordhoff, 1980, p. 74.
26. CERD/C/35/Rev.3; between 1970 and 1984 the Committee worked on the basis of "Provisional Rules of Procedure".
27. Pursuant to General Assembly Resolution 38/117 of 16 December 1983, the Secretary-General convened a first meeting of the persons chairing the bodies entrusted with the consideration of State Party reports in August 1984. The report of the meeting was presented to the General Assembly at its thirty-ninth session

(A/39/484, Annex). A second meeting was convened by the Secretary-General in October 1988, pursuant to General Assembly resolution 42/105 of 7 December 1987 and the report of that meeting was presented to the General Assembly (A/44/98, Annex). In its resolution 44/135 of 15 December 1989, the General Assembly invited the chairpersons to maintain communication and dialogue with each other on common issues and problems; a third and a fourth meeting were convened, pursuant to resolution 44/135 of 15 December 1989 (report A/45/636); resolution 45/85 of 14 December 1990 (report A/47/628, Annex, respectively).

28. On the reporting procedure in general, see C. Tomuschat, "Human Rights, Reports of States", R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 559-566; L. Sohn, "Human rights: their implementation and supervision", Th. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, Vol. II, Oxford, Oxford University Press, 1984, pp. 369-401; J. Gomez del Prado, "United Nations conventions on human rights: the practice of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in dealing with reporting obligations of States Parties", *Human Rights Quarterly*, 7, 1985, pp. 492-513; in particular on ICERD M.R. Burrows, "Implementing the UN Racial Convention: Some Procedural Aspects"; *Australian Yearbook of International Law*, 7, 1981, pp. 236-278; Michael O'Flaherty, *Human Rights and the UN: Practice before the Treaty Bodies*, 1996, pp. 89 *et seq.*
29. On this procedure in general, see K.J. Partsch, "Human Rights, Complaints of States", R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 567-572; S. Leckie, "The inter-State complaint procedure in international human rights law: hopeful prospects or wishful thinking?" *Human Rights Quarterly*, 10, 1988, pp. 249-303.
30. Lerner, (Note 25) p. 75 speaks of an implementation machinery in the form of a Good Offices and Conciliation Committee. Although Article 12 of the Convention uses the word "*Ad Hoc* Conciliation Commission", its functions as well as those of the Committee surpass the functions traditionally entrusted to bodies on conciliation. On this procedure in general see C. Tomuschat, "Human rights, individual complaints", R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 551-558; M. Tardu, "Human rights complaint procedures of the United Nations: assessment and prospects", J. Jejewitz, H. Klein, J. Kühne, H. Petersmann and R. Wolfrum (eds.), *Des Menschen Recht zwischen Freiheit und Verantwortung, Festschrift für K.J. Partsch* (The right of man between freedom and responsibility. For K.J. Partsch), 1989, pp. 287-314.
31. Concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples.
32. For details, see especially Tomuschat (Note 30) at pp. 555 et seq.; on the Human Rights Committee; see especially T. Opsahl, "The Human Rights Committee" in P. Alston (ed.), *The United Nations and Human Rights*, 1992, pp. 369-443.
33. No specific professional qualifications are required; in this respect the composition of the Committee differs from that of the Human Rights Committee. For a more recent assessment of the work of the Committee see R. Wolfrum, "The Committee on the Elimination of Racial Discrimination", in J.A. Frowein/R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, vol. 3, 1999, pp. 489 *et seq.*
34. The impartiality of the experts may not only be endangered by the States Parties having nominated a given expert (for details in this respect, see Partsch (Note 24) at pp. 340 *et seq.*) but by other States Parties, too. The Committee at one point felt it mandatory to strongly object to the tendency "... to put pressure upon experts, especially those serving as Country-Rapporteurs" and to remind States Parties "... to respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity." (Recommendation IX, 38th Session, 1990).

35. According to Rule 14, each expert, in assuming his or her duties, makes a solemn declaration similar to the one of the judges to the International Court of Justice: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously".
36. As to the Human Rights Committee and the Committee for Economic, Social and Cultural Rights see C. Tomuschat, "Human rights covenants and their executive organs" in R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 583-591 (pp. 589 et seq.); Opsahl (Note 32) at pp. 372 et seq.
37. Partsch (Note 24) p. 340 emphasizes the specific reference to the "principal legal systems", in contrast to Lerner (Note 25) p. 76 who concludes that the experts should represent "as many political systems and cultures as possible".
38. The chairperson is elected in accordance with the following regional sequence which was established at an early stage to reflect the number of ratifications from each region: Asia, Latin America, Africa, Western Europe, and Eastern Europe. However, this rotation scheme has been set aside several times for different reasons; for details, see Partsch (Note 24), pp. 340 *et seq.* In general, the chairperson is first agreed upon in the regional group and elected by consensus.
39. Article 88 of the UN Charter authorizes the Trusteeship Council to use such an approach.
40. CERD/C/R/12 and A/8027(1970), Annex IIIA. These guidelines were issued as a 'Communication to States Parties' on the basis of the Committee's authority to request further information; for details, see Partsch (Note 24), p. 350.
41. For the revised guidelines adopted on 9 April 1980, see A/35/18(1980), Annex IV.
42. See the consolidated guidelines for the initial part of the reports of States Parties, as suggested by the chairpersons of the treaty bodies (A/45/636, at p. 18):

"Land and people"

1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65 years of age, percentage of population in rural areas and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex.
2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

General legal framework within which human rights are protected

3. This section should contain information on:
   (a) Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;
   (b) What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation and rehabilitation exist for victims;
   (c) Whether any of the rights referred to in the various human rights instruments are protected either in the constitution or by a separate bill of rights and, if so, what provisions are made in the constitution or bill of rights for derogations and in what circumstances;
   (d) How human rights instruments are made part of the national legal system;
   (e) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative

authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned;

(f) Whether there exist any institutions or national machinery with responsibility for overseeing the implementation of human rights".

43. A/9018(1973).
44. As to the earlier discussion in the Committee, see Partsch (Note 24), p. 351.
45. General Recommendation VII (1985).
46. A/32/18(1977), Annex; General Recommendation V (1977).
47. For details, see Partsch (Note 24), 350 *et seq.*
48. A/37/18(1982), Chapter 9; Decision 2(XXV) (1982); incorporated into the Revised General Guidelines (CERD/C/70/Ref.1(1983/2)); on Article 7 of ICERD see in particular José Bengoa, Ivan Garvalov, Mustafa Mehedi, Shanti Sadiq Ali, Joint Working Paper, UN Doc. E/CN. 4/Sub. 2/1998/4. Efforts are undertaken by UNESCO on the improvement of the education of children belonging to minorities (UNESCO, Executive Board, 156 EX/21, 17 March 1999, p. 9).
49. A/Res.2783(XXVI) of 6 December 1971; Rule 64; for details, see Partsch (Note 24), pp. 354 *et seq.*
50. Tomuschat (Note 36), p. 562; Opsahl (Note 32) p. 403.
51. CERD/SR771.
52. CERD/SR823, para. 29; this idea was rejected.
53. CERD/SR827, para. 40.
54. CERD/SR para. 74.
55. CERD/SR829, para. 1-7.
56. A/44/98, 17 para. 57 and 24 para. 91.
57. Since 1988, Country-Rapporteurs have not had reports allocated to them by the Bureau. A list of reports has been circulated and members volunteering to serve have so indicated to the Committee's Rapporteur. The members volunteering increased such that, by 1992, 16 out of 18 members had volunteered. In that year, the Committee briefly considered its method of allocation; it was agreed that no member should be responsible for serving as Country-Rapporteur for two successive reports from the same State, or be called upon to evaluate the report of his or her own country. It was also thought inappropriate for someone to volunteer if there was tension between the State of which the member was a national and the reporting State. Annexes have been included in the annual report indicating which members served as Country-Rapporteurs for which reports, and which Country-Rapporteurs have been appointed for the next session.
58. For the early practice of the Committee, see Partsch (Note 24), pp. 351 *et seq.* The limitations of this interpretation, however, led to its early rejection. During a discussion on co-operation with the ILO and UNESCO, differing views were expressed on the use of information provided by these organizations. The UN Office of Legal Affairs issued an opinion on the use of information in which it was stated that nothing in CERD indicated that the Committee was limited to the data received by States Parties in its primary consideration of reports and in particular in formulating requests for further information (*United Nations Juridical Yearbook* 1972, p. 164, para. 4(a)).
59. Confirmed by the chairman, CERD C/SR.296 (1976), para. 57.
60. In 1977, the Committee discussed and rejected a suggestion made in the Third Committee that CERD might benefit from the knowledge and experience of non-governmental organizations (Report, para. 29).
61. See *Manual on Human Rights Reporting*, 1991, p. 121 regarding the Human Rights Committee; p. 174, the Committee on the Elimination of Discrimination of Women; p. 188 the Committee against Torture.
62. A/45/636, p. 16, para. 68.

63. See Decision 1 (XL), A/46/18, p. 104; it states that "members of the Committee must have access as independent experts, to all available sources of information, governmental and non-governmental."
64. See, for example, the report of 1971 (A/8418), para. 30; this practice was abandoned by the Committee in 1974, A/9618 (1974), para. 23.
65. A/44/668, paras. 134 and 124.
66. CERD/SR.805, para. 65.
67. A/46/18.
68. See, for example, the report of the Human Rights Committee to the General Assembly at its 43rd, 44th and 45th session 1992 (A/47/40), p. 18 *et seq.*
69. Report (Note 68) p. 18, para. 45.
70. For further details, see the report of the fourth meeting of chairpersons (A/47/628) and Alston's study (Note 24) at pp. 44 *et seq.*; O'Flaherty (Note 28) at pp. 93 *et seq.*
71. A/Res.37/44 of 3 December 1982.
72. A/38/393(1983); see also A/37/18(1982), Annex IV and A/38/18(1983), Annex VI.
73. A/39/18(1984), pp. 127-128, Decision 1 (XXIX) 1984.
74. A/Res.38/117 of 18 December 1983; A/Res.39/138 of 14 December 1984; A/Res.40/116 of 13 December 1985; A./Res.41/121 of 4 December 1986; A/Res.42/105 of 7 December 1987; A/Res.43/115 of 8 December 1988; A/Res.44/135 of 15 December 1989; A/Res.45/85 of 14 December 1990; A/Res.46/111 of 17 December 1991; A/Res.47/111 of 16 December 1992.
75. See the reports thereon: A/44/98; A/45/636; HRI/MC/1992/2.
76. See resolutions 1989/46, 1990/25, 1991/20, 1992/15.
77. See report of the Chairman of the Committee at the first meeting of chairpersons of human rights treaty bodies (A/44/98).
78. A/46/18, p. 17, para. 27.
79. The text of the letter is contained in the report of the Committee to the General Assembly (A/46/18), p. 123.
80. A/Res.47/111 which refers to the recommendation of the 4th meeting of chairpersons of the human rights treaty bodies. A/47/628 paras. 70 and 71; see also resolution 1993/14, para. 4 of the Commission on Human Rights.
81. See A/43/18, para. 24(c).
82. Recommendation X (1991) which is based upon the recommendation of the third meeting of chairpersons of treaty bodies (A/46/18).
83. Alston is in this respect (Note 24) on p. 48 and suggests to appoint one or more individuals whose sole responsibility would be to assist States Parties to fulfil their reporting obligations.
84. Note 24 at pp. 39 *et seq.*
85. See Article 41, para. 1 of the International Covenant on Civil and Political Rights.
86. See Partsch, (Note 24) at p. 362.
87. Buergenthal, *Implementing the UN-Racial Convention*, pp. 211-218; *Texas International Law Journal*, Band 12, (1977), p. 202.
88. See Syria's sixth periodic report (CERD/C/66, Add.22) and discussion in A/36/18 of 1981, paras. 169-173 and CERD C/SR/507 and C/SR/508 (1981). As regards the seventh periodic report (CERD/C/91, Add. 39, see CERD/C/SR/CERD/661 and CERD/C/SR/662 (1984).
89. CERD/C/SR/507 (1981), para. 37 and CERD/C/SR/661 (1984), para. 3.
90. Report of the Committee A/46/18, p. 65, para. 258 (concluding observations).
91. Ibid., p.90, para. 386.
92. Tardu (Note 30) at p. 291 distinguishes between "complaint-procedure" and "complaint-information"; among the former belong those which require the competent organ to take a decision on admissibility (Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee Against Torture); among the latter, all those procedures which regard the complaint as information to

identify human rights problems in general. UNESCO has created a complaint system of its own in 104 EX/Decision 3.3. of the Executive Board (1978).

93. A/42/44, paras. 64 to 67; Rule 90 para. 1(b) of the Rules of Procedure.
94. For details, see Tardu (Note 30) at p. 298.
95. See Tardu (Note 30), p. 301.
96. See Rule 91(c) of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination.
97. Critical in this respect, Tardu (Note 30), p.302; more positive Opsahl (Note 32), p. 425.
98. Rule 95 of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination.
99. The first opinion (1/1984) was on communication Yilmaz Dogan v. the Netherlands. As for the decision on communications 8/1996; 10/1997; and 6/1995 see Report of the Committee on the Elimination of Racial Discrimination, GAOR 54th session, Supplement No. 18 (A/54/18), 51 *et seq.*; 78 *et seq.*
100. A new para. 3 was added to Rule 87: "The Committee may designate a Special Rapporteur from among its members to assist it in the handling of new communications"; a new sentence was added to Rule 92, para. 1: "A request for information may also emanate from a Special Rapporteur designated under Rule 87, para. 3"; a new para. 7 was added to Rule 94: "The Committee may, in appropriate cases and with the consent of the parties concerned, decide to deal jointly with the question of admissibility and the merits of a communication".
101. This was encouraged by the General Assembly with the Agenda for Peace – A/Res./47/120 of 18 December 1992; as for the drafting history see Report of the Committee (Note 99), p. 4 *et seq.*
102. Doc. A/49/18, para. 19; Doc. A/50/18, para. 22; Doc. A/51/18, para. 26. For further details see Banton (Note 17), pp. 161 et seq.
103. See O'Flaherty (Note 28), pp. 103 *et seq.*; Banton (Note 17), pp. 161 *et seq.*
104. T. van Boven, "Prevention, Early-Warning and Urgent Procedures: A New Approach by the Committee on the Elimination of Racial Discrimination", in E. Denters, N. Schrijver (eds.), *Reflections on International Law from the Low Countries in Honour of Paul de Waart*, 1998, pp. 165 *et seq.*
105. When in 1993 the Committee adopted its prevention, early-warning and urgent procedure its Chairman justified such decision in its covering letter to the annual report to the Secretary-General of the United Nations in the following terms: "The forms of racial discrimination which in the 1960s were regarded as most abhorrent were those of discrimination by Whites against Blacks. Racial discrimination was frequently described as caused by the dissemination of doctrines of racial superiority by the institutions of colonial rule and by policies of racist regimes. The international community could counter these abuses by political means and in this way racial discrimination could be eliminated." The letter continued to say: "In 1993 we contemplate the success of policies initiated in the 1960s. The struggle against colonial rule and racist regimes has been successful even if the consequences of apartheid will continue to give trouble for a long time. New challenges started to emerge at the end of the 1980s with the disintegration of some of the larger political structures, particularly in eastern Europe, and the weakening of some structures in other regions ... racial or ethnic conflicts are appearing in areas previously characterized by tolerance..." (Report of the Committee on the Elimination of Racial Discrimination, 1993, Doc. A/48/18, 6).
106. See Report of the Committee (Note 99), at pp. 5 *et seq.*; in the respective Decision 2 (54) of 18 March 1999 the Government of Australia is called upon to "... suspend implementation of the 1998 amendments [to the Native Title Act] and reopen discussions with the representatives of the Aboriginal and Torres Strait Islander People with a view to finding solutions acceptable to the indigenous peoples and which would comply with Australia's obligations under the Convention."

107. See the letter of the Chargé d'affaires of the Permanent Mission of the Federal Republic of Yugoslavia in Geneva on 15 February 1995 as reproduced in the Report of the Committee on the Elimination of Racial Discrimination, 1995 (Doc. A/50/18, para. 227). See also the reply of the Chairman of 6 March 1995 (in the same report at para. 227).
108. See Alston (Note 25), para. 79.
109. Here, in fact, the principle of the division of labour should apply as suggested by Alston (Note 25), para. 79. This, however, requires that the Security Council or a regional organization has become active. This cannot be taken for granted.
In the cases of inactivity it is the function of the human rights treaty bodies engaged in such procedure to induce activities of international organizations engaged in the preservation of peace and security.
110. Alston is sceptical (Note 24) paras. 171 *et seq.*
111. The Commission of Human Rights is critical in this respect, see Resolution 1993/58; report of the Nordic Seminar on Human Rights, A/Conf. 157/Pc/7, para. 56.
112. See also Opsahl (Note 32), p. 440.
113. Opsahl is equally sceptical (Note 32), p. 420.
114. A/Res. 47/120 of 18 December 1992 emphasized the need for all organs and bodies of the United Nations to intensify their efforts to strengthen the Organization's role in preventive diplomacy. At their fourth meeting, the chairpersons considered a suggestion by a member of the Committee on the Elimination of Racial Discrimination and a member of the Committee against Torture that they examine the possibility of undertaking preventive action against human rights violations, within the scope of the activities of the human rights treaty bodies. As a result of their consideration of this issue, the chairpersons concluded that, "... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States Parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible." (A/47/628, para. 44).

Reinforcement of International and Regional Mechanism for Individual Complaints of Racial Discrimination*

Régis de Gouttes

At the international and regional levels, it is interesting to look at three major mechanisms for individual complaints open to victims of racial discrimination[1]:

- The mechanism provided under the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted on 21 December 1965 and entered into force on 4 January 1969: individual complaints or communications may be submitted to the Committee on the Elimination of Racial Discrimination (CERD), a procedure now recognized by 29 out of the 155 States Parties[2] to the Convention (Article 14 of the Convention);
- The mechanism provided under the first Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted on 16 December 1966 and entered into force on 23 March 1976: individual complaints or communications may be submitted to the Human Rights Committee, a procedure now recognized by 93 out of the 142 States Parties[3] to the Covenant[4];
- The mechanism provided under the Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed on 4 November 1950 and entered into force on 3 September 1953: individual complaints or petitions may be submitted to the European Court of Human Rights, a procedure applicable to the 41 Member States of the Council of Europe parties to the European Convention (Article 25 of the European Convention).

Of the three international instruments mentioned above, only one focuses solely on combating racial discrimination: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.

Moreover, only this Convention gives a broad, specific definition of the prohibited forms of racial discrimination. According to Article 1 (1), "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or

exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

The inspiration for the 1965 Convention is reflected in the Preamble, which, after recalling the principles of the dignity and equality inherent in all human beings, as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights, goes on to declare that States Parties are "Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous" and that racial discrimination "is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples".

The other two international instruments mentioned above contain certain provisions on racial discrimination: Articles 2, 4(1), 20 (2), 24 and 26 of the International Covenant on Civil and Political Rights; and Article 14 of the European Convention on Human Rights.

However, these two instruments merely subsume the prohibition of racial discrimination into a broader principle of non-discrimination or equal rights. According to Article 26 of the International Covenant on Civil and Political Rights, for example: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Similarly, according to Article 14 of the European Convention on Human Rights: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured 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, property, birth or other status".

As to CERD and the Human Rights Committee, a comparison of their procedures for individual complaints need not detain us very long. These are two United Nations global treaty-monitoring bodies, organized and operating in similar ways, but each within its own field:

- the Human Rights Committee in the general area of violations of civil and political rights;
- CERD in the specific field of discrimination on the basis of race, colour, descent, or national or ethnic origin.

There is naturally a certain amount of overlap between the instruments monitored by these two Committees:

- The International Covenant on Civil and Political Rights includes racial discrimination in its general prohibition of all forms of discrimination (Article 26). In addition, it specifically prohibits any advocacy of racial hatred (Article 20 (2)) and establishes the right of every child to such

measures of protection as are required by his status as a minor, without discrimination on grounds of race (Article 24 (1));

- The International Convention on the Elimination of All Forms of Racial Discrimination deals with forms of racial discrimination that impair the enjoyment, on an equal footing, of all human rights, including those protected by the International Covenant on Civil and Political Rights (Article 1).

However, in the area of racial discrimination, the 1965 Convention goes further: it guarantees the enjoyment of all rights, not only civil and political but also economic, social and cultural rights, on a non-restrictive basis, since the list of rights protected in Article 5 of the Convention is prefaced by the words "in particular".

The secretariats of the Office of the High Commissioner for Human Rights (OHCHR), CERD and the Human Rights Committee ensure that the individual complaints submitted to the United Nations are correctly channelled and directed to the Committee concerned.

As a result, although the Human Rights Committee has been required to rule on many individual complaints of human rights violations, only on rare and exceptional occasions have racial discrimination cases come before it (for example "Gueye *et al. v.* France", of 3 April 1989).

Complaints of incidents of racial discrimination are naturally addressed to CERD which to date has examined 17 such individual communications.

It should be noted, however, that there are a number of provisions specific to the International Covenant on Civil and Political Rights and the Human Rights Committee, which do not fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination and CERD:

- According to Article 4 (1) of the Covenant, for example, States Parties may take steps to derogate in times of crisis only to the extent that such measures "do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".
- Similarly, according to the Human Rights Committee's General Comment N° 24 (52) relating to reservations, dated 2 November 1994, "provisions of the Covenant that represent customary international law (and *a fortiori* when they have the character of peremptory norms) may not be the subject of reservations". Specifically, "a State may not reserve the right [...] to permit the advocacy of national, racial or religious hatred ..." (General Comment N° 24 (52), para. 8).
- Lastly, in order to avoid a proliferation of international procedures, some of the States that have ratified the first Optional Protocol to the Covenant – chiefly those States that are also parties to the European Convention on Human Rights – have entered a reservation to the effect that the Human Rights Committee should decline jurisdiction if a petition submitted to it and relating to the same right has already been

thoroughly considered on its merits in the European Court of Human Rights. That reservation has been declared by the Human Rights Committee to be consistent with the object and purpose of the first Optional Protocol (General Comment N° 24 (52), para. 14).

Turning now to a comparative analysis of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, which are universally applicable, and those of the European Convention on Human Rights, which apply to a region, it is useful, as regards racial discrimination, to assess the relative merits of the procedures for individual complaints to the monitoring bodies for the two instruments (CERD and the European Court of Human Rights), since a considerable number of States are parties to both Conventions.

Of the 155 States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, 34 are also Member States of the Council of Europe and parties to the European Convention on Human Rights[5].

The procedure for individual communications or complaints provided under Article 14 of the International Convention is now recognized by 18 Member States of the Council of Europe (Bulgaria, Cyprus, Denmark, Finland, France, Hungary, Iceland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Russian Federation, Slovakia, Spain, Sweden and Ukraine); that is to say, a large proportion of the total number of 29 States now recognize this procedure under the International Convention.

Without going into technical detail on the Articles of the International Convention and the European Convention, the following main points emerge from a comparison of their respective provisions. The scope of the International Convention on the Elimination of All Forms of Racial Discrimination is broader than that of the European Convention on Human Rights in the area of racial discrimination. The scope of the International Convention is, in the first place, naturally broader in geographical terms: it has been ratified by 155 States the world over and its uniqueness derives from its universal applicability.

The reports submitted by States from every continent on their implementation of the Convention demonstrate a diversity of approaches to the subject, a wealth of influences and a plurality of policies, as well as the sometimes very different concepts of human rights evident in the world.

The composition of the Committee responsible for monitoring the implementation of the United Nations Convention is itself a reflection of that pluralism, although the January 1998 elections created an imbalance in the geographical distribution of its members (there are 18 members, comprising five experts from the Latin America group, four from the Asia group, five from the Western Europe group, three from the Eastern Europe group and one from the Africa group).

The scope of the International Convention is also broader in substantive terms. It effectively guarantees the enjoyment, without distinction as to race, or national or ethnic origin, of all civil, political, economic, social and cultural rights. Moreover, as mentioned above, this list is not restrictive, since Article 5 of the Convention mentions these rights "in particular", as recalled in the Committee's General Recommendation N° 20 of 1996.

Article 14 of the European Convention on Human Rights, by contrast, does not in its current form establish a general right to protection against racial discrimination. It merely establishes a principle of non-discrimination on grounds of race in the enjoyment of the rights recognized and protected by the Convention, which are basically civil and political rights and do not include economic, social and cultural rights.

A violation is considered to have occurred, therefore, only if there has been a violation of Article 14 in conjunction with some other substantive provision of the Convention. Article 14 cannot be said to be independent or autonomous.

This question is not yet settled, however. Proposals have been made by, *inter alia*, the European Commission against Racism and Intolerance to broaden the scope of Article 14. As a result of those proposals, consideration is being given to a draft Additional Protocol N° 12 to the European Convention extending Article 14, the formulation of which has been entrusted to the members of the Steering Committee for Human Rights. This draft should shortly be submitted to the Committee of Ministers of the Council of Europe.

The monitoring body for the International Convention is very different from the bodies that monitor the European Convention. Whereas the implementation of the European Convention on Human Rights is monitored chiefly by a supranational judicial body (the European Court of Human Rights in Strasbourg, whose decisions are binding and which is now a standing body consisting of 41 judges from each of the Council of Europe Member States, elected by the Consultative Assembly), the monitoring body for the International Convention is not judicial in nature. It could even be said that, in its organization, composition and functions, it is more a political than a judicial monitoring body.

In terms of its composition, CERD is an independent body established by the Convention and made up of 18 experts elected for four-year terms by the States Parties from among their nationals, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems. The elected experts serve in their personal capacity and are independent. CERD has a wide variety of functions, as follows:

- consideration of reports from States Parties on the implementation of the Convention (Article 9);
- the optional procedure for individual communications or complaints (Article 14);

- the procedure for complaints by States against other States (Articles 11ff);
- consideration of questions of racial discrimination in Trust and Non-Self-Governing Territories (Article 15);
- submission of an annual report to the United Nations General Assembly (Article 9).

These five functions are what make the United Nations Committee totally different from the European Convention's monitoring bodies.

In addition, in 1993, prompted in particular by events in the former Yugoslavia, Somalia and Rwanda, CERD took on a new function: preventive measures known as early warning and urgent procedures, inspired by "preventive human rights diplomacy", which have already been used on several occasions since 1993, in missions to the former Yugoslavia, Kosovo, Croatia and Guatemala, for example, and in convening urgent meetings of representatives of countries where serious and massive acts of racial or ethnic discrimination have been reported.

The International Convention's mechanism for individual communications or complaints is less restrictive than that of the European Convention. The mechanism for individual petitions provided under Articles 25 *et seq.* of the European Convention may lead to financial damages being awarded against a State by the European Court of Human Rights and to the injured party being afforded "just satisfaction" (Article 50 of the European Convention on Human Rights).

By contrast, the "individual communications" mechanism under Article 14 of the International Convention does not include a binding penalty on States. The only measures the United Nations Committee can take against an offending State are basically to make "recommendations" and "suggestions" to that State (Article 14 (7) (b) of the Convention); and to include a summary of the communication, together with the Committee's recommendations and suggestions, in the Committee's annual public report to the United Nations General Assembly (Article 14 (8) of the Convention).

The limited practical impact of individual complaints to the United Nations Committee is doubtless largely responsible for the small number of communications so far received. 17 complaints have been lodged, in which the Committee arrived at six "opinions" that a violation has occurred (in Cases N°s. 1/1984 "Yilmaz-Dogan v. the Netherlands"; 2/1989 "Diop v. France"; 3/1991 "Narrainen v. Norway"; 4/1991 "L.K. v. the Netherlands"; 8/1995 "Siddiqui v. Australia"; 10/1997 "Habassi v. Denmark") and three rulings that a violation had occurred ("Yilmaz-Dogan v. the Netherlands"; "L.K. v. the Netherlands"; "Habassi v. Denmark"). Four cases were declared inadmissible.

In considering individual complaints of racism, the United Nations Committee tends, on the other hand, to allow itself rather greater discretion than the European Court of Human Rights. The European Court found that

there was a violation of Article 14 of the Convention in only a small number of cases, concerning the right to respect for family life, the right to respect for property, the right to education and gender equality[6].

That is very few compared with the total number of cases brought before the Court.

Yet a number of the cases submitted to the European Court were directly related to racial discrimination. One such case was "Abdulaziz, Cabales and Balkandali", which concerned the implementation of United Kingdom immigration regulations and the right to respect for family life (judgement of 28 May 1985). In this instance, the European Court held that there had been no racial discrimination and accepted that the immigration regulations, which applied to all those seeking to enter the country, were based not on objections regarding their origin, but on the need to stem the flow of immigrants in order to protect the domestic labour market. The Court held, moreover, that the fact that the regulations affected fewer whites than other people at the time was an effect not of their content but of the fact that, among those wishing to immigrate, some ethnic groups outnumbered others:

- Another case, "Jersild v. Denmark", the subject of a European Court judgement of 23 September 1994, is of considerable interest in this discussion, since it directly raises the problem of the conflict between the right to freedom of information or of the press and the right to protection against racial discrimination. Yet the European Court based its conviction only on Article 10, and made no reference to Article 14 of the European Convention.
- Furthermore, a case before the European Court ("Remli v. France" of 23 April 1996) was a particularly typical one of racial discrimination arising from racist remarks made before a witness by a member of the jury in the Assize Court that had sentenced Saïd André Remli, of Algerian origin, to life imprisonment for intentional homicide and attempted escape. However, the European Court based its conviction on a violation of Article 6 (1) of the European Convention, for lack of impartiality in the Court, and held that, since domestic remedies had not been exhausted, it could not entertain the complaint under Article 14 of the Convention taken together with Article 6.
- Lastly, in the judgement "Grégory v. United Kingdom" of 25 February 1997, which also concerned an allegation of comments with racist connotations made by a jury member, the European Court held that there had not been a violation of Article 6 (1) of the European Convention, reasoning that the judge, when faced with a vague allegation, had done sufficient by simply redirecting the jury, in accordance with the principle of the secrecy of jury deliberations.

As can be seen, one of the reasons why Article 14 of the European Convention is so limited in scope is that any violation of Article 14 must be combined with some other provision of the European Convention and that, in

many cases, establishing a violation of the other provision may be sufficient in itself.[7]

CERD, for its part, has given an opinion on 10 complaints to date. While the Committee found the Convention to have been violated in only three cases[8], it has taken to making "recommendations" and "suggestions" in its "opinions", sometimes even in cases where no violation of the Convention has been found, a practice which demonstrates its willingness to take a broad, flexible view of the cases brought before it. Two examples can be given:

- In "Yilmaz-Dogan" and "L.B." (cases N°s. 1/1984 and 4/1991), the Committee noted, with regard to the "expediency principle", that "the freedom to prosecute criminal offences is governed by considerations of public policy and the Convention cannot be interpreted as challenging the raison d'être of that principle", but that "notwithstanding, it should be applied in each case of alleged racial discrimination in the light of the guarantees laid down in the Convention". The Committee therefore found, in these cases, that the State Party had failed in its duty to investigate allegations of racial discrimination with due diligence and expedition, since the inquiries undertaken by the police and judicial authorities had been inadequate.
- In the "Narrainen" case (N° 3/1991), concerning racist remarks allegedly made by a police officer and two jurors in the Court of Appeal[9], the Committee noted that, on the basis of the information before it concerning the racist remarks attributed to the police officer and the two jurors, it was unable to conclude that a breach of Article 5 (a) had occurred, but it nevertheless recommended to the State Party that every effort should be made to prevent any form of racial bias from entering into judicial proceedings which might result in adversely affecting the administration of justice on the basis of equality and non-discrimination; and that, in criminal cases of this kind, due attention should be given to the impartiality of juries, in line with the principles underlying Article 5 (a) of the Convention.

The fact that the United Nations Committee clearly adopts a broader perspective in the individual cases submitted to it is due largely to three factors:

- the Committee is not yet weighed down by an excessive number of individual petitions;
- the substantive scope of the International Convention is broader than that of the European Convention;
- if it finds that the Convention has been violated, the United Nations Committee, unlike the European Court of Human Rights, is not required to convict or to award "just satisfaction" to the victim, and that allows it to be more flexible in its approach.

Bearing in mind the difference of approach between the United Nations Committee and the European Court in Strasbourg as regards the evaluation of individual petitions, it is not surprising that differences in interpretation should also arise between the two bodies.

For example, one might ask whether the United Nations Committee would have evaluated the "Jersild v. Denmark" case in the same way as the European Court, which convicted Denmark of violating Article 10 of the European Convention and criticized a decision by the Danish Supreme Court to punish a television journalist who had broadcast particularly offensive and aggressive racist remarks made by the members of a group of young people called "the green jackets".

The United Nations Committee in fact adopted a General Recommendation (N° XV-42) in 1993, concerning the interpretation of Article 4 of the International Convention, which deals with this very problem of conflicts between the right to freedom of expression and information and the right to protection from racial discrimination.

In this Recommendation, CERD states that the prohibition of the dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression, as embodied in ("with due regard to", according to Article 4 of the 1966 Convention) the Universal Declaration of Human Rights (Article 19) and recalled in Article 5 (d) (viii) of the 1966 Convention, and having particular regard to the provisions of Article 29 (2) of the Universal Declaration (prohibition of the dissemination of racist ideas) and Article 20 of the International Covenant on Civil and Political Rights (prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence).

The United Nations Committee had in fact been informed of the "Jersild" case during its consideration of Denmark's periodic report in 1990 (General Assembly document A/45/18, p. 26, para. 56). A number of different views were expressed by Committee members, some of whom saw the case as "the clearest statement yet, in any country, that the right to protection against racial discrimination took precedence over the right to freedom of expression", while others thought "that in such cases the facts needed to be considered in relation to both rights".

The European Court's decision in this case thus gave the United Nations Committee the opportunity to look once more, as it continues to do, at the delicate question of the conflict of rights.

Conclusions

On the basis of this brief comparative analysis, it may be possible to formulate a number of suggestions aimed at reinforcing the universal and regional mechanisms for individual complaints of racial discrimination:

- First, it is important to continue with efforts to secure general and universal recognition of the individual complaints mechanism provided under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. This would entail a further call to States Parties to the Convention to persuade them that they can and should all eventually make the optional declaration under Article 14 of the Convention. The number of countries that have recognized the procedure so far (29) is most inadequate and effectively creates an inequality of commitments as between the individual States Parties to the International Convention, since those who recognize the mechanism for individual communications are exposed to complaints from which the others are exempt.
- Secondly, in parallel with efforts to secure universal recognition, the United Nations Secretariat should consistently channel or direct complaints concerned with discrimination of a specifically racial nature to the only Committee specializing in that field, namely CERD. In my view, that should result in complaints that might otherwise go to the Human Rights Committee being rerouted to CERD. At the same time, CERD should be given a larger secretariat, to enable it to deal with a greater number of individual communications.
- Thirdly, it is important to endeavour to inform the general public about the existence of the mechanism under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. Such efforts should be requested from States Parties, anti-racist non-governmental organizations and associations, and lawyers and jurists alike[10].
- Lastly, it would be useful if the procedures for submitting individual complaints to CERD and to the European Court of Human Rights were complementary.

All the Member States of the Council of Europe Parties to the European Convention on Human Rights should be able not only to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, but also to make the declaration under Article 14 of the Convention on the mechanism for individual communications, which does not compete with, but rather complements, the procedure under Article 25 of the European Convention.

While welcoming Protocol N° 12 to the European Convention on Human Rights, currently being prepared, which may soon establish at the European level a general, independent principle of non-racial-discrimination, thanks to a broadening of the scope of Article 14 of the Strasbourg Convention, it must be

pointed out that it is in victims' interest to have as wide a choice as possible of international remedies at a time when, as is well-known, expressions of racial and ethnic discrimination are becoming more frequent worldwide.

These are some of the points that could be raised in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

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Notes

1. Other regional or global mechanisms such as the Inter-American Court of Human Rights and the new African Court on Human and Peoples' Rights will not be discussed here.
2. As of the middle of 2001, the number of ratifications was 157.
3. As of the middle of 2001, the number of ratifications was 147.
4. Note that a new mechanism for individual complaints is envisaged in the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights.
5. Of these European countries, only Andorra, Ireland, Liechtenstein, San Marino and Turkey have not ratified the 1965 International Convention.
6. See judgements in "Case relating to certain aspects of the laws on the use of languages in education in Belgium" of 23 July 1968; "Marckx" of 13 June 1979; "Abdulaziz, Cabales, Balkandali" of 28 May 1985; "Inze" of 28 October 1987; "Darby" of 23 October 1990; "Vermeize" of 29 November 1991; "Pine Valley Developments Ltd." of 29 November 1991; "Schuler-Zgraggen v. Switzerland" of 24 June 1993; "Karlheinz Schmidt v. Germany" of 18 July 1994; "Gaygusuz v. Austria" of 16 December 1996; "Chassagnol v. France" of 29 April 1999, etc. See also "Buckley v. United Kingdom" of 25 September 1996, in which the European Court held that there had been no violation of the Convention.
7. In this connection, see European Court judgement "Kroon *et al.* v. the Netherlands" of 27 October 1994, para. 2.
8. N°. 1/1984 (Yilmaz-Dogan v. the Netherlands), 4/1991 (L. Karim v. the Netherlands), N° 10/1997 (Habassi v. Denmark).
9. Compare also the above-mentioned "Remli v. France" judgement of 23 April 1996 by the European Court of Human Rights.
10. The Anti-Racism Information Service (ARIS), a Geneva-based non-governmental organizations, does important work in this regard by collecting and coordinating information from other non-governmental organizations for CERD members and disseminating information on the work of CERD to others.

Fighting Racism with Positive Messages: Importance of Youth and Education Activities

Jyoti Shankar Singh

Introduction

Problems and solutions concerning racial discrimination are too often cast in Black and White terms – as battles to be won or lost. The long and arduous struggle to end apartheid in South Africa, a battle waged by millions with the support of the international community, shows that determination and will can triumph even against the strongest, most blatant and severe forms of racial oppression. The defeat of the doctrine of racial superiority and its ministers in South Africa stands as a major inspiration to anti-racism struggles the world over.

However, racism also comes in more subtle and insidious forms which often proves very difficult to identify and address. Differential access of minority individuals to the levers of political, economic and social power can be difficult to document and harder to tackle. Although less obvious perhaps than systematic racial segregation or oppression, such forms of racism can make individuals and communities feel victimized. Unfortunately, this can lead to the perception that racism is perpetrated only by others and that it is therefore someone else's responsibility. While it is true that no one can be considered immune from prejudice and discrimination or its long-lasting effects, this mind set is essentially negative in orientation in the sense that it can entail struggle against discrimination while ignoring one's own responsibilities. Rights without responsibilities is an untenable proposition and it misses the potential of positive measures to bring about sustained and deep-rooted attitudinal improvement.

An alternative approach is to view racial discrimination and related intolerance as a challenge that needs to be met through a strengthening of the culture of human rights at all levels. Racism has to be recognized as everyone's responsibility to tackle together. In other words, since anyone may bear the brunt of racism, it is incumbent upon all of us to fight it – not only in a negative 'all or nothing' sense, but through the constructive promotion of human rights standards. In South Africa, for example, a national conference was convened ahead of the World Conference that involved comprehensive consultations with the South African Human Rights Commission, the Commission for

Gender Equality, the South African NGO Coalition and Government representatives. The South African Millennium Statement on Racism and Programme of Action underlined, *inter alia*, the need to ensure that primary and secondary school children received anti-racism education and that a number of positive measures had to be instituted through a "National Dialogue to Combat Racism" involving all sectors of society.

The purpose of this article is to consider the important practical role that education – whether formal or non-formal, whether inside or outside the educational programme – can play in promoting sustained tolerance and respect for diversity in social interaction. We will first reflect upon the rationale for the more systematic incorporation of multicultural values in youth education. Next, we will explore the contribution of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR). We shall then consider some valuable examples of positive measures taken to instill multicultural values and promote intolerance. Finally, we discuss possibilities for future action.

Rationale for the more systematic incorporation of multicultural values, tolerance and respect for racial, ethnic and cultural diversity in youth education

Discrimination on the basis of race or related ground exerts an insidious effect on the enjoyment of all human rights simply because it involves the infringement or denial of entire groups or individuals of the right to be treated fairly and equally, and intended or otherwise, can impose a strong negative impact on entire populations and groups. Conversely, the right to be free from discrimination has become accepted not only as an enforceable legal right, but as an overarching general principle that guides the implementation of all human rights guarantees at domestic, regional and international levels. This facet of the principle of non-discrimination was well recognized by the drafters of the Charter of the United Nations who, in the aftermath of World War II, understood that racial discrimination unchecked could lead to serious social disruption and even threaten or breach regional and international peace and security. Accordingly, the promotion and encouragement of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" figure among the principles and purposes of the United Nations in Article 1, paragraph 3, of its Charter.

The pernicious effect of racial discrimination, xenophobia and related intolerance lies also in the many ways it is practised, subtle or not so subtle. Particularly strong are the effects of racial and related discrimination on individuals and communities already disadvantaged by force of circumstance or social prejudice, such as migrants, refugees, asylum seekers, sufferers of

HIV/AIDS, indigenous populations, women, the disabled, the elderly, and members of minorities.

Case-by-case responses are necessary to provide redress in respect of individual instances of racial discrimination, but such responses in themselves do not necessarily foster a living culture of tolerance and respect for diversity or meet the need for systematic efforts to prevent discrimination. Multi-faceted as racism and related intolerance are, they must be countered with a range of measures conducted at all levels. This forms also the rationale for the more systematic incorporation of multicultural values, tolerance and respect for racial, ethnic and cultural diversity in youth education, because only through education aimed at youth can human rights values be effectively inculcated and plant the seeds for a strong human rights culture.

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance – WCAR

The United Nations General Assembly's decision to hold a World Conference against Racism is reflected in resolution 52/111 of 12 December 1997, which recognized the need for more effective and sustained measures at the national, regional and international levels for the elimination of all forms of racism and racial discrimination. In particular, the General Assembly considered that the World Conference agenda should take due account, *inter alia*, of the need to address in a comprehensive manner all forms of racism, racial discrimination, xenophobia and related contemporary forms of intolerance and that it should also be action-oriented and focus on practical measures to eradicate racism, including measures of prevention, education and protection and the provision of effective remedies and take into full consideration existing human rights instruments.

Accordingly, the General Assembly designated the following as the main objectives of the World Conference:

- to review progress made in the fight against racism, racial discrimination, xenophobia and related intolerance, in particular since the adoption of the Universal Declaration of Human Rights, and to reappraise the obstacles to further progress in the field and ways to overcome them;
- to consider ways and means to better ensure the application of existing standards and the implementation of the existing instruments to combat racism, racial discrimination, xenophobia and related intolerance;
- to increase the level of awareness about the scourges of racism and racial discrimination, xenophobia and related intolerance;

- to formulate concrete recommendations on ways to increase the effectiveness of the activities and mechanisms of the United Nations through programmes aimed at combatting racism, racial discrimination, xenophobia and related intolerance;
- to review the political, historical, economic, social, cultural and other factors leading to racism, racial discrimination, xenophobia and related intolerance;
- to formulate concrete recommendations to further action-oriented national, regional and international measures to combat all forms of racism, racial discrimination, xenophobia and related intolerance;
- to draw up concrete recommendations for ensuring that the United Nations has the financial and other necessary resources for its actions to combat racism, racial discrimination, xenophobia and related intolerance.

Resolution 52/111 also requested Governments, specialized agencies, other international organizations, concerned United Nations bodies, regional organizations, non-governmental organizations, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and other human rights mechanisms to assist the preparatory committee, to undertake reviews, to submit recommendations concerning the World Conference and the preparations thereof to the preparatory committee through the Secretary-General and to participate actively in the World Conference. The General Assembly called upon States and regional organizations to hold national or regional meetings or to take other initiatives in preparation for the World Conference, and requested the regional preparatory meetings to submit reports to the preparatory committee through the Secretary-General on the outcome of their deliberations, including practical and action-oriented recommendations to combat racism, racial discrimination, xenophobia and related intolerance.

The regional intergovernmental meetings, regional expert seminars and numerous NGO meetings that have taken place in the context of the World Conference preparatory process have identified a number of areas for constructive action as regards education aimed to eradicate racism and related intolerance.

Some examples of lessons learned

A common theme in the World Conference preparatory process has been the pivotal role that education and youth activities can and should play in the international community's follow-up to the Conference.

For example, the Regional Seminar of Experts on the Prevention of Ethnic and Racial Conflicts, held in Addis Ababa in October 2000, commended the

efforts already under way in a number of African countries to comb racial and gender stereotypes from schoolbooks and curricula. The seminar called upon Governments in other regions to follow that example, and in fact, a number of other regional expert seminars also urged action along the same lines.

In the European intergovernmental and expert seminars, it was proposed that school networks draw up a code of practice, incorporating into their educational objectives clear principles on combating xenophobia. In particular, the need for co-operation between all school authorities to strike a better balance in the number of immigrants at each of the schools in every municipality, was emphasized with a view to avoiding ghettoization in the school system.

An interesting example is to be found in an urban renewal project set up in one of the poorest areas of Copenhagen. The Vestebro Immigrant Information initiative concentrated on an area with a high immigrant population to explain the aims of urban renewal and to solicit the views of the migrant groups that would be affected so that the authorities could take their concerns fully into account. Significantly, the project focussed on the training of youth, unemployed persons, and second-generation immigrants thereby engaging and empowering them to employ their cultural and linguistic assets to encourage local immigrant network participation and to improve the prospects for young immigrants by strengthening their skills and integration.

Another important element in the official recognition of minority groups is the concrete implementation of the right to receive education in one's own mother tongue. Mother tongue schools aim to provide students with a fluency in the mother tongue as well as in the language of the majority to facilitate the process of integration into the school system while maintaining cultural heritage. In areas where numbers do not allow such facilities to be provided, some Governments have provided supplementary education for non-speakers of the majority language free of charge.

In many countries, Governments provide training to teachers in order to assist them to handle racist incidents at school. For example, the European Commission against Racism and Intolerance (ECRI) has noted that the exclusion of students of minority backgrounds from classes is being monitored, and that Governments have requested local education authorities to tackle this problem where it exists.

Several countries have initiated exchange programmes to combat racism by encouraging children from different countries to share their cultures and learn each other's languages. Some countries have integrated the exchange programmes into the curricula, permitting students in secondary or tertiary education to participate in longer term exchanges. Intensive training in the ethnic, linguistic and cultural norms of country involved in exchanges can foster tolerance and respect for diversity in youth that lasts for a life-time.

A number of governmental and non-governmental organisations around the globe have joined together to mobilise teaching about the trans-Atlantic slave trade through exchanges and visits to places of historical significance.

These projects aim to promote mutual respect and dialogue between young people by allowing students to learn about the slave trade and the immense suffering it involved as well as the great destruction it brought about to land and culture. Such programmes also foster understanding on the rich contributions slaves brought through music, dance, poetry, stories and food and the abiding influence of their culture.

In countries where nomadic minorities are often stigmatized, certain Governments have created a category of itinerant education cards, which permit children from these minority groups to move to new schools and to pick up where they left off. This prevents unnecessary waste of time from constant appraisals and enrolment in new schools. It has also significantly increased participation of these minorities in education.

Many Governments and NGOs include teaching on racial tolerance and cultural sensitivity in their material on human rights education. Public education programmes often include teaching on racial tolerance in compulsory social studies/development classes. Especially where there is a high rate of illiteracy, the use of drama and music to spread the message of tolerance has become popular in many parts of the world.

In World Conference preparatory meetings, individuals, NGOs, experts, Governments, and international agencies in all regions expressed concern at the alarming proliferation of Internet hate sites. Many of these sites target youth and attempt to persuade them to adopt blatantly racist attitudes.

Radio and TV stations in several countries have propagated ethnic hatred. The case of Radio Mille Collines which incited Hutus in Rwanda to massacre their Tutsi neighbours during the 1994 Civil War, and the similar role of certain radio and TV stations in the former Yugoslavia, demonstrate the power of media, particularly among youth. Furthermore, the rapid spread of the Internet and the rise of international mass media transmission facilities means that the dissemination of information and opinion is no longer as localized at it once was. This explains why the World Conference against Racism is an appropriate forum for discussion on freedom of the press and racial discrimination. An Internet site or media organization based in one country with lax or non-existent laws to protect racial minorities against racial hatred, can affect people in other countries as well. The spread of information and opinion has never been so easy, so inexpensive, nor so difficult for Governments to regulate. The challenge of the World Conference will be to find constructive concrete and sustained ways to fight racism, racial discrimination, xenophobia and related intolerance and to promote the message of tolerance and respect for diversity among youth in a sustained and balanced way.

Future action

Through the World Conference preparatory process, it has become clear that all elements – ordinary people, experts, NGOs, Governments, regional and international organizations – place high priority on the introduction of tolerance and respect for diversity in school education curricula both in the formal and non-formal contexts. Future action must concentrate on spreading the awareness of tolerance and respect for diversity as the norm rather than the exception in school education curricula with the full participation of civil society and national anti-racism campaigns.

A very important avenue for sustained implementation of anti-racism measures through constructive action aimed at youth will remain human rights institutions at the national level. National human rights institutions are well placed to identify applicable provisions in international and national law addressing the special concerns of youth vis-à-vis the right to be free from racial discrimination, xenophobia and related intolerance and to strengthen implementation of these standards and to revitalize their promotional anti-racism activities.

Student exchanges have a long tradition, and in our age of globalization, the Internet has almost conquered time and space. The Internet can be a powerful tool for future action by incorporating multicultural values around the world. Unfortunately, the Internet can equally spread racist messages and incite racial hatred. NGOs, experts and Governments in all regions have rightly indicated serious concern over the ambivalent uses of Internet technology and have cautioned that more needs to be done to ensure that children and young people are not exposed to the baser elements.

The efficacy of future action will depend much upon the sharing of lessons learned and ongoing dialogue not only among various communities in every country, but among countries at the non-governmental and governmental levels. If the World Conference programme of action is to be effective, all actors must keep anti-racism high on their agendas.

Perhaps most important, all actors need to listen carefully and directly to young people to understand their problems and encourage them to become involved in the spread of tolerance and respect for diversity. This view has been adopted by the UN Commission on Human Rights which in resolution 2000/14 urged that “the particular situation of children should receive special attention during the preparations for and during the World Conference against Racism”. Following the World Conference, the General Assembly’s Special Session on Children will be convened to review the implementation of the UN Convention on the Rights of the Child and to emphasize the substance of Article 12 of the Convention which expresses “the right of children to express their opinions, and to have them duly taken into account”. The United Nations High Commissioner for Human Rights has underlined the need for youth participation in World Conference activities and follow-up action, and accordingly, the Office of the

High Commissioner for Human Rights is facilitating the participation of youth representatives in the World Conference and in parallel activities in Durban.

Ultimately, all actors must make concerted and sustained efforts to institutionalize anti-racism efforts and invite the full and active participation of youth in non-racist education thus spreading tolerance and respect for diversity through the decision-makers of tomorrow – children and youth the world over.

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The role of the Council of Europe in the Struggle against Racism, Racial Discrimination and Xenophobia

Pierre-Henri Imbert

Introduction*

Ever since its inception in 1949 the Council of Europe has been endeavouring to develop a set of rules to guarantee the fundamental human rights. As stated in the Universal Declaration of Human Rights, "all human beings are born free and equal in dignity and rights". The equality principle provides the basis for combating racism and intolerance, placing it at the centre of human rights protection and promotion. Consequently, the Council of Europe has prioritized action against racism, racial discrimination and xenophobia in its combat for human rights. So the Council of Europe's role in this field is absolutely vital, and breaks down into (I) providing impetus and follow-up and (II) standard-setting action.

Providing impetus and follow-up

Even though the Council of Europe has been particularly concerned about racism right from the outset, it was in 1993 that it issued the most solemn possible declaration on the importance of combating racism.

In view of the upheaval following the collapse of the Berlin Wall and the end of the division of Europe, the Council of Europe realized that it had to reaffirm forcibly its basic values. The First Summit of Heads of State and Government of member States of the Council of Europe was accordingly convened in order to commemorate this new era in European history. It was organized in Vienna and ended with a major political Declaration on 9 October 1993. The Vienna Summit pinpointed a number of necessary measures, the most important being action against racism, xenophobia, anti-semitism and intolerance.

The Declaration and Plan of Action adopted at the Summit laid the foundations for the Council of Europe's action in these fields over the ensuing years. Having noted "the present resurgence of racism, xenophobia and anti-semitism,

the development of a climate of intolerance, the increase in acts of violence"[1], the Heads of State and Government of the member States of the Council of Europe condemned "in the strongest possible terms racism in all its forms, xenophobia, anti-semitism and intolerance and all forms of religious discrimination"[2].

However, the Heads of State and Government did not stop at a political declaration. They also agreed on a Plan of Action, which included launching the European youth campaign against racism[3] and setting up the European Commission against Racism and Intolerance (ECRI)[4], and invited the Member States to step up safeguards against all forms of discrimination based on race, national or ethnic origin or religion.

The Second Summit of Heads of State and Government of the member States of the Council of Europe was held in Strasbourg on 10 and 11 October 1997 and called for "the intensification of the fight against racism, xenophobia, anti-semitism and intolerance"[5]. Welcoming "the action taken in this field by the Council of Europe since the Vienna Summit"[6], the Heads of State and Government "resolve(d) to intensify, for this purpose, the activities of the European Commission against Racism and Intolerance"[7].

Action against racism is now one of the main activities of the Council of Europe bodies in general (B), and of the European Commission against Racism and Intolerance in particular (A).

European Commission against Racism and Intolerance (ECRI)[8]

ECRI was set up after the Vienna Summit in order to reinforce and intensify the Council of Europe's action against racism, xenophobia, anti-semitism and intolerance. It is therefore the Council of Europe's main body responsible for addressing these issues.

ECRI members are appointed individually by their respective governments on the basis of their proven expertise in the field of racism and intolerance, and attend meetings on an independent basis. The Parliamentary Assembly, Congress of Local and Regional Authorities of Europe, Commission of the European Communities and the Holy See also appoint observers to the ECRI.

ECRI's work programme comprises three strands:

- studying the situation of racism, xenophobia, anti-semitism and intolerance in each Council of Europe Member State and writing a detailed report on the situation. Contact is made with various partners such as governmental authorities, public institutions or non-governmental organizations while the report is being drafted and during the visit made by the ECRI delegation to the country in question;

- working on general themes. This work takes the form of general policy recommendations to Council of Europe Member States[9], examples of "good practices" and detailed studies;
- maintaining relations with civil society. This mainly involves co-operating with non-governmental organizations working in the anti-racism field.

The problems detected while studying the situation in individual Council of Europe Member States help build up a complete overview of the situation of racism in Europe[10]. Drawing on close co-operation with the countries in question and helped along by the resultant publicity, the ECRI's reports on the situation in each Council of Europe Member State have led to progress in the fight against racism on a number of fronts (adoption or amendment of legislation, review of public authority practices, etc).

The reports also enable ECRI to highlight problems which tend to recur in the various countries. For instance, it has found that most Member States lack effective anti-discrimination regulations. Not all the States have complete legislation in this field, and those that do often implement it unsatisfactorily.

ECRI has also noted underdevelopment of institutional structures, as well as of the national human rights and anti-racism bodies. This realization led ECRI to adopt its General Policy Recommendation N° 2 on "Specialized bodies to combat racism, xenophobia, anti-semitism and intolerance at national level"[11]. In order to illustrate the type of body that is needed, ECRI has published and disseminated examples of "good practices" relating to national specialized bodies[12].

Another area where ECRI has noted persistent problems is that of Roma/Gypsies in Europe. Consequently, the Commission adopted its third general policy recommendation on this subject. The same measures have been taken in relation to the situation of Muslims in Europe, (General Policy Recommendation N° 5).

The increasing use of new mass communication technologies, such as the Internet, to disseminate racist messages, is another burning issue. This is why ECRI drew up a report in co-operation with the Swiss Institute of Comparative Law on the legal, especially criminal, measures aimed at combating racism on the Internet[13].

ECRI's work has become extremely significant since its inception in 1993. Its activities are in line with the broader activities of the Council of Europe and in close co-operation with the other Council of Europe bodies in order to guarantee consistency in the Council of Europe's policy in this area.

Action against racism in the activities of other Council of Europe bodies

Given the importance of the fight against racism in the Council of Europe, most of its constituent bodies at some stage find themselves dealing with this issue.

For instance, the Committee of Ministers, the Council of Europe's decision-making body, has adopted a large number of recommendations, resolutions and declarations on issues bound up with racism, xenophobia, anti-semitism and intolerance. In 1981 it issued the "Declaration on intolerance – a threat to democracy", and since then has adopted a number of particularly important texts, including Recommendation N° R 97 (20) on "Hate Speech", Recommendation N° R 97 (21) on the media and the promotion of a culture of tolerance and Recommendation N° R (92) 19 on video games with a racist content[14].

The Parliamentary Assembly, comprising parliamentarians from all the Council of Europe Member States, has also adopted recommendations against racism, including Recommendation N° 1438 (2000) on the threat posed to democracy by extremist parties and movements in Europe, Recommendation N° 1345 (1997) on the protection of national minorities, and Recommendation N° 1275 (1995) on the fight against racism, xenophobia, anti-semitism and intolerance[15].

The Congress of Local and Regional Authorities of Europe, which is for the most part made up of elected representatives of local and regional authorities, also contributes to the Council of Europe's action against racism by promoting, for instance, the launch of the European Network of Towns for provision for Roma in municipalities.

Many other Council of Europe work sectors also comprise action against racism and intolerance. For instance, the European Centre for Global Interdependence and Solidarity (North-South Centre), a body responsible for European co-operation in alerting the public to global interdependence issues and encouraging solidarity-based policies in line with the Council of Europe's objectives and principles, is enthusiastically promoting a type of dialogue based on multicultural understanding and religious tolerance. Such dialogue is aimed at combating ignorance of other cultures, which is a common cause of racism, intolerance and exclusion. All the strands of its work programme, especially the media section, the global education programme and the Trans-Mediterranean (Transmed) programme, deal with such issues.

The problems of racism are also dealt with from different angles, for example protecting vulnerable groups such as refugees, migrants, national minorities, Roma/Gypsies and women, or specific themes such as legal co-operation concerning nationality, education, youth, the media and sport[16]. Legal instruments have been drawn up to protect or promote these vulnerable groups and develop activities on these specific themes[17]. One of the main outcomes of

the Council of Europe's work in fighting racism, racial discrimination and xenophobia was the European Youth Campaign against Racism "All Different, All Equal", which ran from December 1994 to February 1996. The scale and impact of this campaign helped develop a Europe-wide pro-tolerance movement, thus giving fresh impetus to the fight against racism throughout the continent.

The Council of Europe's leading role in combating racism, racial discrimination and xenophobia in Europe is widely acknowledged both continent- and world-wide. The European Union was behind the proposal to mandate the Council of Europe to deal with the European preparations for the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance (Durban, South Africa August/September 2001,). As part of the preparations a European Conference against Racism was organized in Strasbourg from 11 to 13 October 2000, attended by national delegations, representatives of civil society, that is mainly non-governmental organizations, representatives of national specialized bodies to combat racism, and representatives of international organizations.

All this having been said, the Council of Europe's role in providing impetus and follow-up would be incomplete without its standard-setting action on issues relating to racism, racial discrimination and xenophobia.

The standard-setting role

Legal measures are of cardinal importance in fighting racism and intolerance. This is why the Council of Europe has endeavoured to include action against racism in many of the legal instruments it has issued, especially the European Convention on Human Rights.

Action against racism and the European Convention on Human Rights

The 1950 European Convention on Human Rights is the Council of Europe's most effective legal instrument in the field of protecting human rights, thanks to the system of individual petition before the European Court of Human Rights. All persons residing in the territory of a Council of Europe Member State can submit applications to the Strasbourg Court provided they comply with the procedural rules, particularly that on exhaustion of legal remedies available in the country where they consider the violation to have taken place. Nevertheless, the text of the Convention itself does not provide adequate protection against racial discrimination, even though the case-law of the Court has occasionally improved such protection (1). This is why an additional protocol has been adopted to the Convention in order to fill the gaps in the current provisions and provide more effective protection against racism, racial discrimination and xenophobia (2).

The European Convention on Human Rights and the case-law of the European Court

Only Article 14 of the European Convention on Human Rights deals with the issue of discrimination. However, the Court has had recourse to other legal bases in order to condemn racist conduct.

Article 14 of the European Convention on Human Rights[18] does not lay down any general prohibition of discrimination. Discrimination is only prohibited vis-à-vis "the enjoyment of the rights and freedoms set forth in (the) Convention". So Article 14 does not introduce any independent prohibition of discrimination because the provision has to be read in conjunction with another Article of the Convention.

In its case-law on Article 14 the European Court of Human Rights has also referred to "equality of treatment"[19] and "equality of the sexes"[20]. The Court has an established interpretation of the concept of discrimination. This case-law clearly states that not all forms of differential treatment necessarily constitute discrimination[21]. For instance, in its judgment on the Abdulaziz, Cabales and Balkandali case, the Court held that "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realized'[22].

The Court generally finds that the right secured under Article 14 not to be discriminated against in the enjoyment of the rights recognized by the Convention has been violated where States apply different treatment to individuals in similar situations without any objective or reasonable justification[23]. However, the Court recently broadened this interpretation in its Thlimmenos judgment, where it states that "this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different"[24].

The Court agrees that States Parties have a margin of appreciation in their application of Article 14[25]. However, this margin of appreciation has never been quantified. Even though the Court has never ruled on a case of racial discrimination, we can justifiably consider that the margin of appreciation concerning differential treatment based on racial origin would be very small indeed, if not non-existent, as already held by the Court in cases of difference of treatment based on religion[26] or sex[27]. Gender equality is one of the Council of Europe's major aims, like the fight against racial discrimination, as the Court acknowledged in May 2000: "In today's multicultural European societies, the eradication of racism has become a common priority goal for all Contracting States (see, *inter alia*, Declarations of the Vienna and Strasbourg Summits of the Council of Europe)"[28]. Moreover, in 1994 the Court had already spoken of

"the vital importance of combating racial discrimination in all its forms and manifestations"[29].

It has been recognized[30] that the European Court's scope for expanding its case-law on the protection afforded under Article 14 against discrimination is very limited because the prohibition set out in this Article is clearly secondary to the other substantive guarantees of the Convention.

The Court has nonetheless dealt with issues involving racist attitudes based on the violation of other articles of the European Convention on Human Rights. For instance France[31] and the United Kingdom[32] have both been found guilty of violating Article 6 para. 1 of the Convention on the grounds of prejudice shown by a court where one of the jurors allegedly made racist remarks about a defendant.

Despite the interpretations which the European Court of Human Rights has formulated, it must be admitted that the European Convention on Human Rights lags behind other instruments on the non-discrimination front. The Universal Declaration of Human Rights proclaims that "all human beings are born free and equal in dignity and rights". This makes the principle of equality and non-discrimination a fundamental component of international human rights law. This principle has been affirmed in Article 7 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights. Therefore, the protection provided under Article 14 of the European Convention on Human Rights is limited and less effective than that stipulated in these other international instruments. Protocol N° 12 strives to remedy this shortcoming.

Protocol N° 12 to the Convention

In April 1996, at ECRI's prompting, the Committee of Ministers of the Council of Europe decided to instruct the Steering Committee on Human Rights (CDDH) to study the advisability and feasibility of a legal instrument against racism and intolerance. In October 1997 the latter submitted a report on the issues of equality between women and men and racism and intolerance, and at the 622nd meeting of the Ministers' Deputies the Committee of Ministers mandated the CDDH to draft an additional protocol to the European Convention on Human Rights.

After prolonged debate among Council of Europe Member States, the principle was adopted of a general prohibition of discrimination. It was also decided that the protocol should contain a non-exhaustive list of grounds of discrimination.

The CDDH finalized the text of the draft protocol at its meeting on 9 and 10 March 2000 and transmitted it to the Committee of Ministers, together with the draft explanatory report. The Committee of Ministers adopted the text of Protocol N° 12 in June 2000, which will therefore be opened for signature

by the Member States of the Council of Europe in Rome on 4 November 2000, the date of the 50th anniversary of the European Convention on Human Rights. Protocol N° 12 will come into force as soon as it has been ratified by ten Member States of the Council of Europe.

Article 1 of the Protocol, entitled "General Prohibition of Discrimination", reads as follows: "1. The enjoyment of any right set forth by law shall be secured 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, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1".

The list of grounds of discrimination set out in Article 1 of this Additional Protocol is identical to that given in Article 14 of the Convention. After lengthy discussions this was felt to be a better option than including such additional grounds as disability, sexual orientation or age, not through insensitivity to the particular importance that such grounds have taken on since Article 14 of the Convention was drafted but because such inclusion was deemed legally unnecessary given the non-exhaustive nature of the list of grounds of discrimination and the fact that including specific additional grounds might lead, *a contrario,* to undesirable interpretations regarding discrimination based on grounds not listed.

The additional protection afforded under Article 1 of the Additional Protocol covers cases of persons discriminated against:

- in the enjoyment of any right specifically granted to an individual under national law;
- in the enjoyment of a right which may be inferred from clear obligations of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
- by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
- by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot).

So we can see that Protocol N° 12 is not primarily aimed at the question of discrimination in interpersonal relations.

Protection against discriminations will consequently be greatly extended with the entry into force of Protocol N° 12. The Court will be faced with many more cases of discrimination than at present. The scope and success of protection against discrimination in general and racial discrimination in particular will depend on the use the Court makes of this Protocol. Lastly, it should be noted that Protocol N° 12 neither amends nor supplants Article 14 of the Convention, which continues to apply.

Action against racism and the other Council of Europe conventions

Action against racism is also an integral part of many other Council of Europe conventions.

This applies to the *European Social Charter*. This instrument was signed in 1961 and is aimed at protecting the fundamental social and economic rights of nationals of Contracting Parties residing or working lawfully in the territory of Contracting Parties. The European Social Charter was revised in 1996 in order to update and consolidate its substantive provisions. The revised Social Charter came into force on 1 July 1999. The guarantee of equal treatment is the bedrock of the social structure set out in the Charter, which clearly expresses the principle of non-discrimination: "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" [33].

One of the originalities of the European Social Charter, and one which explains its importance, is the mechanism for supervising its application by the Contracting States. Under this system each member State must prepare a report describing its implementation of the Social Charter. These reports are public and can be commented on by management and labour. The reports are studied by the European Committee of Social Rights, which is made up of nine independent and impartial experts who determine whether or not the States have honoured their commitments. The conclusions of the European Committee of Social Rights are then forwarded to the Governmental Committee, which comprises representatives of the Contracting States. In the more serious cases the Governmental Committee may ask the Committee of Ministers of the Council of Europe to adopt recommendations to States urging them to change any legislation, regulations or practices found to be incompatible with the requirements of the Charter. A new system of collective complaints has recently been added to this supervisory mechanism[34]. Trade unions, employers' organizations and non-governmental organizations are entitled to submit collective complaints to the European Committee of Social Rights if they feel that a given State has failed to comply with the Charter. The European Committee of Social Rights considers the complaint and, if it considers that the Charter has been violated, transmits a report setting out its decision to the Committee of Ministers of the Council of Europe, which then decides, or not, to address a recommendation to the State concerned.

So far the European Committee on Social Rights has never noted a violation of the Charter on the ground of racial discrimination. The recent reinforcement of protection against discrimination based on race (Article E of the revised Social Charter) combined with the fact that the Additional Protocol on collective complaints has only been in force since 1 July 1998, would lead

us to expect the number of such cases to increase greatly in the near future. There will be nothing to prevent the European Committee on Social Rights from applying the "case-law" it has developed for other types of discrimination[35], particularly sexual discrimination[36], to cases involving racism. Sexual and racial discrimination are now covered by the same text, namely Article E of the revised Social Charter. It should be possible to transpose the general interpretation of this article as regards sexual discrimination to racial discrimination. A further type of discrimination could prove important for this study, regarding discrimination on grounds of nationality, which the European Committee of Social Rights has noted on several occasions, especially involving discrimination between European Union nationals and other categories of foreigners. The importance of the possible link between national and racial discrimination depends on the extent of the changes, for example legislative amendments, which the State found against may have to introduce. In theory, only the legislation on foreigners who are nationals of States Parties to the Charter must be amended since the States' international-law obligations arising out of their ratification of the Social Charter only apply to such nationals. In practice, however, in order to comply with the Charter, States can amend their legislation on all foreigners, not only on those with the nationality of a State Party to the Charter. The protection afforded under the Charter may consequently extend beyond the States' mere international-law obligations. The same will probably apply when States are induced to amend their legislation on racial discrimination.

Effective use of the new instruments provided under the European Social Charter should help improve protection against racial discrimination in the years to come.

The European Convention on the Legal Status of Migrant Workers of 24 November 1977 was designed to complement the protection provided by the European Convention on Human Rights and the European Social Charter. It deals with the main aspects of the legal situation of migrant workers. The convention is based on the principle of equal treatment of migrant workers and nationals of the receiving State: "Considering that the legal status of migrant workers who are nationals of Council of Europe Member States should be regulated so as to ensure that as far as possible they are treated no less favourably than workers who are nationals of the receiving State in all aspects of living and working conditions"[37].

The Framework Convention for the Protection of National Minorities of 1 February 1995 is another major instrument used by the Council of Europe to combat racism, racial discrimination and xenophobia. It is geared to protecting the existence of national minorities and promoting full and effective equality of such minorities by guaranteeing the requisite conditions for preserving and developing their cultures and safeguarding their identities. Article 4, para. 1, of the Framework Convention reads "… any discrimination based on belonging to a national minority shall be prohibited". States Parties also undertake "to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural,

linguistic or religious identity" (Article 6, para. 2). Implementation of the Framework Convention is monitored on the basis of five-yearly national reports on measures taken to implement the Framework Convention, which are subsequently made public. In between reports the Committee of Ministers may also request ad hoc reports, which are considered by a Consultative Committee of eighteen independent experts. This Consultative Committee may also receive information from other sources, and may secure additional information on its own initiative and organize meetings with governments and other organizations. The Consultative Committee adopts an opinion on each national report and transmits it to the Committee of Ministers, which takes the final decision in the monitoring process by issuing country-by-country conclusions and recommendations.

The European Charter for Regional or Minority Languages of 5 November 1992 is in line with the same philosophy of protecting minorities. The text is aimed at preserving and developing European cultural traditions and heritage and ensuring respect for the right to practise a regional or minority language in private and public life. Implementation is monitored by a committee of independent experts responsible for examining the periodical reports submitted by the States Parties and subsequently making proposals and recommendations to the Committee of Ministers.

The European Convention on Nationality of 6 November 1997, which has only been in force since 1 March 2000, contains many rules and principles applicable to all aspects of nationality. The Convention stipulates that "1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amounts to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin. 2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently"[38].

Lastly, the European Convention for the Participation of Foreigners in Public Life at Local Level of 5 February 1992 strives to improve the integration of foreign residents into local community life. It applies to anyone who is legally resident in the territory of a given State but does not hold its nationality. The Convention requires Parties to undertake to guarantee to foreign residents, "on the same terms as to its own nationals"[39], the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas, and the right to freedom of peaceful assembly and of association with others. The Convention also permits the setting up of local consultative bodies elected by foreign residents, and allows Parties to undertake to grant to every foreigner lawfully and ordinarily resident in the State in question for the five years preceding the elections the right to vote and to stand for election in local authority elections.

* Most of the documents mentioned in this article can be found on the ECRI Internet site: http://www.ecri.coe.int or are obtainable from the ECRI Secretariat.

Notes

1. Declaration and Plan of Action on combating racism, xenophobia, anti-semitism and intolerance, Appendix III to the Vienna Declaration of 9 October 1993, para. 3.
2. Ibid., para. 9.
3. The results of the Campaign are set out in *All Different, All Equal. A Sum of Experience*, Council of Europe publishing, 1996, 110 p.
4. See below.
5. Final Declaration of the Second Summit of Heads of State and Government of the member States of the Council of Europe, 11 October 1997.
6. Para. I (5) of the Action Plan adopted at the Second Summit of Heads of State and Government of the member States of the Council of Europe, 11 October 1997.
7. Ibid.
8. For further details on the work of ECRI, see the Internet site http://www.ecri.coe.int.
9. See European Commission against Racism and Intolerance, *Compilation of ECRI's general policy recommendations*, CRI (2000) 22, Strasbourg, May 2000.
10. See European Commission against Racism and Intolerance, *Annual report on ECRI's activities covering the period from 1 January to 31 December 1999*, CRI (2000) 20, Strasbourg, 27 April 2000.
11. European Commission against Racism and Intolerance, *Compilation of ECRI's general policy recommendations*, CRI (2000) 22, Strasbourg, May 2000.
12. European Commission against Racism and Intolerance, *Good practices: Specialized bodies to combat racism, xenophobia, anti-semitism and intolerance at national level*, CRI (99) 43, April 1999.
13. European Commission against Racism and Intolerance, *Legal instruments to combat racism on the Internet*, CRI (2000) 27.
14. For the text of these recommendations see the ECRI publication *Recommendations adopted by the Committee of Ministers of the Council of Europe in the field of combating racism and intolerance*, Strasbourg, 2000 (not yet published).
15. For the text of these recommendations see the ECRI publication *Recommendations adopted by the Committee of Ministers of the Council of Europe in the field of combating racism and intolerance*, Strasbourg, 2000 (not yet published).
16. For an overall presentation see the ECRI publication *Activities of the Council of Europe with relevance to combating racism and intolerance*, Strasbourg, 2000 (not yet published).
17. See below.
18. "The enjoyment of the rights and freedoms set forth in this Convention shall be secured 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, property, birth or other status".
19. See for example ECHR, 23 July 1968, so-called "Belgian linguistic" case, Series A Vol. 6, § 10.
20. See for example ECHR, 28 May 1985, Abdulaziz, Cabales and Balkandali v. United Kingdom, Series A Vol. 94, § 78.
21. See ECHR, 23 July 1968, so-called "Belgian linguistic" case, Series A Vol. 6, p. 69.
22. ECHR, 28 May 1985, Abdulaziz, Cabales and Balkandali v. United Kingdom, Series A Vol. 94, para. 72.
23. ECHR, 28 October 1987, Inze v. Austria, Series A Vol. 126, p. 18, para. 41.
24. ECHR, Grand Chamber, 6 April 2000, Thlimmenos v. Greece, para. 44.

25. See ECHR, 28 November 1984, Rasmussen v. Denmark, Series A Vol. 87, para. 40; ECHR, 28 May 1985, Abdulaziz, Cabales and Balkandali v. United Kingdom, Series A Vol. 94, para. 78; ECHR, 8 July 1986, Lithgow and others v. United Kingdom, Series A Vol. 102, para. 177; ECHR, 28 October 1987, Inze v. Austria, Series A Vol. 126, para. 41.
26. See ECHR, 23 June 1993, Hoffmann v. Austria, Series A Vol. 255 – C, para. 36; ECHR, 16 December 1997, Canea Catholic Church v. Greece, para. 47.
27. ECHR, 28 May 1985, Abdulaziz, Cabales and Balkandali v. United Kingdom, Series A Vol. 94, para. 78: "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention".
28. ECHR, 3rd section, 9 May 2000, Sander v. the United Kingdom, para. 23.
29. ECHR 23 September 1994, Jersild v. Denmark, Series A Vol. 298, para. 30.
30. See 7th International Colloquium on the European Convention on Human Rights, Copenhagen, Oslo and Lund, 30 May – 2 June 1990.
31. ECHR, 23 April 1996, Remli v. France.
32. ECHR, 3rd section, 9 May 2000, Sander v. the United Kingdom.
33. Article E – Non-discrimination, Part V, European Social Charter (revised) of 3 May 1996.
34. Additional Protocol to the 1995 Charter, coming into force on 1 July 1998.
35. See Lenia Samuel, *Fundamental Social Rights – Case Law of the European Social Charter*, Council of Europe publications, 1997, 450 pages.
36. See *Equality between women and men in the European Social Charter*, Human Rights – Social Charter Monographs No. 2, Council of Europe publications, Strasbourg, 2nd edition, 1999, 144 pages.
37. Preamble.
38. Article 5.
39. Article 3.

Common Problems Linked to all Remedies Available to Victims of Racial Discrimination*

Theo Van Boven

Introduction

It is assumed that remedies available to persons whose basic rights are violated, notably victims of racial discrimination, have primarily to be ensured within national legal and political orders. Such remedies include the right to have access to effective judicial and administrative procedures with a view to obtaining just and adequate redress. It appears, however, that in law and in actual practice, effective remedies are scarce or practically unavailing, in particular where victims belong to the most destitute and marginalized groups of society. This state of affairs defies basic standards of justice set forth in international human rights instruments and for that matter offends international human rights law. A common understanding is needed and common efforts have to be deployed, by means of enhancing international awareness and encouraging international cooperation, to strengthen the availability and effectiveness of remedies on behalf of those groups, communities and individual persons who have been and still are victims of persistent abuse, neglect, deprivation and discrimination. Therefore, while ensuring effective protection and remedies should basically be a matter of national responsibility, international cooperation and international monitoring are supplementary means to meet the requirements of the relevant international standards. In this regard the dynamics of inter-action between national and international levels are of great importance.

In the present context, the International Convention on the Elimination of All Forms of Racial Discrimination provides major directions. First, it is the most comprehensive international instrument dealing with issues of racial discrimination, both in scope and content. Ratified by some 153 States Parties as of 31 May 2000, the International Convention forms a common basis for national and international action. Furthermore, a collegial body of independent experts, the Committee on the Elimination of Racial Discrimination (CERD),

monitors the implementation of the Convention by the States Parties on the basis of close examination of periodic reports, the consideration of complaints (communications) submitted by individual persons, and by taking preventive action, including early warning and urgent procedures. Among other matters, this article will draw upon findings and opinions of CERD relating to the availability of remedies to victims of racial discrimination.

While all the provisions of the International Convention are interlinked and have to be assessed in their interrelationship, two clauses are of special interest for present purposes. Article 1, para. 1, defines the notion of racial discrimination in broad terms, referring to race, colour, descent, national or ethnic origin as non-discrimination grounds. This provision reads: "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

The other provision central to our concerns is Article 6 dealing with effective protection and remedies and just and adequate reparation or satisfaction. It reads as follows: "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination".

It should be recalled that the United Nations carries out pertinent work on remedies and recourse procedures, notably as part of earlier programmes to combat racism and racial discrimination. For instance, in a Seminar on Recourse Procedures Available to Victims of Racial Discrimination and Activities to be undertaken at the Regional Level (Geneva, 9-20 July 1979)[1] a detailed review took place on:

- Existing constitutional, legislative and administrative guarantees relating to recourse procedures for persons claiming to be victims of acts of racial discrimination;
- Conditions of availability and scope of recourse procedures open to persons claiming to be victims of racial discrimination and evaluation and effectiveness of such procedures;
- Activities at the regional level.

The views expressed at this seminar and the conclusions reached by the participants are still of considerable interest and will be referred to here. However, in the twenty years since then, new insights have been gained. Treat-based procedures and Charter based mechanisms placed greater focus on the

realities of racial discrimination existing in all parts of the world. Remedies have to be assessed against that background.

Moreover, in recent times, awareness of the rights and the position of victims is growing. The perspective of the victim is becoming a more apparent consideration in dealing with violations of human rights and international humanitarian law, including situations where there exist widespread policies and practices of racial discrimination, ethnic violence and religious extremism. Ethnic cleansing in defiance of all basic principles of the International Convention on the Elimination of Racial Discrimination is rampant in several parts of the world and victimizes numerous people, notably women and children. Thus, the victim's perspective prompted the undertaking of a United Nations study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. This study led to the drawing up of a set of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law[2]. These principles were adopted by the Commission on Human Rights at its 56th session by its resolution 2000/41. The Principles are of considerable interest for assuring remedies to victims of racial discrimination, including the right of victims to seek just and adequate reparation or satisfaction referred to in Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. They are part of the normative framework discussed below.

Normative Framework

Efficiency of remedies, notably the effectiveness of recourse procedures

The 1979 seminar on recourse procedures available to victims of racial discrimination referred to above, dealt extensively with the effectiveness of this type of remedy. To appreciate the effectiveness of these recourse procedures, a number of requirements deserve special attention, among them:

- Easy accessibility should be ensured, especially to those sections of the people who are likely to be victims of racial discrimination, citizens and non-citizens alike, individual persons as well as groups;
- Initiation of complaints should be simple and flexible and should be easily available to victims and, as appropriate, to a public agency or a third party;
- Dissemination of information concerning the availability of existing remedies, including recourse procedures, should be actively pursued through organizations, institutions and the media;

- Investigations should cover individual cases as well as situations which indicate practices of racial discrimination;
- Expeditious handling should be pursued with no undue delays and in all stages of the procedures;
- Interim measures should be ordered to avert or prevent irreparable damages;
- Legal aid and assistance should be provided for victims of racial discrimination and, where appropriate, the services of an interpreter are to be made available;
- Award of reparations for material and moral damages and suffering should be granted;
- Impartiality and independence of organs dealing with complaints are to be assured.

It is noteworthy that several international instruments have opened up the possibility – often on an optional basis as is the case in Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination – that victims invoke international recourse procedures. Wider acceptance and broader use of these additional recourse procedures should be strongly promoted.

Basic principles concerning specialized bodies

I do not intend to deal here with the variety of national institutions set up in several countries to assist victims of racial discrimination. Nevertheless, from the point of view of broader strategies to prevent and to combat racial discrimination, including remedies available to victims, the functions and responsibilities of specialized bodies at the national level, as outlined by the European Commission against Racism and Intolerance (ECRI), deserve special attention[3].

Highly important are the principles relating to composition, independence and accountability, as well as accessibility. For present purposes some of these functions and responsibilities are specifically mentioned because of their potential preventive and remedial effects. Among these are:

- Monitoring the content and effect of legislation and executive acts and making proposals, where necessary, for improving legislation;
- Advising the legislative and executive authorities with a view to improving regulations and practice;
- Providing aid and assistance to victims, including legal aid;
- Having recourse to the courts or other judicial authorities, as appropriate;
- Hearing and considering complaints concerning specific cases and seeking amicable settlements or binding and enforceable decisions;
- Providing information and advice to relevant bodies;

- Issuing advice on standards of anti-discriminatory practice in specific areas;
- Promoting and contributing to training of certain key groups;
- Promoting the awareness of the general public to issues of discrimination.

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law

Victims of racial discrimination, like all victims of violations of human rights, are not only entitled to effective protection and remedies but they have the right, pursuant to Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, to seek just and adequate reparation or satisfaction. If at all victims are awarded some form of reparation, the usual modality takes the form of monetary or compensatory awards. Such awards offer the victims a source of satisfaction in material, moral and psychological terms. It should be noted that in the law of reparations the first form of reparation is restitution aiming at the re-establishment of the situation that existed prior to the violation of human rights. It appears, though, that restitution is only feasible in specific circumstances; for instance, if as a result of racist policies or practices persons or groups of persons lose their employment, their housing, their property, their citizenship etc. In other cases redress must be obtained by compensatory measures, by rehabilitation programmes and by programmes and deeds of satisfaction as well as by guarantees of cessation and non-repetition of evil done. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, indicate a wide variety of forms of reparation. They state, *inter alia*:

- Restitution may require, as the case may be, the restoration of liberty, family life, citizenship, return to one's place of residence, and restoration of employment or property;
- Compensation may be provided for any economically assessable damage resulting from physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation or dignity, and costs required for legal or expert assistance, medication and medical services;
- Rehabilitation includes medical and psychological care as well as legal and social services;
- Satisfaction and guarantees of non-repetition should entail measures aimed at (a) cessation of continuing violations; (b) verification of the facts which should be fully and publicly disclosed; (c) an official declaration or judicial decision restoring the dignity, reputation and legal rights of the victim; (d) apology, including public acknowledgement

of the facts and acceptance of responsibility; (e) judicial or administrative sanctions against persons responsible for the violations; (f) commemorations and paying tribute to the victims; (g) inclusion in human rights training and in history or schoolbooks of an accurate account of the wrongs committed; (h) various policies and means to avert the recurrence of violations.

Actual Practice

The normative framework outlined above is significant in terms of entitlements, principles, guidelines and policy recommendations. Actual practice demonstrates that realities are highly troubling in many ways and that remedies are often unavailable, uncommon or unproductive. Mostly, patterns and practices of racial discrimination are intrinsically linked with structural patterns of injustice requiring structural solutions. In this respect remedial action requires a broad range of measures. Recourse procedures should form part of a comprehensive range of remedies. This is also borne out by the monitoring practice of CERD.

Some structural issues

The most marginalized and the most destitute

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance observed in a report on his mission to Brazil that the populations that suffer racism and racial discrimination are the most underprivileged; they lack education; they are ignorant of the law; in addition, they mistrust the courts[4]. Apparently these people – and this applies to most of the marginalized and underprivileged persons in many countries and continents – lack the benefit of legal and other remedies and, concurrently, they lack hope of improvement of their conditions. Even when cases of racism or racial discrimination are brought before the courts, the Special Rapporteur noted after his visit to the United States that victims do not always obtain redress, on account of the growing reluctance of many judges to take into account a racist intent or motive in dealing with complaints about racial discrimination[5].

One also wonders whether any remedies are available to undocumented persons, the *sans papiers*, who often contribute to the economies of industrialized countries but who undergo offensive and racist treatment in many ways. Even if they are aware of any available remedies or recourses, they fear intimidation, retaliation or expulsion and consequently they are virtually without protection and they lack the benefit of remedies.

Among the most unprotected and the most marginalized are women victims of trafficking and children. As a working paper prepared by the International Movement Against All Forms of Discrimination and Racism (IMADR) stated: "They [victims of trafficking] are often targets of racial discrimination and prejudice in the receiving country. They are also subject to many forms of physical and psychological violence including physical assault, starvation, forced use of drugs and alcohol, burning with cigarettes, rape, isolation in dark rooms, beating with hot irons and threats to the victims or their families" [6].

Again, remedies are hardly of any avail. As the same paper by IMADR observed, national policies criminalizing the trafficked victims instead of the traffickers – the latter cynically and contemptuously profit from the misery of people – deter the victims from reporting to the authorities. In criminal justice systems that are harsh and insensitive to the needs of women, and civil justice systems that do not facilitate redress for the wrongs done to the trafficked victims, these persons are reluctant to testify against exploiters[7]. Governments address these shortcomings by taking legal and other measures to ensure adequate protection and assistance, to provide civil damages and to promote the reintegration of the victims and survivors.

The above description of lack of protection and remedies, lack of rehabilitation and reintegration, lack of sensitivity of the legal system and judicial authorities, as well as a climate of fear, intimidation and retaliation is symptomatic for the situation in which the most marginalized and the most destitute find themselves without clear prospects of redress.

Shortcomings in law and practice

In study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, a review and analysis was made of national law and practice pertaining redress of wrongs and reparation to victims [8]. The general picture that emerges is not favourable. The findings of the study relate to victims of gross violations of human rights in general but it is obvious that these findings are also pertinent to victims of various forms of racial discrimination. The study states: "Large categories of victims of gross violations of human rights, as a result of the actual contents of national laws or because of the manner in which these laws are applied, fail to receive the reparation which is due to them. Limitations in time, including the application of statutory limitations; restriction in the definition of the scope and nature of the violations; the failure on the part of the authorities to acknowledge certain types of serious violations; the operation of amnesty laws; the restrictive attitude of the courts; the incapability of certain groups of victims to present and to pursue their claims; lack of economic and financial resources: the consequence of all these factors, individually and jointly, is that the principles of equality of rights and due reparation of all victims are not implemented. This deficiency is not only apparent within the national

context, it is even more glaring in the global context where millions of victims of gross violations of human rights are still deprived of any remedial or reparational rights and perspectives"[9].

Collective rights and affirmative action

The consequences of racial oppression and exploitation and of persistent racial discrimination have been victimizing over the years, and even over the centuries, masses of people. An obvious example concerns the victims of the slave trade and other early forms of slavery. This raises the issue of claims for redress and reparation by the African descendants of the slave trade. Another obvious example is the indigenous peoples who have been largely marginalized and whose land rights and rights relating to natural resources and the protection of the environment are vital to them. Among other categories of victims of persistent racial discrimination are the Roma (Gypsies).

As regards indigenous peoples, existing and emerging international law lays emphasis on the protection of their collective rights and stipulates the entitlement of indigenous peoples to compensation in the case of damages resulting from exploration and exploitation programmes pertaining to their lands and in case of relocation[10]. In its General Recommendation XXIII, adopted on 18 August 1997, CERD called upon States Parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their traditionally owned lands and territories or where they have been otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. CERD added that when, for factual reasons, this is not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation which should as far as possible take the form of lands and territories.

Particularly when collective rights are involved, redress and reparational action through the lodging of individual claims appear of limited avail. Adequate provisions should be made to honour collective claims and to obtain collective reparation. In this context more effective results may be expected from taking special measures – sometimes referred to as affirmative action – with a view to affording opportunities for self-development and advancement to groups who, following long periods of persistent racial discrimination and marginalization, have been denied such opportunities. Article 1, para. 4, and Article 2, para. 2, of the International Convention on the Elimination of All Forms of Racial Discrimination lay emphasis on such special measures to ensure the adequate development and protection of disadvantaged racial groups or individuals belonging to them. Such special measures by way of affirmative action are intended to have remedial effects and may serve the purpose of effective protection and remedies in a broader structural sense.

CERD's practice

In the examination of the periodic reports submitted by the States Parties on the measures taken to give effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD naturally reviews, together with the other provisions of the Convention, the implementation of Article 6 by the States Parties. CERD takes a particular interest in the availability and effectiveness of remedies, in cases that demonstrate the use of such remedies and that lead to reparation or satisfaction on the part of victims. One of the major problems encountered by CERD in assessing these issues is complete lack of information. Many if not most States Parties fail to provide the information as required and requested. Illustrative are the following concerns expressed in concluding observations by CERD:

- The lack of comprehensive information on instances in which complaints are lodged by individuals alleging acts of racial discrimination and on compensation paid to victims of such acts makes it difficult to assess whether the provisions of Article 6 of the Convention are implemented effectively in Algeria[11].
- With respect to Article 6 of the Convention, there is concern at the lack of legislative provisions to implement the right to just and adequate reparation or satisfaction for any damage as a result of acts of racial discrimination. Moreover, the absence of reported violations of Presidential Decree 1350-A (of the Philippines) to the courts, raises doubt as to the extent of the publicity given to and the effectiveness of available remedies for victims of racial discrimination[12].
- CERD regrets that there is still a lack of information on remedies filed, rulings handed down and compensation awarded for acts of racism, as well as on *amparo* proceedings instituted as a result of discrimination. In view of this lack of information, CERD has been unable to determine to what extent Article 6 of the Convention is effectively implemented in Argentina or to assess the role and the shortcomings of the judicial authorities in this regard[13].

It is noteworthy that CERD in its concluding observations relating to States Parties identified particular categories or groups of persons who were most in need of remedies but who appeared to be lacking the benefit of effective protection and remedies. On the basis of these concluding observations an illustrative (by no means exhaustive) list is given below regarding such vulnerable people and inadequate or ineffective remedies:

- Aboriginals land rights; protracted proceedings and exigent conditions – Australia[14].
- People of Serb origin and Roma (Gypsies); difficulties in obtaining justice – Croatia[15].
- Violence affecting peasant and indigenous groups; persistent pattern of impunity – Peru[16].

- Minority groups; no adequate redress for violations of their human rights – Federal Republic of Yugoslavia[17].
- Indigenous communities; lack of awareness about recourse procedures and weaknesses of judicial system – Guatemala[18].
- Inequitable treatment of indigenous people in the process of land distribution, including restitution – Mexico[19].
- Acts of violence, in particular affecting indigenous people; impunity, rare official investigations, questions about reparations and guarantees of non-repetition – El Salvador[20].
- Ill-treatment of foreign workers, including women domestic servants of foreign origin; insufficient remedies – United Arab Emirates[21].
- Expressions of racial hatred and acts of violence towards persons belonging to minorities, especially Roma (Gypsies), Jews and people of African or Asian origin; need for strengthening of measures of affirmative action – Hungary[22].
- Victims of deaths in custody affecting disproportionately members of minority groups; more expeditious investigation needed by independent inquiry mechanisms – United Kingdom[23].
- Discrimination against indigenous people, blacks and mestizos; need for equitable solutions for the demarcation, distribution and restitution of land – Brazil[24].
- Discrimination towards persons belonging to the scheduled castes and scheduled tribes; need to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims – India[25].
- Certain categories of foreigners, including those without legal status and temporary residents; no entitlement to redress for acts of racial discrimination – Germany[26].
- Victims of racism and xenophobia; questions about remedies – Ukraine[27].
- Indigenous population, the Black minority, refugees and immigrants; additional efforts needed to facilitate equal access to courts and administrative bodies – Costa Rica[28].
- Discrimination against the Roma; need for measures of affirmative action, especially in the areas of education and vocational training and enhancing their capacity to assert their rights – Romania[29].
- Discrimination against the indigenous population; formal apology and compensation recommended as a contribution to the process of reconciliation – Chile[30].
- Discrimination against the Afro-Uruguayan and indigenous communities; need to facilitate access to courts and administrative bodies – Uruguay[31].
- Life and well-being of the internally displaced, persons mainly belonging to the indigenous and Afro-Colombian communities; need for effective protection and remedies – Colombia[32].

- Persons belonging to ethnic minorities; need for equal access to the courts and administrative bodies and implementation of the right to seek just and adequate reparation – Azerbaijan[33].

The above list shows a wide range of people who, on the grounds of race, colour, descent, national or ethnic origin, are disadvantaged, excluded or threatened in their very existence and who are in need of effective protection and remedies. The list also shows that CERD is mindful of a great variety of remedial measures depending on the particular needs and conditions of the disadvantaged and victimized people. As stated earlier, remedies should be available both to collectivities and to individual persons. In examining reports by States Parties and in drawing up concluding observations, CERD focuses on patterns and practices of racial discrimination which affect whole categories of people or collectivities and groups. However, in the procedure provided for in Article 14 of the International Convention, CERD concentrates on individuals who claim to be victims of a violation of rights set forth in the Convention. The number of cases dealt with by CERD under Article 14 is still limited, but CERD, in its suggestions and recommendations pursuant to Article 14 (7(b)) of the Convention, expressed significant views on the issue of remedies in connection with specific cases. In conclusion, some of these views are cited.

In its opinion on communication N° 4/1991 (LK v. the Netherlands) concerning a Moroccan citizen residing in the Netherlands, CERD found that the police and judicial authorities had given inadequate response to incidents of which the petitioner had been a victim and that these authorities had failed to afford to the victim effective protection and remedies, within the meaning of Article 6 of the Convention. CERD suggested that the Netherlands should review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, and recommended that the victim be provided with relief commensurate with the moral damage he had suffered.

In two cases relating to Australia, communications N° 6/1995 and N° 8/1996, filed respectively by an Australian citizen of Pakistani origin and an Australian doctor of Indian origin, CERD did not come to the conclusion that the facts submitted disclosed a violation of the Convention. However, CERD expressed itself in critical terms on the delays and the complexities of the recourse procedures in the State party. CERD suggested that the procedures to deal with complaints of racial discrimination be simplified, in particular those in which more than one recourse measure is available, and any delay in the consideration of complaints should be avoided. CERD further recommended that Australia should make every effort to avoid any delay in the consideration of all complaints by the Human Rights and Equal Opportunity Commission.

Finally, in its opinion on communication N° 10/1997 (Ziad Ben Ahmed Habassi v. Denmark) concerning a Tunisian citizen residing in Denmark, who claimed that the Danish authorities had not properly investigated his complaint of discrimination after he was refused a bank loan on the sole ground of his

non-Danish nationality, CERD was of the view that the petitioner had been denied effective remedy within the meaning of Article 6 of the Convention. In an interesting follow-up development the State Party informed CERD of the measures it had taken. Thereupon CERD acknowledged this information and stated that the follow-up measures raised the issue of just and adequate reparation or satisfaction referred to in Article 6 of the Convention. CERD added that it expected to examine this issue both in general and in connection with the next periodic report of Denmark [34].

Consequently, at its fifty-sixth session in March 2000, CERD adopted General Recommendation XXVI on Article 6 of the Convention, in which it expressed the belief that the degree to which acts racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation is often underestimated. CERD further expressed the opinion that the right embodied in Article 6 is not necessarily secured solely by the punishment of the perpetrator of the discrimination and that, at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim.

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Notes

1. UN doc. ST/HR/SER.A/3
2. UN doc. E/CN.4/2000/62, Annex.
3. ECRI general policy recommendation N° 2: Specialized bodies to combat racism, xenophobia, antisemitism and intolerance at national level, Council of Europe doc. ECRI(97)36.
4. UN doc. E/CN.4/1996/72/Add. 1, para. 68.
5. UN doc. E/CN.4/1995/78/Add. 1, para. 104.
6. Strengthening the International Regime to Eliminate the Traffic in Persons and the Exploitation of the Prostitution of Others, A Working Paper Presented to the Working Group on Contemporary Forms of Slavery by the International Movement Against All Forms of Discrimination and Racism, Tokyo, May 1998, p. 3.
7. Ibid., p. 73.
8. UN doc. E/CN.4/Sub. 2/1993/8, Chapter VI, paras. 106-124.
9. Ibid., para. 124.
10. See ILO Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries, Articles 15 and 16.
11. UN doc. A/52/18, para. 394.
12. UN doc. A/52/18, para. 426.
13. UN doc. A/52/18, para. 549
14. UN doc. A/49/18, para. 544.
15. UN doc. A/50/18, para. 155.
16. UN doc. A/50/18, para. 186.
17. UN doc. A/50/18, para. 231.
18. UN doc. A/50/18/ para. 309.
19. UN doc. A/50/18, para. 386.
20. UN doc. A/50/18, para. 471.
21. UN doc. A/50/18, paras. 566-567.
22. UN doc. A/51/18, paras. 116 and 126.
23. UN doc. A/51/18, para. 242.
24. UN doc. A/51/18, para. 309.
25. UN doc. A/51/18, para. 365.
26. UN doc. A/52/18, para. 169.
27. UN doc. A/53/18, para. 155.
28. UN doc. A/54,18, para. 203.
29. UN doc. A/54/18, para. 286.
30. UN doc. A/54/18, para. 377.
31. UN doc. A/54/18, para. 431.
32. UN doc. A/54/18, para. 478.
33. UN doc. A/54/18, para. 499.
34. UN Doc. A/54/18, para. 552.

Racial Discrimination against Vulnerable Groups: an Examination of Recourse Procedures and Remedies for Indigenous Peoples, Minorities, Migrants, Refugiees, Asylum-Seekers and Non-Nationals in General*

Asbjørn Eide

Introduction

Importance

The Universal Declaration of Human Rights was proclaimed in 1948 as a "common standard of achievement for all peoples and all nations" and that by "progressive measures, national and international", their universal and effective recognition and observance should be ensured. The focus here is on the effective observance. An essential requirement for that purpose is the need for effective remedies in cases of violations. This was recognized in the Universal Declaration which, in its Article 8, states that: "Everyone has the right to an effective remedy by the competent tribunals for acts violating the fundamental rights granted by the constitution of law". The concern was then with the rights in domestic law, and its significance would depend entirely on the degree to which satisfactory human rights were included in the national legal system. In the years which have since passed, the main effort has been to elaborate and consolidate a comprehensive system of human rights standards and to promote their implementation in domestic constitutions or laws . Part of that effort is to ensure that effective remedies exist under domestic law for violations of internationally recognized human rights.

The reality, unfortunately, is that human rights are often violated in many parts of the world, and remedies are insufficiently developed. In many places they exist on paper, but only with a limited scope which fall short of international requirements. More serious is the fact that members of many vulnerable groups have great difficulties in obtaining access to effective remedies even where these do exist on paper.

The promise and reality of remedies for vulnerable groups

This article examines the promises of remedies in relation to a set of vulnerable groups: the non-dominant indigenous peoples who have been marginalized by the dominant society; the migrants, national or ethnic and linguistic minorities, refugees, asylum-seekers and other non-citizens ("aliens"). We are here dealing with the most serious fault-lines of human rights protection. The focus here is mainly on the normative requirements, but some general observations are made also in regard to the problems which make the remedies ineffective even when they are available. A more comprehensive empirical study would be required to determine with precision how the remedies work for these groups. That task, which is highly desirable, is beyond the scope of the present article.

Conceptual

The word "remedy" covers two aspects: the procedural question of a right to recourse and the material or substantive question of reparation. The two are often interlinked. In some cases the absence of appropriate recourse procedures can be a violation in itself even if the underlying substantive issue does not constitute a violation.

The procedural issue covers the right to challenge a decision before it is implemented – which may also imply that the decision cannot be made unless it conforms to a certain procedure which meets conditions of availability and effectiveness, including a decision by a court – as well as the right to bring a complaint when a violation has been committed, or is alleged to have been committed, to international bodies.

A right to challenge a decision before it is implemented applies mainly at the domestic level, and only when there is a subjective right in domestic law, but on occasion the international bodies (in particular the Council of Europe) has been requested and sometimes have accepted to demand interim measures or a provisional stay of execution of a decision until the substantive issue has been decided upon. A complaint to the international body normally occurs when a violation has been committed. But the international institutions are not an appellate body; they do not take their position on the basis of domestic law but on international human rights law. Remedies in terms of reparation can be requested when an international human right has been violated, even if it has not been made a subjective right in national law or suspended in national law.

In light of the glaring failures in the past to make reparations for massive violations, Theo van Boven (see infra) did pioneering work as a member of

the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It led to the elaboration of the Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, which were adopted by the Commission on Human Rights at its 56th session by its resolution 2000/41.

Van Boven outlined the criteria for effective remedies. These include easy accessibility, simple and flexible initiation of complaints, dissemination of information concerning the availability of remedies, investigations, expeditious handling, interim measures to prevent irreparable damages, legal aid and assistance, award of reparations, and the impartiality and independence of the bodies dealing with the complaints.

International human rights law on remedies versus the reality faced in practice

The law

Under conventional international law, several general provisions can be found on the right to remedies. The main provisions are found in the Universal Declaration of Human Rights, Article 8, the International Covenant of Civil and Political Rights, Article 2.3, and in comparable provisions in the regional instruments, such as the American Convention on Human Rights, Article 26, the European Convention on Human Rights and Fundamental Freedom, Article 13, and the somewhat less precise formulation in the African Charter on Human and Peoples' Rights, Article 7. Others deal specifically with remedies regarding racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination, Article 6) or are directly related to the different groups here under consideration (indigenous peoples, for example International Labour Organisation (ILO) Convention N° 169, Article 12, refugees, asylum-seekers, migrants and other aliens).

The most elaborate provision is found in the International Covenant on Civil and Political Rights, Article 2, para. 3, under which the State Parties to the Covenant have undertaken: "(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted".

Ratification

Since we are here concerned with the availability of effective remedies, their inclusion in international human rights law is only the first step in the process. The next question we have to ask is whether the State concerned has ratified the convention concerned. Some 50 States are still defaulters in the sense that they have not ratified the two International Covenants on Human Rights; with regard to the other instruments, the numbers vary, as will be discussed below.

Domestic implementation

States are legally bound to respect and ensure the rights contained in the instruments to which they have become parties, and to implement the obligations under them in good faith. In particular, the right to remedies should be incorporated in domestic law and the necessary institutions be set up and trained to fulfil their remedial functions. The degree to which this is done varies greatly; it should be one of the tasks in the preparation of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to obtain detailed information on the provisions of domestic law regarding remedies.

Application and enforcement

Even if the State concerned has included provisions in its constitutional or statutory law, there is no guarantee that it is applied and enforced in practice. It depends both on the resources and knowledge of the victim, the availability of legal aid, and very much depends on the commitment, independence and impartiality of the bodies to whom the claim for remedy is addressed.

Normal and abnormal situations

The conditions under which remedies are available and effective depends on the prevailing situations. Where there is general rule of law in a functioning, stable democracy, the prospects for effective remedies are, naturally, considerably higher than in various forms of abnormal situations. On the one hand, there are the situations where a large part of the normal legal order is suspended, such as during reigns of military regimes (Chile under Pinochet, Argentina during the “dirty war”) etc. On the other are the situations of serious racial or ethnic tension, such as during the apartheid regime in South Africa or in the context of ethnic conflicts in Burundi, Rwanda or the former Yugoslavia. When situations develop into internal armed conflicts, further and more serious abnormality arises, causing massive refugee flows and internally displaced persons, sometimes deliberately so in terms of ethnic cleansing. Even when the violence has ended and efforts at peace-building start, abnormal situations often face those who seek to return to their places of origin and try to regain their property and other rights they enjoyed before.

Derogation

When there is a situation of emergency which threatens the life of the nation, some measures of derogation can be made from human rights norms (International Covenant of Civil and Political Rights, Article 4 and comparable provisions in regional instruments). Some of the provisions related to due process and rule of law can be temporarily suspended, if this is strictly required by the exigencies of the situation. Some rights are non-derogable, however, such as the right to life, freedom from torture and freedom of religion and belief. States are required to maintain the necessary remedies in cases of violations of non-derogable rights. Of relevance to the present article is also that the measures of derogation must not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin. It is therefore entirely unacceptable if the authorities maintain a functioning rule of law for the hegemonic group in society and neglect fundamental aspects of such obligations in regard to minorities and such other vulnerable groups as those addressed here.

Resourceful versus vulnerable groups

The availability of effective remedies depends much on the resources of the victims, whether it be resources in terms of knowledge and information about the availability of remedies, or their physical or economic (lack of) security.

Discrimination within the bodies set up to provide remedies

One of the most fundamental issues is whether the judiciary, the police and other law enforcement agencies, and – where they exist – also ombudspersons, human rights commissions and other bodies are genuinely impartial, and where required also are able to take the necessary remedial measures of affirmative action required to ensure equality in fact. The record in this regard is, at best, rather mixed, and a pervasive problem is that the police and other security forces are often biased against the vulnerable groups.

Indigenous peoples

The definition of indigenous peoples

Article 1 of ILO Convention N° 169 concerning Indigenous and Tribal Peoples defines indigenous peoples as those who are considered indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their

legal status, retain some or all of their own social, economic, cultural and political institutions. Another common feature defining indigenous peoples is that they are non-dominant in the society in which they live, that is in the country as a whole.

Remedies for violations of their individual rights

Persons belonging to indigenous peoples are normally also citizens of the country in which they live, and they are therefore, in principle, entitled to all individual rights contained in the International Bill of Rights, including the right to effective remedies. They are often in vulnerable positions, however, due to a lower level of literacy and education and weaker economic positions in society. This, in turn, is at least in part due to present or past discrimination.

Remedies in regard to the right to special measures (affirmative action)

Because persons belonging to indigenous peoples often are faced with discrimination on racial or ethnic grounds, the International Convention on the Elimination of All Forms of Racial Discrimination is applicable to them. States Parties to the Convention are therefore obliged to abstain from any discriminatory action against them and to prohibit and bring to an end racial discrimination against them by any person, group or organization (Article 2, para. 1 (a) and (d). But State obligations do not stop there: They shall also adopt special and concrete measures (often referred to as affirmative action) to ensure the adequate development and protection of the indigenous groups for the purpose of guaranteeing the full enjoyment of all human rights. The purpose of such measures is thus to ensure equality in fact, and such measures shall be discontinued when equality has been reached. Under the International Convention on the Elimination of All Forms of Racial Discrimination Article 6, States shall ensure to everyone, including members of indigenous peoples, effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination and to seek reparation as a result of such discrimination. This must be understood as a right to remedy and reparation also when the required affirmative actions have not been taken. In practice, there is often a lack of will within the dominant part of the society and the authorities to fully accept their obligations under these provisions, and the indigenous peoples are often too vulnerable to persist in pushing their claims.

Remedies in regard to their rights as members of ethnic minorities

Indigenous peoples are in most cases numerically ethnic minorities within the country in which they live. They are thus entitled to all the rights established under international law for persons belonging to national or ethnic, religious or linguistic minorities. In particular, they are entitled to avail themselves of the International Covenant on Civil and Political Rights, Article 27, and they shall therefore not be denied the right to enjoy their own culture, to practice their own religion, or to use their own language. In regard to that right they can therefore also avail themselves of the wide-reaching right to remedies set out in the International Covenant of Civil and Political Rights, Article 2, para. 3. The treaty body set up to monitor the implementation of the International Covenant on Civil and Political Rights, the Human Rights Committee, has made it clear that in regard to indigenous peoples, Article 27 requires that States take active measures ensuring the material conditions necessary for the indigenous peoples to maintain their own culture. Failure by the State to take such measures may therefore give rise to claims for remedy under Article 2, para. 3.

Remedies in regard to their specific rights as indigenous peoples

In recent years, efforts have been made to provide specific protection to indigenous peoples, beyond what they can enjoy under the instruments discussed above. A draft declaration on the rights of the indigenous peoples has been adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now entitled the Sub-Commission on Promotion and Protection of Human Rights) and it is presently under discussion in the Commission on Human Rights. In 1989 ILO Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries was adopted, which sets out important land rights and autonomy, education, and general policy matters towards the indigenous peoples, in addition to the more traditional ILO concerns with rights in employment, training, social security and health. Under its Article 12, indigenous peoples shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. This is an important provision whose full implications remain to be drawn. Unfortunately, until now only a small number of States have ratified the ILO convention.

National, ethnic or linguistic minorities

Remedies for individual human rights

Persons belonging to national, ethnic or linguistic minorities are, in most cases, citizens of the country in which they live. In terms of law, they have the same rights as others to remedies in case of violations of their individual human rights. In practice, however, their remedies are often not as effective as those of the members of the majority, in particular when the latter has a hegemonic position in society. Special efforts are therefore required to provide them with adequate remedies. In some countries, special bodies or mechanisms have been set up for this purpose. A pioneer in this respect was the establishment in Sweden of the Ombudsman against Ethnic Discrimination.

In Norway, a somewhat similar mechanism was set up by a decision of Parliament in 1998, establishing the Centre for Combating Ethnic Discrimination. Its task is to improve the effectiveness of remedies by improving the legal assistance available to persons who suffer from ethnic discrimination and to monitor the situation with respect to the nature and scope of discrimination. The Centre is governed by a board half of whose members come from ethnic minorities.

It is indeed very important for remedies to be available for minorities that they are represented in the institutions administering the remedies. This is a conclusion reached also by a study by the ILO entitled "Affirmative action in the employment of ethnic minorities and persons with disabilities" published in 1997, in which it is stated in the conclusions that involvement of the stakeholders (that is representatives of the minorities themselves) in the planning, implementation, monitoring and evaluation is essential for the effectiveness of the measures.

Remedies for collective rights and rights which are mainly enjoyed only in community with others

The concept of collective rights is controversial and will not be discussed here. What is clear, however, is that some rights are mainly applicable only when they can be enjoyed in community with others. Many of the rights established for persons belonging to national or ethnic, religious or linguistic minorities fall in this category, be it in the International Covenant of Civil and Political Rights (Article 27), the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities of 1992, the Organization for Security and Co-operation in Europe documents on minorities (particularly the Copenhagen document of 1990) or the European Framework Convention on the Rights of National Minorities of 1994. In terms

of human rights law, remedies for violations of the rights under the International Covenant of Civil and Political Rights (Article 27) have to be secured in accordance with its Article 2, para. 3. In practice, however, remedies are weak and insufficient. One reason is that the interpretation of Article 27 is the subject of some controversy, and that doubts persist even after the adoption of the 1992 Declaration which should guide the understanding of Article 27. The main reason why remedies are weak for collective rights is the reluctance of majorities to fully accept such rights. For that reason, it is of particular importance that international monitoring and international remedies exist. The role of the United Nations Human Rights Committee is essential in this regard, including its role under the First Optional Protocol to the International Covenant of Civil and Political Rights to deal with communications relating to Article 27. Several such communications have resulted in the finding of violations of that article. The activities of the Committee on the Elimination of Racial discrimination (CERD) are also important both in terms of monitoring and in addressing individual complaints under the optional Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. The United Nations Working Group on Minorities has a more informal, but important role to play in this regard, particularly in developing policy proposals for more effective implementation of the rights contained in the 1992 Declaration.

Migrant workers

Migrant workers and their families, who are usually not citizens of the country in which they live, are often exposed to exploitation, xenophobia, racism and expulsion. Some distinctions are necessary, however.

"Regularized" versus "unaccounted" migrants

Here reference will be made to those migrants who are "regularized" and therefore lawfully within the country; subsequently the particular problems of those who are in an irregular position – the so-called "unaccounted" migrants – will be discussed. Being in a "regularized" situation implies that the host country has some legislation or regulation which contain the conditions for entry in work in the country concerned, but which also establishes the rights that the migrants shall enjoy. The United Nations human rights bodies and the International Labour Organisation has been concerned over many years with the elaboration of standards which should be implemented and applied by States in their protection of migrant workers, including availability of remedial action in case of violation. The task is far from completed, however. It has been noted on many occasions that migrant workers in some countries suffer *de facto* discrimination even when legislation is in place. Governments have repeatedly been requested to make arrangements for information and reception facilities

and to put into effect policies relating to training, health, housing and educational and cultural development for migrant workers.

The law

Several ILO Conventions, in particular N° 97 and N° 143, deal with the rights of migrant workers. ILO Convention N° 97 on Migration for Employment has been ratified by 41 States and ILO Convention N° 143 on Migrant Workers (Supplementary Provisions) has been ratified by 18 States. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted by the United Nations General Assembly in 1990 but which has not yet entered into force, provides more extensive rights than the ILO standards. Unfortunately, it has been ratified only by 12 States and these are all mainly sending States, not States which receive migrant workers. To enter into force, 20 ratifications are required, but it will be of little use unless it is also ratified by countries which host significant number of migrants. Several factors have caused such States to be reluctant in ratifying it such as international economic, social, and political instability, compounded by declining levels of employment due to less labour-intensive patterns of production and transfer of production from the industrialized to less industrialized countries. Migrants arriving in great numbers when employment is on the increase are the first to lose their job when employment decreases.

Under Article 83 of the United Nations Migrant Workers Convention, States Parties to it undertake to ensure effective remedies to any person whose rights or freedoms as set out in the Convention are violated. Those who seek remedy shall have the claim reviewed and decided upon by competent judicial, administrative or legislative authorities, or by any competent authority provided for by the legal system of the State. Judicial remedies should be developed. When remedies are granted, competent authorities shall enforce the remedy.

European migrants

Under the European Social Charter of the Council of Europe, Article 19 deals with migrant workers and members of their families, but it is limited in its scope to migrants who are citizens of other Contracting States, that is those European States which have become party to it. Such migrants have a relatively strong position under the Charter. Under its Article 19, para. 7, they are entitled to treatment no less favourable than the nationals of the country concerned to legal proceedings relating to matters referred to in Article 19. This implies, *inter alia*, that free legal aid must be given to migrant workers under the same conditions as they are given to nationals of the country concerned. Comparable provisions are found also in the European Convention on the Legal Status of Migrant Workers of 1977, which is also limited to nationals of a Contracting State Party authorized by another Contracting State Party to reside in its territory to take up paid employment. Migrant workers coming from third

States, those who are not party to these conventions, cannot avail themselves of the protection offered by these conventions, but the State in which they reside is, of course, also free to extend such protection to other migrant workers.

New initiatives

In 1997, the United Nations Commission on Human Rights established a working group of intergovernmental experts on the human rights of migrants with a mandate to: (a) gather all relevant information from Governments, non-governmental organizations and any other relevant sources on the obstacles existing to the effective and full protection of the human rights of migrants; and (b) elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants. The Commission decided in 1999 to replace the working group by a Special Rapporteur on the human rights of migrants.

Migrant workers face a threat which is common to all aliens: the threat of expulsion. The conditions under which they can be expelled has serious consequences for their sense of security in the country in which they live. It is discussed below under "Remedies against discrimination for aliens in general".

Unaccounted and trafficked migrants

Special difficulties in establishing effective remedies arise for persons who have arrived clandestinely or been smuggled into a country and who are therefore not lawfully resident there. Under international law, States may condition the entry of foreigners into their territory upon their consent, and they can limit the period of stay and prohibit the engagement in gainful employment unless specific work permits are issued. Undocumented aliens, that is those who have not obtained the necessary consent for arrival or who have violated the conditions, face grave risks to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law. One purpose of the adoption of the United Nations Migrant Workers Convention was to discourage illegal migration, as set out in its Article 68, which requires States Parties to collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation.

Some irregular migrants have been brought there under false promises of employment in respectable jobs, but after arrival they discover that they are subject to exploitation and, particularly for women, to prostitution. In many countries, large proportions of prostitutes are illegal immigrants – often trafficked women and girls. Women and children become vulnerable to trafficking because of social inequality and the vast economic disparity between rich and poor States and within States.

Considerable efforts have gone into standard-setting to combat this evil. The problem, however, is to find the appropriate remedies for this tragic and slavery-like phenomenon. Such persons are in a particularly difficult situation. If they complain to the authorities of the illegal exploitation to which they are subjected, they risk being expelled since they are illegal entrants. Expulsion may place them in very difficult circumstances in their home country. This is particularly true for those who have been forced into prostitution or criminal activities.

Under the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Trafficking Convention) (Article 17), States Parties undertake to check the traffic in persons of either sex for the purpose of prostitution and to enact legislation to protect women and children while travelling, to warn the public of the dangers of trafficking, to take measures to prevent trafficking at ports of entry, and to make sure that the proper authorities are aware of the arrival of women who appear to be trafficking victims. Similar obligations are set out in the Convention on the Elimination of All Forms of Discrimination against Women, Article 6, and the United Nations Convention on the Rights of the Child, where States are required to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35) and to protect the child against all forms of exploitation prejudicial to any aspects of the child's welfare (Article 36).

The ILO, the United Nations High Commissioner for Refugees (UNHCR), the Organization for Security and Co-operation in Europe (OSCE), the European Union and other organizations have devoted particular attention to irregular migration. The International Programme on the Elimination of Child Labour (IPEC) of the ILO has been actively involved in action against child trafficking both at the national level and sub-regional levels.

The issue should be given serious attention at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. A two-pronged approach is required. Measures to combat exploitative smuggling and trafficking of persons, and measures to help those victims who in spite of this have been smuggled into the country and have stayed there for some time, making it inappropriate to return them to their country of origin. The task should be to bring them out of their condition of prostitution or other criminal or degrading circumstances and to obtain education and jobs by which they can enjoy an adequate standard of living. States should undertake to provide victims of sexual exploitation, including prostitution and traffic in women, with refuge and protection and to repatriate those who desire to be repatriated. Remedies need to be developed which make it possible for such persons to reveal their exploitative circumstances without risk. This will also make it possible to identify the persons who engage in exploitative trafficking and remove their economic incentives.

Problems similar to those described for unaccounted migrants apply in countries where there are few or no standards set for the reception and treat-

ment of migrants. In the absence of standards they can be subject to arbitrary treatment including expulsion. Such conditions can facilitate exploitation in the workplace and elsewhere due to their almost complete lack of legal security.

Refugees

The law

As soon as a person is recognized as a refugee and allowed to enter a country which is not his or her own, the refugee is entitled to most of the rights contained in several of the international human rights such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights. As soon as a person is on the territory of a State Party to these conventions and is subject to the jurisdiction of that State, the obligation to respect and ensure the rights contained in those instruments extends also to the refugee. The right to a remedy in case of violations therefore extends, in principle, also to the refugees. But the receiving State is entitled to set conditions for entry, and some of those conditions may constitute significant limitations in their rights. The International Convention on the Elimination of All Forms of Racial Discrimination allows for distinctions to be made between citizens and non-citizens, which therefore also can affect refugees, but the International Convention does not allow distinctions to be made between different sets of refugees on the basis of race, colour or ethnic origin. Consequently, its Article 6 on remedies may be applicable also for refugees should they complain of racial discrimination.

The vulnerable situation of refugees requires specific standards for their protection. The main instruments are the United Nations Convention Relating to the Status of Refugees of 1951 in conjunction with the Protocol relating to the Status of Refugees of 1966. The Convention prohibits discrimination as to race, religion or country of origin, and sets standards regarding juridical status including access to a court, which implies a right to remedy. Among the other standards are provisions on gainful employment and on administrative measures.

The interpretation of the definition in Article 1 of the Convention Relating to the Status of Refugees is subject to much controversy and has been narrowly interpreted in recent years by European States in order to stem the flow of asylum-seekers. The Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity (OAU) contains less explicit standards of treatment but has a broader definition of the term “refugee”.

Among the many problems faced in practice by refugees, two are particularly serious. One is their situation while in refugee camps; the other is the threat of expulsion. Refugee camps are an unavoidable device in cases of mass refugee flows, and are mainly set up in countries bordering the State from

where the refugees come. Among the many tragic aspects of refugee camps, which include inadequate food and housing, the breakdown of familial and social structures, and the loss of meaningful occupation, is also a high rate of sexual and domestic violence against women and girls in these camps. It has been reported that neither the staff of the UNHCR nor those of the government has been able or willing fully to address this issue. The perpetrators of such crimes are not prosecuted, and remedies are not available to the women and girls subject to such violations.

The other major problem facing the refugees is the danger of expulsion. Under the United Nations Convention relating to the Status of Refugees, Article 32, a refugee lawfully in the country shall not be expelled save on grounds of national security or public order. A decision to expel requires due process of law, and the refugee shall normally be allowed to submit evidence to clear himself and to appeal to a competent authority designated for that purpose. However, the notions of "national security" and "public order" may leave a wide discretion to the authorities of the host government. The refugee cannot be expelled or returned ("refouler") to a country or territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33, para.1). But this provision is not applicable when there are reasonable grounds for regarding him as a danger to the security of the country or when he has been convicted of a particularly serious crime and considered a danger to the community of that country.

Another problem facing some of the refugees is that they are liable to be attacked and possibly assassinated by opponents coming from the country from which they have fled. Sometimes that threat emanates from the authorities of the country of origin, and sometimes from competing groups within an ethnic group fighting the government of the country of origin. The authorities of the refugee-receiving countries are only to a very limited extent able or willing to ensure protection in such cases, and remedies are therefore often not available.

Asylum-seekers

The law

For a refugee to enjoy and exercise fundamental rights and freedoms, admission – somewhere – is required as the first step. The Universal Declaration of Human Rights proclaimed the right to seek and to enjoy asylum, but not a right to obtain it. No corresponding provision has been included in the International Covenant of Civil and Political Rights. In the 1969 American Convention on Human Rights, Article 22, para. 7, and in the 1981 African Charter on Human

and Peoples' Rights, Article 12, para. 3, every person has the right to seek "and be granted asylum in a foreign country, in accordance with the legislation of the State and international conventions". Since the granting depends on the national law, there is no obligation outside that law. Thus it remains the prerogative of the country of entry to decide whether asylum should be given.

A few States have, by national constitution or by law, established a right, under some specified conditions, to receive asylum. These include Denmark, France, Germany, Slovakia. In these cases there is also a right to appeal a refusal by the authorities to grant asylum

In international law, the only legal obligation is found in the 1951 United Nations Refugee Convention, which requires States not to return or expel ("*refouler*") a refugee and by implication also an asylum-seeker to a country where his life and freedom may be threatened. In regard to asylum-seekers and refugees who have arrived in countries party to the European Convention on Human Rights and Fundamental Freedoms, its Article 3 has obtained some significance. Under that article, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". The article has been interpreted to imply that governments of the receiving country cannot send a person back to a country where he/she can risk torture. The provision is more important than Article 33, since the latter does not have effective remedies. There are, however, serious limitations in using remedies in relation to the European Convention on Human Rights, Article 3, since remedies under Article 13 of that Convention require that there is a violation of a right, while the situation when the authorities want to return an asylum-seeker or refugee is that a violation results only if, upon return, the person is subjected to torture. Prediction of such future events often gives rise to uncertainty at the time of expulsion, and the European Court has been cautious in overruling the assessment made by the host country in this regard. The remedy is therefore not a very effective one.

The right to seek asylum, proclaimed in the Universal Declaration, would in practical terms require that the asylum-seeker could at least reach a country where he or she would try to obtain asylum. Many countries, including most of the Western European States and the United States of America, have in recent years implemented what amounts to a "non-admission" policy, which takes many forms: visa requirements combined with carrier sanctions, the creation of international zones in airports or isolation of applicants and processing of applications for asylum at military bases abroad. This has led to a very significant decrease in the number of asylum-seekers reaching these countries, in spite of the fact that the number of refugees in Europe and throughout the world increased substantially during the same period. The consequence is that the asylum-seeker can reach only a country bordering their own, which places an enormous burden on that neighbouring country. Neighbouring countries therefore often take the precaution of tightening up border controls so as to deny admission to persons without a valid passport and visa for a third country, and the net outcome is that would-be refugees are prevented from leaving their

home countries and have to face their persecutors at home. The lack of availability of remedies for asylum-seekers should therefore be seen as one of the major problems in international protection of human rights.

It should be underlined that exploitative smuggling of persons discussed above is fundamentally different from assistance given by private parties to help refugees flee their country when it is in turmoil, and reach the borders of countries where they may be safe. One such person, set in the context of the French revolution, was made famous in the novel *The Scarlet Pimpernel* by Baroness Orczy. Numerous unsung heroes of many subsequent conflicts have saved the life of thousands.

Remedies against discrimination for aliens in general

Towards equal enjoyment of human rights

As noted above, international human rights standards have at the normative level significantly reduced the difference in rights between citizens and non-citizens. There still remain important differences, however. The issue was the subject of a working paper by David Weissbrodt for the Sub-Commission on Promotion and Protection of Human Rights, presented to the 1999 session with references, *inter alia*, to the work of CERD in this regard.

In terms of human rights law, three differences are of great significance: Aliens are not entitled to enter a country other than their own (though normally, permanent residents have a right to re-enter their country of residence even if they are not citizens); aliens can be expelled from their country of residence, and aliens do not have political rights to vote and be elected, or to obtain and hold public office (International Covenant of Civil and Political Rights, Article 25). These differences can have serious consequences for the individual and for groups of resident aliens.

Discrimination in access to citizenship

Under the Universal Declaration of Human Rights, Article 15, everyone has a right to a nationality, but this provision has not been followed up by binding international standards. Special problems arise in cases of state succession and State restoration, when part of the resident population is not enfranchised (given citizenship). The problem has arisen mainly in the context of decolonization and the dissolution of larger entities, but has occurred also under other circumstances. Denial of citizenship can at its extreme lead to forcible removal, mass expulsion, or ethnic cleansing but, as a minimum, it causes difficulties for the non-enfranchised resident in obtaining public positions and be an active

partner in the political processes of the country of residence. The denial of access to citizenship are *de facto* often directed against ethnic minorities, even when the legislation *de jure* does not say so. In the absence of clear international norms on the right to nationality (citizenship) and on State obligations in this respect, there are no internationally imposed standards on deprivation thereof.

In 1997, the International Law Commission adopted a set of Articles on the Nationality of Natural Persons in Relation to the Succession of States, which provide guidelines for allocation of citizenship. One of them is that decisions regarding application for citizenship shall be made quickly in writing and be subject of administrative review. There is also the European Convention on Nationality adopted in 1997. which contains important guidelines. Under Article 5 (Non-discrimination), it is provided that the rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin, and that each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently. Under its Article 12 (Right to a review), each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

Remedies against expulsion

Under the International Covenant of Civil and Political Rights, Article 13, an alien lawfully in the territory of a State Party to the Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority. Comparable provisions are found in the Convention Relating to the Status of Refugees, Article 22, and in regional instruments such as Article 1 of Protocol N° 7 to the European Convention on Human Rights. These remedies are fairly weak because it is left to the national authorities to determine the conditions of expulsion, and there is no requirement for a judicial procedure to review the decision to expel the alien. Furthermore, even this modest remedy can be denied before the expulsion takes place, if this is considered necessary in the interest of national security or even – in the European provision – if it is in the interest of public order. But the general principle of non-discrimination has to be respected. Acts of expulsion which have the effect of discrimination on the grounds of race, colour or ethnicity constitute a violation (International Covenant of Civil and Political Rights – Article 2 and European Convention on Human

Rights – Article 14). It would be very difficult in most cases, however, to marshal the necessary evidence of discrimination.

Detention and imprisonment: Inadequate remedies

In recent years, there has been a steep increase in the percentage of aliens under detention or imprisonment in industrialized countries, and a large part of that increase consists of persons coming from ethnic or racial groups different from the majority in the country where they are detained. Two different circumstances need to be addressed in this connection.

One set of problems concern persons who are detained as asylum-seekers or who, while not being asylum-seekers, have made or have attempted to make an illegal entry into the country. In some places, such persons are detained, sometimes for prolonged periods, pending the determination or their status under applicable law. That determination may lead either to permission to reside in the country or to deportation. In some cases the person is detained because the authorities do not believe the information given by the detained person as to his or her identity, or where the person refuses to reveal the identity. This set of issues is now under consideration by the United Nations Working Group on Arbitrary Detention, which has expressed concern about the lack of adequate remedies during such detentions, and which has addressed a number of issues aimed at improving the effectiveness of remedies.

Imprisonment of aliens following conviction for criminal acts

The second category within the growing number of detained aliens are those who have been convicted of crimes and who are serving terms in prison. Undoubtedly, in many cases there are objective reasons for this. Many are involved in drug traffic or other criminal activities. There are also expanding international Mafia networks, but there may also be other and more worrisome factors at work. Visible aliens are more easily singled out for suspicion. They may have less resources to defend themselves against unjustified prosecution. There is also the possibility that continuous social discrimination and degrading treatment generates anger and hatred which eventually leads to criminal acts. This is an indication that polite treatment by public authorities and law enforcement agencies may in itself be a crime-prevention measure, and underlines the need for effective remedies whenever public authorities behave in a discriminatory and derogatory way.

Conclusion

The project which was started with the adoption of the Universal Declaration of Human Rights in 1948 was to move towards a social and international order in which all the rights contained in the Declaration could be enjoyed by everyone, based on the principle that everyone shall be free and equal in dignity and rights. The pursuit of equality is addressed by the principle of non-discrimination and by special measures to extend equality to members of groups which are still in a vulnerable position. For this to move from promise to reality, effective remedies are essential.

It has been shown in this paper that there has, on the level of standard-setting, been an increasing attention to provide for remedies, but there remain significant gaps of protection in some of those standards. More importantly, accessibility to the remedies is often difficult, and inadequate efforts have been made to disseminate to the members of the vulnerable groups information concerning their existence and availability. Authorities often fail to conduct with impartiality the investigations required to determine whether violations have occurred. Interim measures to prevent irreparable damages are rarely adopted. The major problem is the lack of impartiality and independence of the bodies dealing with complaints. Xenophobia and racism are on the increase in many countries, and relevant authorities sometimes yield to the pressure of public opinion.

While progress therefore appears to be slow, it should not lead to despair. A gradual and positive impact of the standards adopted and of their gradual incorporation in domestic law and practice exists. There is reason to believe that the protection of the human rights of vulnerable groups has probably improved and that their awareness of their rights and remedial possibility has increased considerably. The task is to expedite that process by making remedies against discriminatory treatment more effective, and it is to be hoped that the 2001 World Conference Against Racism, Racial Discrimination and Related Intolerance will contribute to that end.

* This article was presented at the United Nations 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 in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Geneva from 16 to 18 February 2000.

Racial Discrimination in Economic, Social and Cultural Life*

Luis Valencia Rodríguez

Bodies responsible for economic, social and cultural rights: the Committee on the Elimination of Racial Discrimination (CERD)

Chapter IX of the Charter of the United Nations adopted in San Francisco in 1945 deals with international economic and social co-operation. Its Article 55 states that: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment and conditions of economic and social progress and development".

Subparagraph (c) of this same article adds that such promotion shall also include: "… universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

Various United Nations bodies are responsible for ensuring the exercise of economic, social and cultural rights in accordance with the provisions of the Charter and relevant international instruments. These bodies include the General Assembly, the Economic and Social Council (ECOSOC), the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women (CEDAW). In addition there are a large number of specialized international bodies which, in their own specific fields are also concerned with the exercise of these rights.

International attention has traditionally and as a matter of choice been focused on civil and political rights, since it was rightly felt that failure to respect them would make the full enjoyment of economic, social and cultural rights impossible. Although obvious, it is worth emphasizing once again the close interrelationship of all rights, including the right to development, since

the violation of any one – even in remote parts of the world – affects the validity of and respect for all the others.

The International Convention on the Elimination of all Forms of Racial Discrimination which entered into force on 4 January 1969, was the first instrument to create an international body, namely, the Committee on the Elimination of Racial Discrimination (CERD), responsible for examining "the legislative, judicial, administrative or other measures" adopted by States Parties to the Convention to give effect to its provisions.

Article 1 of the Convention states that "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". In its General Recommendation XIV, CERD stated that: "Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights ... A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms".

The Recommendation goes on to say that: "Article 1, paragraph 1, of the Convention also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in Article 5". CERD, in examining the reports of States Parties, has accordingly placed particular emphasis on the requirement that States should take into account not only the purpose of various acts or actions, namely, the concept of deliberate intention, but also the discriminatory effect that such acts or actions may produce in respect of the exercise of human rights.

General activities of the CERD in connection with economic, social and cultural rights

In examining the implementation of Article 5 of the Convention, CERD focuses on the principle of non-discrimination in the exercise of economic, social and cultural rights. In its General Recommendation XX, CERD stated that: "Article 5 of the Convention contains the obligation of States Parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights had been elaborated in the International Covenants on Human Rights. All States Parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States

Parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights".

The Recommendation goes on to say that: "Whenever a State imposes a restriction upon one of the rights listed in Article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that neither in purpose nor effect is the restriction incompatible with Article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to enquire further to make sure that any such restriction does not entail racial discrimination".

What has been stated above is in essence a description of CERD's sphere of action in its efforts to ensure that the exercise of economic, social and cultural rights in the States Parties to the Convention is not tainted by racial discrimination. During the almost three decades that have elapsed since its establishment, CERD has reached the conclusion that no State is immune to racial discrimination practices, which often emerge as a reflection of traditions or age-old prejudices or as a result of the introduction of policies or ideologies based on chauvinistic nationalism. Discrimination in the exercise of economic, social and cultural rights arises not only as a result of these factors but also others, such as socio-economic underdevelopment, segregation experienced by indigenous populations, racial conflicts giving rise to violence, and the xenophobia which is so frequent in our day, particularly in the developed countries of the North against minority groups (ethnic and tribal), undocumented immigrants, refugees and displaced persons.

In the course of its work during 1998 and 1999, CERD frequently identified cases which, in general, reveal the existence or indications of racial discrimination in the exercise not only of economic, social and cultural rights but also of the right to participate in public life. It has accordingly made suggestions or recommendations to Gabon[1], Nepal[2] and Niger[3]. It has also addressed a General Recommendation to Peru[4] in respect of the rights referred to in Article 5. The recommendation to Finland[5] is connected with the right to housing, employment and education. In the case of Azerbaijan[6], the recommendation refers to displaced persons and refugees. The recommendation addressed to the Dominican Republic[7] is connected with persons of Haitian origin. It addressed a recommendation to Haiti[8] concerning foreigners of different racial or ethnic origin and respect for non-native Haitians. In the case of Iran[9], the recommendation refers to tribal minorities and groups. The recommendation to Latvia[10] is concerned with differences of treatment between citizens and non-citizens. In the case of Uruguay[11] the recommendation refers to Afro-Uruguayan and indigenous communities. In many cases, the action taken by CERD is explained by a lack of information or incomplete information.

Racial discrimination in housing

The right to adequate housing has been the subject of a large number of resolutions by the United Nations and other international bodies[12] and is also embodied in the constitutions of many States. It has been stated that adequate shelter and services are a basic human right and that, in striving to uphold that right, priority must be given to the needs of the poor, the homeless and the most vulnerable groups of society[13]. Yet the realization of this right is still in many cases almost utopian. Over a billion persons in the world live in what are tantamount to pigsties unfit for human occupation, and this situation is common to all countries, in the North as well as, principally, in the South.

Discrimination in the housing sphere remains a major problem, often resulting in the exclusion of large numbers of people (ethnic minorities, migrant workers, refugees, sexual minorities, the landless, indigenous communities, the unemployed, the elderly, the ill, ex-offenders and others) from their rightful guarantee to adequate housing. Although international law and the domestic laws of many countries prohibit discrimination on grounds of race, social status or other factors, such legalization is often not enforced and individual acts of discriminatory practices are often hard to detect and prove, and even harder to punish[14]. CERD, in its General Recommendation XIX, stated that: "… while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds".

It is common knowledge that in many towns persons who sell or lease housing try not do so to certain racial or ethnic groups, usually because house-owners or residents in the area refuse to live side by side with persons of a different racial or ethnic group. It is argued that the value of such housing or residential districts declines when persons of a different colour or origin manage to "invade" the area. This situation is not confined to private owners or lessors but also arises in connection with housing administered by local or municipal authorities.

CERD, in examining the reports of States Parties, has on many occasions expressed an opinion concerning racial discrimination in respect of the right to housing. One of the most recent examples based on its work during 1998 and 1999 is offered by the Czech Republic, in respect of which it adopted Decision 2 (53)[15], in which it requested the Government "to provide it with information on the disturbing reports that in certain municipalities measures are contemplated for the physical segregation of some residential units housing Roma families". In response to this request, the Czech Republic submitted document CERD/C/348, in which, among other things, it stated: "What is more, the

situation on Maticní Street, Nestemice, does not suggest physical isolation (much less segregation) of the tenants in the two residential blocks that are to be separated from the street by a fence 1.8 m high, without gates. With the fence in place, the tenants will not have direct access to Maticní Street from the residential blocks. This measure would affect approximately 35 families (150 persons) living in the blocks, 90 per cent of whom are Romas …".

The Government views this proposal of the local authority as grave and alarming. This measure might be understood as a possible infringement on human rights, namely of human dignity and equality before the law without distinction as to social and ethnic origin or property. The Government has entrusted its representative for human rights with discussing with the local authority the imperative need consistently to respect human rights. It has further asked its representative to report to the Government on the results of this debate before the work on the proposed fence commences. Should the preparation for the erection of the fence actually start, the Government will consider legal steps to countermand such a decision by the local authority."

In view of this reply from the Czech Government, CERD decided to resume its consideration of the questions raised when the country submitted its next periodic report.

Among the other cases examined by CERD during 1998 and 1999, attention should be drawn to those of Israel[16], Armenia[17], Guinea[18], Italy[19] and Iraq[20] as well as to the recent report of the United Kingdom[21] which has not yet been considered.

Racial discrimination in health matters

The Constitution of the World Health Organization, approved two years before the Universal Declaration of Human Rights, states explicitly that: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition".

The United Nations and the World Health Organization have co-operated closely since their establishment in matters relating to the right to health and in 1981 the United Nations General Assembly supported the Global Strategy for Health for All by the Year 2000, adopted by the World Health Assembly. In 1982, the General Assembly approved the Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment prepared by the World Health Organization[22].

In the same way as it tries to ensure respect for other economic, social and cultural rights, CERD has also looked into the question of racial discrimination in health matters. For example, as a result of its work during 1998 and 1999, it had something to say in connection with Yugoslavia, Armenia[23]

and Cambodia[24]. Its statement in the case of Yugoslavia is particularly interesting since it concerned CERD's first attempt to send a good-offices mission to the country. In the report on its 53rd session CERD stated: "It is noted with regret that there has been no follow-up to the good-offices mission of the Committee in 1993. The purpose of the mission was to help promote a dialogue for the peaceful solution of issues concerning respect for human rights in the province of Kosovo and Metohija, in particular the elimination of all forms of racial discrimination, and to help the parties concerned to arrive at such a solution. As a result of the mission, the Committee proposed to the State Party that a number of specific steps, particularly in the fields of education and health care, be taken with a view to normalizing the situation in Kosovo. Although the Committee expressed a willingness to continue the dialogue within the framework of the good-offices mission, no response was received from the State Party".

Racial discrimination in employment

The right to work is guaranteed by a large number of international instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination since, in Article 5(e)(i) States Parties undertook to guarantee: "… the rights of all persons to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration".

A large number of questions have arisen in connection with the performance of this contractual obligation, particularly as a result of the globalization process which has opened up markets with the inevitable result of creating competition between local labour, which wishes to retain its prerogatives and migrant workers prepared to work under less favourable conditions.

The most frequent discriminatory practices in labour matters reflect the fact that employers prefer to take on workers of a certain racial type either because, in their view, they contribute to better working conditions in the enterprise or because customers prefer not to deal with employees whom they regard as inefficient or untrustworthy. In such cases, the workers discriminated against, particularly if they belong to minority groups (such as immigrants, either legal or illegal, and refugees) receive lower wages and enjoy less favourable working conditions. The arguments used in attempts to justify these practices is that such workers lack the vocational training required to do a good job and this results in the lack of confidence and discrimination of which they are victims.

On many occasions during 1998 and 1999 CERD expressed views about racial discrimination in employment, as in the cases of Israel[25], the Netherlands[26], Lebanon[27], Armenia[28], Libya[29], Cambodia[30], Kyrgyzstan[31], Mauritania[32], Romania[33], Costa Rica[34], Syria[35] and the United Kingdom[36] – whose report has not yet been considered.

Racial discrimination in education

The United Nations and UNESCO are co-operating closely in protecting and promoting the right to education, as well as in eliminating racial discrimination, since it is considered that education constitutes the cornerstone of efforts to ensure the promotion of and respect for human rights in general. This co-operation dates back to the very first years of the existence of CERD.

Segregation in housing also leads to discrimination in educational establishments, since it reduces the possibility of contacts between pupils belonging to different racial or ethnic groups. Indeed, it obliges parents to send their children to the schools of a generally lower academic level in the areas where they live. Moreover, parents tend to avoid sending their children to schools attended by a large number of pupils belonging to minority ethnic groups since they want to prevent their children having contact with them.

In the course of 1998 and 1999 CERD drew attention to various cases of this type of discrimination. Examples are the Netherlands[37], the Czech Republic[38], Yugoslavia[39], Armenia[40], Cambodia[41], Chile[42], Romania[43] and the United Kingdom[44] (whose report has not yet been considered).

Racial discrimination in the public sector

Article 5 (f) of the Convention states that States Parties undertake to guarantee to everyone, without distinction as to race, colour or national or ethnic origin: "The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks." In many countries there are clubs or other establishments, either public or private, which exclude persons belonging to racial or ethnic minority groups different from the majority; they do so not on the basis of a person's race or ethnic origin but by pretending to invoke different considerations, such as clothing, personal appearance and language, although the underlying reason is racial or ethnic discrimination.

This type of discrimination generally occurs when individuals or groups try to enter premises open to the public. It does not constitute discrimination on a large scale but is nevertheless humiliating for the victims and constitutes an offence on the part of those who engage in this practice. In many cases it occurs because anti-discrimination legislation is lacking, inadequate or not complied with for want of adequate supervision and sanctions. Victims of this type of discrimination should request the police for assistance and protection. Rarely do they do so, however, because the police turn a blind eye and fail to provide them with the protection they need because they are not familiar with their duties or connive with the persons practising discrimination. The victims of this type of discrimination should make use of the legal procedure provided for in Articles 4 and 6 of the Convention or the machinery in Article 14, provided

it is legally possible and easy to do so; in many cases however, it is impossible or extremely difficult to use.

During 1998 and 1999, CERD responded to violations of this right either by means of a general reference to Article 5 of the Convention as a whole or in a specific manner, as in the cases of the Czech Republic[45], Austria[46], Finland[47], Peru[48] and Costa Rica[49].

Racial discrimination in cultural matters

The United Nations and UNESCO have consistently endeavoured to encourage all persons to participate freely in the cultural life of their community, which implies promoting and preserving the identity of their cultural values. The International Convention on the Elimination of All Forms of Racial Discrimination states that the States Parties have undertaken to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin: "… to equal participation in cultural activities". The exercise of this right implies that Governments are under a duty not only to respect cultural events but also to provide members of communities with adequate facilities to participate effectively in cultural activities. This right is more important in the case of minority groups for which cultural events are essential to the preservation of their identity and peculiar characteristics. Article 7 of the Convention, which CERD regards as a cornerstone in its efforts to combat racial discrimination, embodies a specific obligation for States Parties.

CERD, in the course of its work, approved General Recommendation V, in which it drew the attention of States Parties to the fact that, in accordance with Article 7 of the Convention, they should include in their reports information on the "immediate and effective measures" which they have adopted "in the fields of teaching, education, culture and information", with a view to: "(a) Combating prejudices which lead to racial discrimination; (b) Promoting understanding, tolerance and friendship among nations and racial or ethnic groups; (c) Propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination as well as the International Convention on the Elimination of All Forms of Racial Discrimination".

CERD constantly monitors compliance with the provisions of the Convention and the above General Recommendation. This activity is even more important in the present circumstances in view of the rising tide of migratory movements, legal as well as illegal, and the emergence of minority groups, in many countries, who lack the possibility of organizing cultural events.

Remedies available to victims of racial discrimination in connection with economic, social and cultural rights

The International Convention on the Elimination of all Forms of Racial Discrimination has been defined as the international community's only tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with built-in measures of implementation, including international machinery – a pioneer in the field – responsible for monitoring the actual implementation of their obligations by the contracting sovereign States[50]. It is of vital importance to ensure not only the universal acceptance of the Convention[51], but also the largest possible number of accessions to the machinery embodied in Article 14, which enables individuals or groups of individuals to apply to CERD in the event of the violation of the rights protected by the Commission. Moreover, it should be borne in mind that paragraph 5 of General Recommendation XX adopted by CERD states that: "The rights and freedoms referred to in Article 5 of the Convention and any similar rights shall be protected by a State Party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention and to report thereon under Article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination".

This general obligation is spelt out in specific instruments. For example, according to Article 2 of the ILO Convention N° 111 concerning Discrimination in Respect of Employment and Occupation of 1958, ratifying States undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. Moreover, according to Article 3 of the UNESCO Convention against Discrimination in Education of 1960, States Parties undertake: "(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group; (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals".

Measures to curb discrimination in connection with the rights to housing and health have not been accorded sufficient attention by the authorities of many States. It has been seen that this form of discrimination is closely connected with discrimination in employment, which points up the need for the adoption of international instruments designed to guarantee non-discrimination in housing and health matters, and particularly in the case of the practices of public bodies, which is covered by Article 4(c) of the International Convention on the Elimination of all Forms of Racial Discrimination[52].

The various remedies available to victims of racial discrimination in the above fields include recourse to national institutions[53], which can play an important role in disseminating information about measures of protection and advising victims of the remedies available to them; law enforcement officials who are primarily responsible for curbing discrimination and protecting the victims; prompt and effective action on the part of bodies responsible for the administration of justice; educational activities through which racial prejudice or practices can be curbed; and the enduring activities of the media which should promote understanding, tolerance and disseminate the basic principles of racial non-discrimination.

Conclusions

In view of the upsurge of racism, racial discrimination, xenophobia and intolerance in recent years, the international community has to be more vigilant and use the instruments at its disposal to curb these evils which are emerging in all countries. The International Convention on the Elimination of all Forms of Racial Discrimination must be supported to a greater extent and applied more effectively. It is to be hoped that one of the practical recommendations adopted at the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will place special emphasis on this aspect as well as on the need for the Governments of all States to become aware of and understand fully the serious consequences of this increase in racial discrimination; for this reason it is vital that they should express their political determination in clear and precise terms to support the efforts of the international community to combat discriminatory practices. It goes without saying that resolute and effective co-operation between Governments constitutes a *sine qua non* for the success of the international struggle against racial discrimination.

* This article was presented at the United Nations 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 in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Geneva from 16 to 18 February 2000.

Notes

1. Supplement N° 18 (A/53/18), para. 381.
2. Ibid., para. 437.
3. Ibid., para. 460.
4. Report of CERD to the General Assembly at its fifty-fifth session (CERD/C/55/CRP.1/Add.3). Para. 136 states that: “Measures should be taken to guarantee the right of the most underprivileged members of the population to benefit from all the rights listed in Article 5 of the Convention and the right to equal treatment before the courts and in the exercise of their political rights”.
5. Ibid. Para. 57 states that: “Additional measures should be taken at the State and municipal levels to alleviate the situation of the Roma minority and of immigrants with respect to housing, employment and education”.
6. Ibid. CERD/C/55/CRP.Add.20. Para. 16 states that: “The Committee recommends that the State Party utilize all available means, including international co-operation, to ameliorate the situation of displaced persons and refugees, especially regarding their access to education, employment and housing, pending their return to their houses under conditions of safety”.
7. Ibid. CERD/C/55/CRP.1/Add.23l. Para. 11 states that: “The Committee recommends that the State Party take urgent measures to ensure the enjoyment by persons of Haitian origin of their economic, social and cultural rights without discrimination. Efforts should be made, in particular, to improve their living conditions in the bateyes (shanty towns)”.
8. Ibid. CERD/C/55/CRP.1/Add.4. Para. 15 states that: “The Committee recommends that the State Party include in its next report information on the restrictions upon foreigners of different racial or ethnic origin and upon non-native Haitians, with respect to the enjoyment of the rights enumerated in Article 5 of the Convention”.
9. Ibid. CERD/C/55/CRP.1/Add.7. Para. 14 states that: “The Committee recommends that the State Party continue to promote economic, social and cultural development in areas inhabited by disadvantaged ethnic and tribal minorities and groups, and to encourage the participation of these minorities in such development”.
10. Ibid. CERD/C/55/CRP.1/Add.14. Para. 23 states that: “It is also recommended to the State Party to review the differences of treatment between citizens and non-citizens, mostly persons belonging to ethnic groups, in light of the provisions of Article 5 (e), so as to eliminate any unjustifiable differences”.
11. Ibid. CERD/C/55/CRP.1/Add.15. Para. 15 states that: “The Committee also recommends that the State Party take immediate and appropriate measures to ensure the enjoyment of all the rights enumerated in Article 5 of the Convention in particular by members of the Afro-Uruguayan and indigenous communities and provide further information on this subject. With respect to employment, education and housing, the Committee recommends that the State Party take steps to reduce present inequalities and adequately compensate affected groups and persons for earlier evictions from their houses”.
12. See, in particular, the International Covenant on Economic, Social and Cultural Rights (Article 11), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e) (iii)), the Convention on the Elimination of All Forms of Discrimination Against Women (Article 14 (ii)), the Universal Declaration of Human Rights (Article 25) and a number of other international and regional instruments.

13. ST/HR/2/Rev.3, Chap. VII, E, para. 90.
14. E/CN.4/Sub.2/1992/15, paras 26-27.
15. Supplement N° 18 (A/53/18), p. 18.
16. Ibid. paras. 85 and 86 state: "The right of many Palestinians to return and possess their homes in Israel is currently denied. The State Party should give high priority to remedying this situation. Those who cannot repossess their homes should be entitled to compensation" and "While noting the special budget for public housing in the Arab sector, the Committee remains concerned about ethnic inequalities, particularly those centring upon what are known as 'unrecognized "Arab villages."
17. Ibid. para. 230 states that: "In its forthcoming report, the State Party should include, *inter alia*, further information on the restoration of the rights of deportees who have returned to the country, the results of the national reform on education, and the access to health care, housing and employment of ethnic and national minorities".
18. Report of the Committee … ibid. CERD/C/55/CRP/Add. 24. Paras. 11 and 17 state that: "Concern is expressed about the lack of information regarding the practical implementation of Article 5 of the Convention. In this connection, the Committee is concerned about the destruction by the State of more than 10,000 homes in the Conakry Ratoma neighbourhood, belonging mainly to members of the Puhlar ethnic group; the resulting riots which led to the death of eight persons; and the inter-ethnic tension which remains in that area. The Committee is also concerned about the lack of compensation for those persons whose property was expropriated".
"The Committee invites the State Party to include in its next report further information on the situation in Conakry Ratoma and the measures taken to address inter-ethnic tension in that area and to accommodate and/or compensate those persons whose properties were expropriated".
19. Ibid. CERD/C/55/CRP.1/Add.3. Para. 102 states that: "In light of reports indicating discrimination against persons of Roma origin, including children, in a number of cases, in particular housing, concern is expressed at the situation of many Roma who, ineligible for public housing, live in camps outside major Italian cities. In addition to a frequent lack of basic facilities, the housing of Roma in such camps leads not only to physical segregation of the Roma community from Italian society, but to political, economic and cultural isolation as well".
20. Ibid. CERD/C.55/CRP.1/Add.10. Para. 12 states that: "Concern is also expressed over allegations that the non-Arab population living in the Kirkuk and Khanaquin areas, especially the Kurds, Turkmen and Assyrians, have been subjected by local Iraqi authorities to measures such as forced relocation, denial of equal access to employment and educational opportunities and limitations in the exercise of their rights linked to the ownership of real estate".
21. 15th United Kingdom periodic report to CERD. Part 1 – United Kingdom Mainland. Paras. 278, 283, 284 and 288 refer to discriminatory practices in housing against minority communities. Para. 283 states that: "One of the characteristics of the 44 most deprived local authority districts is that they have nearly four times the proportion of ethnic minority residents compared with the rest of England".
Para. 284: "Racial harassment on council-run housing estates and the distress it causes to families has become an increasing concern for this Government …".
Para. 288: "The Government has issued advice to local authorities, reminding them of their duties under health, welfare, housing and education legislation. It advises them, where practicable, to tolerate the presence of Gypsies camped without authorization on council land for short periods …".
22. ST/HR/2/Rev.3, Chap. VII, C, paras. 48 and 49.
23. See footnote N° 17.
24. Supplement N° 18 (A/53/18). Para. 298 states that: "The Committee recommends that action be taken at the legislative, administrative and judicial levels to protect the right of everyone, including ethnic Vietnamese, to enjoy their rights under Article 5 of the Convention, especially the right to security of person and protection by the

State against violence or bodily harm, to public health and medical care and to education and training. It further recommends that comprehensive information on the implementation of the Articles be provided in the next report".

25. Supplement N° 18 (A/53/18). Para. 84 states that: "… The Committee encourages the State Party to adopt new labour legislation in order to secure the protection against ethnic discrimination of the rights of Palestinians working in Israel on a daily basis; the rights of migrant workers, including undocumented workers, are also a matter of concern".
26. Ibid. Para. 105 states that: "The disproportionately low rate of participation of minorities in the labour market and their increasing unemployment rates, while the rates for the rest of the population are stable, are noted with concern, as are reports of both direct and indirect forms of discrimination in recruitment procedures. The Committee recommends that further action be taken to ensure and promote equal opportunity in economic and social life, in particular as regards education and employment …".
27. Ibid. Para. 184 states that: "The Committee recommends that the State Party take all appropriate measures, including those of a legal nature, to fully guarantee access to work and equitable conditions of employment to all foreign workers, including Palestinians …".
28. See footnote N° 17.
29 Ibid. Para. 248 states that: "The Committee recommends that the State Party provide in its next report detailed information on … the status and working conditions of foreign workers and on measures taken by the State Party to prevent any acts of discrimination against them".
30. See footnote N° 24.
31. Report of the Committee … Ibid. CERD/C/55/CRP.1/Add.17. Para. 11 states that: "The Committee wishes to receive further information regarding the practical enjoyment by persons belonging to ethnic and national minorities of the rights listed in Article 5 (e) of the Convention, in particular the right to work, including the right to equal opportunities of promotion and career development, the right to health, education and housing".
32. Ibid. CERD/C/55/CRP.1/Add.9. Para. 9 states that: "With regard to Article 5 of the Convention, allegations are noted to the effect that some groups of the population, especially the Black communities, are still suffering from various forms of exclusion and discrimination, especially where access to public services and employment is concerned …".
33. Ibid. CERD/C/55/CRP.1/Add.5. Para. 15 states that: "Measures of affirmative action should be adopted in favour of the Roma population, especially in the areas of education and vocational training, with a view, *inter alia*, to placing Roma on an equal footing with the rest of the population in the enjoyment of economic, social and cultural rights, removing prejudices against the Roma population and enhancing its capacity in asserting its rights …".
34. Ibid. CERD/C/55/CRP.1/Add.3. Para. 169 states that: "The Committee notes with concern recent manifestations of xenophobia and racial discrimination, largely focused on immigrants, in particular Nicaraguans. In this context, the Committee also expresses its concern about the vulnerable status of refugees and clandestine immigrants, who often live and work in the country in precarious conditions, and who frequently become victims of discrimination in the terms of Article 5 of the Convention, in particular Para. 5 (e)".
35. Ibid. CERD/C/55/CRP.1/Add.3. Para. 198 states that: "The Committee recommends that the State Party improve administrative and legal measures to guarantee the enjoyment by individuals belonging to vulnerable groups of foreigners, notably domestic workers, of the rights enshrined in the Convention without any discrimination".

36. Ibid. Paras. 256 and 257 state that “Figures from the Summer 1998 Labour Force Survey indicate that unemployment rates in the UK are generally higher amongst the ethnic minority population … This situation is unacceptable and the Government is determined to address the problem”.
37. Supplement N° 18 (A/53/18). Para. 103 states that: “The increasing racial segregation in society, mainly in the big towns, with so-called ‘White’ schools and neighbourhoods, is also noted with concern. Similar trends are also noted in Aruba and in parts of the Netherlands Antilles …”.
38. Ibid. Para. 123 states that: “The marginalization of the Roma community in the field of education is noted with concern. Evidence that a disproportionately large number of Roma children are placed in special schools, leading to *de facto* racial segregation, and that they also have a considerably lower level of participation in secondary and higher education, raises doubts about whether Article 5 of the Convention is being fully implemented”.
39. Ibid. Para. 199 states that: “Concern is expressed about continuing reports indicating that, despite constitutional and legal safeguards, access of certain minorities to education, public information and cultural activities in their own language is not fully guaranteed”.
40. Ibid. Para. 227 states that: “The Committee further suggests that the State Party consider adopting measures to ensure that ethnic and national minorities have access to education in their own language wherever possible”.
41. See footnote N° 24.
42. Ibid. CERD/C/55/CRP.1/Add.12. Para. 16 states that: “The Committee recommends that the State Party use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities. It encourages the State Party to continue to provide instruction on human rights standards in schools …”.
43. Ibid. CERD/C/55/CRP.1/Add.5. Para. 11 states that: “The situation of Roma is a subject of particular concern since no improvements have been noted in the high unemployment rates and the low educational level traditionally predominant among members of this minority …”.
44. Ibid. Para. 329 states that: “The Government is concerned about the disproportionate number of ethnic minority pupils, particularly African-Caribbean boys, who are being excluded from our schools and is committed to reducing the high level of school exclusions, particularly amongst over-represented groups”.
45. Supplement N° 18 (A/53/18). Para. 129 states that: “The Committee recommends that increased attention be paid to introducing legal provisions aimed at safeguarding the enjoyment on a non-discriminatory basis, by all segments of the population, of the economic, social and cultural rights listed in Article 5 of the Convention, notably the rights to work, housing, education and access to services and places open to the general public”.
46. Report of the Committee … Ibid. CERD/C/55/CRP.1/Add.3. Para. 10 states that: “The Committee expresses its concern that, seven years after it drew the attention of the State Party to the absence of sanctions against racial discrimination in the private sector, little progress has been made in fully implementing the provisions of Article 5 (e) and (f) …”.
47. Ibid. Para. 58 states that: “In accordance with Article 5 (f) of the Convention, appropriate action should be taken to ensure that access to places or services intended for use by the general public is not denied to any person on grounds of national or ethnic origin”.
48. Ibid. Para. 133 states that: “With regard to the right of access to all public places, the Committee takes note of the promulgation in late 1998, following complaints of discriminatory practices in that respect, of legislation prohibiting the owners of establishments open to the public from screening their clients on racial grounds.

The Committee regrets, however, that this prohibition is not yet accompanied by any form of penalty".

49. Ibid. Para. 167 states that: "While noting that Act N° 4430 of 21 May 1968 and Act N° 4466 of 19 November 1969 render punishable by a fine any racial segregation with regard to the admission of people of different races to public or private places, the Committee is concerned that the financial penalties thus provided for do not constitute a sufficiently effective measure to prevent, prohibit and eradicate all practices of racial segregation, as required by Article 3 of the Convention".
50. Manual on Human Rights Reporting, p. 267.
51. The number of States Parties was 155 on 27 August 1999.
52. This provision states that the States Parties: "… shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination".
53. General Recommendation XVII recommends that States Parties should establish national commissions or other appropriate bodies to promote, among other things, "respect for the enjoyment of human rights without any discrimination, as expressly set out in Article 5 of the Convention …".

Discrimination in Education

Katarina Tomasevski

At the beginning of a new millennium, international education strategies have placed much emphasis on the elimination of gender discrimination. This is a welcome change from the previous neglect of gender in both human rights and in education. The advent of gender, however, does not encompass all other internationally prohibited grounds of discrimination[1] these have not yet become part and parcel of international education strategies, and the situation does not seem to be improving. Internationally prohibited grounds of discrimination, such as race, ethnicity, religion, language, or disability. remain unrecorded and create a vicious circle. Discrimination apparently does not exist because it is officially not recorded and because there is no quantitative data, anybody trying to prove that discrimination is really (if not apparently) taking place is likely to fail to do so.

This article does not address quantitative but qualitative dimensions of discrimination in education, taking representative court cases as an indication of the dynamics of exposing and opposing discrimination. It provides a snapshot of mobilization against discrimination, whose first steps are routinely its exposure. It starts by highlighting a series of court cases in Western Europe which have revolved around the wearing of headscarves and revealed how uncertain domestic judiciaries have been in drawing a line between tolerance of religious diversity, secular neutrality of public schools*, and suppression of religious proselytizing. It then proceeds to examine various facets of discrimination in turn, ending with discrimination against persons with disabilities, where a great deal of progress in conceptualizing rights-based education has been attained.

If discrimination is not exposed, it cannot be effectively opposed. Opposing discrimination necessitates, first and foremost, its definition, and different definitions reached by different domestic courts have demonstrated that this is not easy. Difficulties are exacerbated by the lack of quantitative data on differences conforming to prohibited grounds of discrimination. This precludes investigating their pattern and dynamics at the macro level regarding

* The term ‘public school’ in this article refers to state schools.

access to education or educational attainment, or the profile of teachers. Human rights also apply at the micro-level, positing the equal rights of each individual and, moreover, the best interests of each child. The effects of discrimination at the micro-level have been challenged before the courts as human rights violations, often with a great deal of success. This line of inquiry has been carried further, to address the contents of educational curricula and textbooks, as these tend to reflect the biases and prejudices which our global discriminatory heritage has generated during the past decades and centuries.

Religious diversity or neutrality?

Respect for parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions has been affirmed in all general human rights treaties and it is enforceable in individual countries and internationally. It constantly generates jurisprudence because it is continuously subjected to litigation. This article looks into only one facet of this broad and controversial issue which has been brought to light by litigation with regard to pupils and teachers wearing headscarves in public schools in Western European countries. The issue has triggered a great deal of public and political interest because it forced upon courts the task to interpret the nature and scope of the rights of each main actor in the education system: parents, teachers and state agents. Children also have their rights recognized in law but these are not legally enforceable in most countries and thus children cannot vindicate them. Legal battles have thus been fought between parents and schools, teachers and parents, or teachers and schools.

International human rights law clearly and fully accommodates parental preferences concerning the education of their children, not only requiring States to allow the establishment of school in accordance with parental choices but also to adjust public schools to existing parental preferences. The European Commission on Human Rights has found that human rights law "requires the State actively to respect parental convictions within the public schools"[2], which is additional to the governmental obligation to respect parental liberty to establish and operate non-public schools. Moreover, the Commission has affirmed that the State's obligation to respect parental convictions "prohibits any indoctrination of pupils"[3]. Jurisprudence has been generated by challenges of unacceptability of education. Most of all, safeguards against abuse have been directed at compulsory education. In the words of the United States Supreme Court: "Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure"[4].

In Switzerland, the balance needed between a display of religious symbols which should be tolerated, and a display of religious symbols which should be outlawed has included the requirement that public education respect the religious

convictions of every individual child and its parents. In a case involving a Muslim teacher wearing a headscarf, the Swiss Federal Court has opted for a restrictive approach, fearing disputes amongst children belonging to different religions and the likelihood of the immediate involvement of their parents. Moreover, because teachers are a role model for pupils, the court has affirmed the requirement that teachers be religiously neutral[5].

Respect for parental religious convictions in schooling has emerged with particular frequency with regard to Jehovah's Witnesses. The European Court of Human Rights analyzed a complaint concerning a girl who was suspended from school because of her refusal to participate in a parade which she regarded as a commemoration of war. The Court took note of the parents' pacifist convictions but found no human rights violation[6]. The Supreme Court of the Philippines has taken the opposite approach and affirmed that children belonging to Jehovah's Witnesses have the right to be exempt from the flag ceremony (consisting of the singing of the national anthem, saluting the flag and reciting a patriotic pledge) because the freedom to exercise one's religious belief could only be limited on the grounds of a danger to public safety[7].

Public schools which are secular create controversy because the general commitment to secularism necessarily constrains the exercise of parental religious choices. The United Nations Human Rights Committee has examined a complaint against "compulsory instruction for atheists in the history of religion and ethics" to find that such instruction, if "given in a neutral and objective way and [if it] respects the convictions of parents and guardians who do not believe in any religion" does not constitute a human rights violation[8]. The need to accommodate the diversity of pupils and, in particular, the choices articulated concerning their education made by parents, is unlikely ever to stop generating human rights cases. Addressing this same dilemma, the German Federal Constitutional Court has found that the affixation of a crucifix in non-denominational primary schools in Bavaria breached the constitutional protection of freedom of religion. The Court discussed a notion which it has termed as "the schools' duty of religious neutrality", pointing out that "through the cross symbol deep, lasting effect was being exercised on the mental development of easily influenceable school-age children". It has emphasized that the possibility of sending children to private schools was not "an escape" from the exposure of the children to learning "under the cross" because the fees charged in private schools made them inaccessible for many parents. The Court has then concluded: "… that the legislature is not utterly barred from introducing Christian references in designing the public elementary schools, even if those with parental power who cannot avoid these schools in their children's education may not desire any religious upbringing. There is a requirement, however, that this be associated with only the indispensable minimum of elements of compulsion. ... [The cross] cannot be divested of its specific reference to the beliefs of Christianity and reduced to a general token of the Western cultural tradition. It symbolizes the essential core of the conviction of the Christian faith, which has undoubtedly shaped the Western world in particular in many ways but is certainly not shared by all members of

society, and is indeed rejected by many. ... Positive religious freedom is due to all parents and pupils equally, not just the Christian ones. The conflict arising cannot be resolved according to the majority principle, for the fundamental right to religious freedom is aimed in a special degree at protecting minorities. Insofar as the school, in harmony with the Constitution, allows room for [activating religious convictions in State institutions], as with religious instruction, school prayers and other religious manifestations, these must be marked by the principle of being voluntary and allow the other-minded acceptable, non-discriminatory possibilities of avoiding them[9]".

The Supreme Court of Canada has addressed discriminatory effects of the teaching schedule which is derived from Christianity and is thus discriminatory against teachers belonging to other religions: "Teachers who belong to most of the Christian religions do not have to take any days off for religious purposes, since the Christian holy days of Christmas and Good Friday are specifically provided for in the calendar. Yet, members of the Jewish religion must take a day off work in order to celebrate Yom Kippur. It thus inevitably follows that the effect of the calendar is different for Jewish teachers. They, as a result of their religious beliefs, must take a day off work while the majority of their colleagues have their religious holy days recognized as holidays from work. In the absence of some accommodation by their employer the Jewish teachers must lose a day's pay to observe their holy day[10]".

Many cases have been generated by the need for schools in Western European countries to adapt to religious diversity which has vastly increased through migration. The wearing of headscarves has become the embodiment of the multiple and inter-related dilemmas which have had to be faced. Muslim girls have sometimes refused to attend physical exercise, although it constitutes part of the compulsory curriculum and is thus not subject to their freedom of choice. The Equal Treatment Commission of the Netherlands found that the refusal of a school to allow Muslim girls to wear long-sleeved T-shirts, long trousers and head caps constituted discrimination. Having examined a complaint with regard to the wearing of loose headscarves during physical exercise, the Commission did not find a violation of human rights because the rationale for the prohibition was the safety of pupils during exercise. In another case, the efforts of a school to accommodate a Muslim girl by offering her to wear clothing adapted to her religious convictions and a separate dressing room have been found to constitute sufficient accommodation[11]. In yet another case, the Commission found discrimination against a young women who, as part of her practical training at a teachers' college which requires teaching at a primary school, wished to teach at her former primary school but was refused when she answered positively the question as to whether she would wear a headscarf[12]. However, the European Commission of Human Rights had held that the pupil's choice of a particular school (the issue in hand was her enrollment in a secular university) entails the acceptance of the rules applied in that educational establishment. The Commission did not find that the prohibition of wearing a headscarf constituted a human rights violation[13].

Upon a complaint by two Muslim women who had been denied access to training for the unemployed because they were wearing headscarves, the Equal Opportunity Commission of the Netherlands found a human rights violation. The justification offered by the training institute was that employers would not hire women wearing headscarves in their shops, thus undermining the value of any training to be provided to the two women. The Commission rejected that justification, holding that, rather than reacting against such employers' attitudes, the training institute took the lead from them and denied the women access to further training[14].

Freedom of religion has been reinforced by international and domestic human rights law, but freedom in religion lags far behind. In a case concerning a teacher who "had been engaged in a protracted confrontation with the authorities over his teaching and his employment", the Human Rights Committee determined that the teacher's rights had been violated by constant harassment which made his continuation in public-service teaching impossible. The background to the case was the denial of the necessary certificate by the ecclesiastic authorities to the teacher[15], without which he could not teach religion. The Committee agreed that the teacher could be removed from teaching religion because of his advocacy of liberation theology but not prevented from continuing in public service teaching[16].

A court case against a religious Jewish school, brought by a father whose child has been refused admission because the child did not fit the school's definition of a Jew, was decided by the Dutch courts against the complainant. The right to education was interpreted as requiring the State to respect parental philosophical and religious convictions while not creating an obligation for private educational institutions to respect the parental choice of school and admit their children. Requirements specified by religious schools have been therefore upheld as legitimate[17].

Medium of message: teachers, curricula, textbooks, methods of instruction

In the words of the Supreme Court of Canada, "teachers are seen by the community to be the medium of the educational message" and are thus held to high standards, both on and off duty. The younger their pupils, the more vulnerable they are to the teachers' influence. The Court has thus defined the framework for assessing teachers as follows: "A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate".

Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable

influence over their students as a result of their position. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole[18].

Following this line of reasoning, the Court justified dismissal and subsequent criminal conviction of a teacher who had "taught his classes that the Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution" expecting his students to reproduce his teaching in class and on exams and penalizing them by bad marks if they failed to do so[19].

The orientation and methods of schooling involve much more than the transmission of knowledge and skills. The values which schooling espouses might be openly endorsed or cloaked behind the apparent neutrality of the curriculum. The orientation of schooling might be secular or religious, the methods used might favour teaching children what to think or how to think. The power which is exercised by those authorities who decide on the values, contents and methods of schooling therefore ought to be subject to human rights safeguards lest this power be abused. There has been a series of disturbing findings about abuses of education relating to recent and not so recent armed and political conflict. The Special United Nations Committee on Israeli Human Rights Practices in the Occupied Territories was alerted to the portrayal of Arabs "either as shepherds or invaders" in textbooks[20]. The UN Special Rapporteur on Rwanda noted how successive governments conditioned the population to the acceptance of ethnic discrimination and moulded the education to fit this aim: "The schools took it upon themselves to develop actual theories of ethnic differences, based on a number of allegedly scientific data which were essentially morphological and historiographical. In the first case, the two main groups can be differentiated by appearance, as the Tutsi are "long" whereas the Hutu are "short"; the Tutsi are handsome, genuine "Black-skinned Europeans" while the Hutu are "ugly", genuine "Negroes". The fact that the Hutu occupied the country before the Tutsi makes them indigenous, whereas the Tutsi, as descendants of Europeans, are invaders. These purportedly scientific data inevitably created a psychosis of fear and mistrust which gradually became a veritable culture of mutual fear and led to another theory, that of pre-emptive self-defence based on the "kill or be killed principle". This theory was a major factor in the 1994 genocide[21]".

The amplitude of controversies related to the contents of educational curricula has been vividly illustrated by the conflict between "creationism" and "evolutionism" in the United States school curriculum. Darwin's *Origin of Species* created a stir at the time by demonstrating how natural selection occurs, prompting much opposition from many religious communities whose belief in a design by the Creator had been shattered by the theory of evolution. The United States courts became first involved in this issue in 1927, when a teacher was dismissed for teaching evolution, which was deemed to constitute an anti-religious doctrine. It was also deemed unacceptable at the time to teach that

human beings evolved from other species rather than having been created by God[22]. The United States courts revisited the issue in the 1960s. In 1968, a law banning the teaching of evolution was declared unconstitutional and led subsequently to the affirmation that "creationism" represented a religious dogma and hampered scientific education[23]. The issue was not settled (nor has it been since) and the United States Supreme Court had to rule whether school curricula should include the theory of evolution or the biblical account of human creation, or both. The Court upheld the theory of evolution, emphasizing a need for the science curriculum and for the effectiveness of instruction in science[24]. The issue is, however, still subject to a great deal of legislative and judicial controversy in the United States.

The ILO Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent countries of 1989 posits the aim that "… history textbooks and other educational materials provide a fair, accurate and informative portrayal" of indigenous peoples[25]. The Committee on the Rights of the Child urged a changed image of women "… in school textbooks by adopting suitable messages to combat inequalities, stereotypes and social apathy"[26]. The International Convention on the Elimination of All Forms of Racial Discrimination requires States to combat prejudices through education and the Convention on the Elimination of All Forms of Discrimination against Women require the elimination of stereotypes. The United States courts have held, however, that children have the right to attend schools that promote the desirability of racial segregation[27], while at the same time affirming that public schools should teach values "essential to a democratic society" such as tolerance of divergent views and attention to the sensibilities of other people[28].

In many countries education constitutes both a right and a duty of the child, school attendance is enforced for children within compulsory school age, while a series of specified duties regulates the child's behaviour in school. The notion of education as a duty is much older than that of education as right, and the rules on the specification of the child's duties in school and concerning education in general are well-established. Their implementation is gradually being balanced against the rights of the child. In particular, restrictions upon school discipline have considerably increased in the past decades to protect the pupils', especially the child's dignity against humiliation or degradation. In many countries, education is defined as a duty as well as a right, and specific duties of pupils are described in administrative and school regulations. These range from the dress code (frequently the wearing of school uniforms is a prerequisite) and deportment to regular school attendance and rules for the behaviour of pupils with regard to their teachers and other pupils. An attempt by parents (whose religious doctrine posited physical punishment of children as legitimate and necessary) to challenge Sweden's policy against the corporal punishment of children forced the European Commission on Human Rights to revisit the issue that had already been the object of considerable litigation. The parents complained against the encroachment upon their ability to express and implement their own convictions in the upbringing of their children, embodied

in Sweden's 1979 Law, which was "… intended to encourage a reappraisal of the corporal punishment of children in order to discourage abuse[29]. The Commission did not find that a general policy against corporal punishment amounted to a threat of indoctrination of children against their parents' conviction that corporal punishment was legitimate and necessary.

Methods of instruction have been subjected to much criticism, especially with the advent of the Convention on the Rights of the Child. Schooling children to unthinkingly regurgitate whatever they are told may still be prevalent in practice but has been abandoned in theory and also in law. An excerpt from a textbook on children's accounts of their childhood, used by fifteen year old Ugandans in the 1970s, describes the mixture of fearful, uncomprehending obedience that most grew up with: "Children were trained from their earliest years to be respectful, obedient and mannerly, these being the standards by which adults became acceptable in society. All parents, and fathers in particular were very stern with their children who in any way departed from such standards. Furthermore the punishment for children who misbehaved, however harsh, had to be accepted without question or complaint. Thus the children, respectfully submissive, learned to fear their fathers as harsh and severe. Strong feelings of dislike though dutifully suppressed were very frequently mixed with this fear[30]".

Adaptation to diversity

The Supreme Court of Canada has found that adapted treatment and/or accommodation constitutes the necessary step towards securing equal access to education for all[31]. This line of reasoning has turned upside down the heritage of forcing children to adapt to whatever schooling has been made available to them and opened the way towards designing education to suit each child. Most progress has been attained in conceptualizing education for children with disabilities. Educational law traditionally treats the learner/pupil/student as the object of education, specifying the rights of parents, teachers and the State. The affirmation of rights of pupils has not yet been accomplished in most countries. Prioritizing the best interests of learners is reflected in jurisprudence as a step towards affirming the rights of the learner by requiring restraint upon all other actors in education in order to mould education towards what is best for the learner.

"For a child who is young or unable to communicate his or her needs or wishes, equality rights are exercised on his or her behalf, usually by the child's parents. Moreover, the requirements for respecting these rights in this setting are decided by adults who have authority over this child. For this reason, the decision-making body must further ensure that its determination of the appropriate accommodation for an exceptional child be from a subjective, child-centred perspective, one which attempts to make equality meaningful from the child's point of view as opposed to that of the adults in his or her life. As a means of achieving this aim, it must also determine that the form of accommodation chosen is in the child's best interest[32]".

The Supreme Court of Colombia has held that pupils should have the possibility to express their personality. It was examining a case involving a boy who had been wearing an earring in class whereupon the teacher commented that the earring suggested the boy's homosexuality, and the boy felt publicly humiliated. The Court faulted the teacher's inappropriate behaviour and generally defined the relations between pupils and teachers as follows: "The subjects of the educational process are not divided into passive recipients of knowledge and active depositories of wisdom. The constitutional principle which guarantees the free development of personality and the right to participate in the educational community have transformed the pupils into active subjects who participate in education through their rights and duties. [Consistent with the new model established by the Constitution] … the teacher has to heed the fact that the relation pupil-teacher is not based upon the authority which the teacher can exercise as the ultimate depository of wisdom or through his hierarchically superior position, but rather upon reciprocal respect of the subjects of the educational process with the same possibility for free expression, for the free expression of their tastes and inclinations, under the sole condition of not jeopardizing the rights of others or the just order[33]".

The requirement that schools should adapt to pupils with special needs has been subjected to a great deal of litigation. The objective of inclusiveness, that is, integration of pupils with disabilities in mainstream schools, has imposed upon schools and teachers the need to adapt to pupils with divergent abilities and needs. The Supreme Court of Canada has thus defined non-discrimination with regard to persons with disabilities: "Exclusion from the mainstream of society results from the construction of a society based solely on "mainstream" attributes to which disabled persons with never be able to gain access. Whether it is the impossibility of success at a written test for a blind person, or the need for a ramp access to a library, the discrimination does not lie in the attribution of untrue characteristics to the disabled individual. The blind person cannot see and the person in a wheelchair needs a ramp. Rather, it is the failure to make reasonable accommodation, to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation, which results in discrimination against them. The discrimination inquiry which uses 'the attribution of stereotypical characteristics' reasoning as commonly understood is simply inappropriate here. It may be seen rather as a case of reverse stereotyping which, by not allowing for the condition of a disabled individual, ignores his or her disability and forces the individual to sink or swim within the mainstream environment. It is recognition of the actual characteristics, and reasonable accommodation of these characteristics which is the central purpose of [non-discrimination][34]".

The principle of non-discrimination has been interpreted as necessitating a comparison between pupils with and without disabilities in order to detect and inhibit less favourable treatment of pupils with disabilities. A distinction between meeting their special needs and a positive obligation to treat them more favourably has been discussed by the Federal Court of Australia. The Court has

found that the accommodation of special needs sometimes requires positive action to be taken but has not accepted the reasoning of the Human Rights and Equal Opportunity Commission – whose decision it faulted – whereby the yard-stick should be a school's effort or the lack thereof, to meet the needs of a specific pupil. Rather, the Court has confirmed that non-discrimination requires a comparison between the treatment of the pupil with disabilities with that of a pupil without disabilities in the same circumstances[35].

The German Federal Constitutional Court has held that the general approach favouring the education of disabled and non-disabled children together in general public schools does not diminish the need to review each individual case, giving particular weight to the views of the pupil and his or her parents. The Court has added that it is also necessary to consider the requirements of a specific solution for the educational authorities: "The current state of pedagogical research does not indicate that a general exclusion of disabled children from integrated general schools can be constitutionally justified. The education should be integrated, providing special support for disabled pupils if required, so far as the organizational, personal and practical circumstances allow this. This reservation is included as an expression of the need for the State to consider all the needs of the community in carrying out its duties, including the financial and organizational factors[36]".

The European Commission on Human Rights has similarly held that the right to education 'does not require the admission of a severely handicapped child to an ordinary school, with the expense of additional teaching staff or to the detriment of other pupils' when education can be provided in a special school[37].

Concluding remarks

A well-established adage posits that a right cannot exist without a remedy. This truism is sometimes forgotten for economic and social rights, including the right to education, thus depleting these rights of their core. The absence of a focus on denials and violations hampers the conceptualization of economic and social rights by rupturing the symmetry in law which balances rights and duties, freedoms and responsibilities.

This article has reviewed how the right to education is interpreted, applied and enforced worldwide, regarding the core human rights principle of non-discrimination. The advantage of this approach is that court cases are initiated by individuals who feel that their rights have been violated and demand a remedy. The nature and scope of the rights is then examined through due process of law, and substantive issues are defined or clarified. However, cases represent a bottom-up approach. Real-life problems trigger interpretation and application of domestic and international human rights law and set precedents for the future. This approach complements the frequent trend in human rights to quote and cite provisions of various international human rights instruments by furnishing

all the rich detail, including numerous controversies which are generated when abstract provisions should respond to real-life problems. This article has shown that domestic courts tend both to agree and disagree, thus mapping out the universal dimensions of the right to education as well as issues for which a great deal of thought is needed to advance the conceptualization of the right *to* education and human rights *in* education.

Notes

1. The most comprehensive listing of prohibited grounds of discrimination is included in the 1989 Convention on the Rights of the Child. It encompasses race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the children themselves or their parents and/or guardians.
2. European Commission on Human Rights. Kjeldsen, Busk Madsen and Pedersen v. Denmark, Report of the Commission of 21 March 1975, Judgment of the Court, Vol. 21, Series B, pp. 44 and 46.
3. European Commission on Human Rights. Graeme v. United Kingdom, Decision of 5 February 1990, Decisions and Reports, Vol. 64, 1990, p. 158.
4. United States Supreme Court. Edwards v. Aguillard, 482 U.S. 578, 19 June 1987.
5. X v. Etat du Canton de Genève, Arrêt du Tribunal Fédéral, 123 I 296, 12 November 1997.
6. European Court of Human Rights. Efstratiou v. Greece and Valsamis v. Greece, Judgments of 18 December 1996.
7. Supreme Court of the Philippines. Ebralinag v. The Division Superintendent of School of Cebu, G.R. N°. 95770 and 95887, 1 March 1993 and 29 December 1995.
8. Human Rights Committee. Erkki Hartikainen v. Finland, Communication 40/1978, Views of 9 April 1981.
9. Federal Constitutional Court of Germany. Order of the First Senate of 16 May 1995, 1 BvR 1087/91.
10. Supreme Court of Canada. Commission scolaire régionale de Chambly v. Bergevin, [1994] 2 S.C.R., p. 9.
11. Equal Treatment Commission of the Netherlands. Rulings 1998-79 of 6 July 1998. 1997-149 of 24 December 1997, and 1999-106 of 23 December 1999.
12. Equal Treatment Commission of the Netherlands. Ruling 1999-103 of 22 December 1999.
13. European Commission on Human Rights. Application No. 16278/90, Karaduman v. Turkey, Decisions & Reports, Vol. 74, 1993, p. 93.
14. Equal Opportunity Commission of the Netherlands. Ruling 1999-76 of 20 July 1999.
15. The Government of Colombia explained that applicants for the post of a teacher of religion must possess the certificate of suitability, issued by the Catholic Church which also supplies the curriculum and verifies whether religious education is provided in accordance with the precepts of that Church.
16. Human Rights Committee. William Eduardo Delgado Paez v. Colombia, Communication No. 195/1985, Views of 12 July 1990.
17. Hoge Raad. Stichting Hoodse Scholengemeenschap v. Robert Brucker, Judgment of 22 January 1988.
18. Supreme Court of Canada. Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R., paras. 44, 45 and 42-43.

19. Supreme Court of Canada. R.V. v. Keegstra, [1990] 3 S.C.R., p. 714.
20. United Nations. Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, U.N. Doc. A/54/325 of 8 September 1999, paras. 235-236.
21. Commission on Human Rights. Report on the Situation of Human Rights in Rwanda submitted by René Degni-Ségui, Special Rapporteur, U.N. Doc. E/CN.4/1997/61 of 20 January 1997, para. 25.
22. Tennessee Supreme Court. Scopes v. State, 154 Tenn. 105, 289 S.W. (1927).
23. United States Supreme Court. Epperson v. Arkansas, 393 U.S. 97.
24. United States Supreme Court. Edwards v. Aguillard, 482 U.S. 578 (1987)
25. ILO Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries, Article 31.
26. Committee on the Rights of the Child. Report on the 8th session (Geneva, 9-27 January 1995), U.N. Doc. CRC/C/38, 20 February 1995, General debate on the girl child, 21 January 1995, Annex V, para. 3 (a), p. 72.
27. US Supreme Court. NAACP v. Alabama, 357 U.S. 449.
28. US Supreme Court. Bethel School District No. 403 v. Fraser, 478 U.S. 675, 1986.
29. European Commission on Human Rights. Seven individuals v. Sweden, Application No. 8811/79, decision of 13 May 1982 on the admissibility of the application, Decisions and Reports, Vol. 29, p. 111-112.
30. Dagenais, R. and C. Mackay. *Christians and the Holy Spirit*. Pupil's Book, Primary 7, Uganda Joint Christian Council, Kampala, 1976, p. 32.
31. Supreme Court of Canada. Adler v. Ontario, [1996] 3 S.C.R., paras. 73 and 75.
32. Supreme Court of Canada. Eaton v. Brant County Board of Education, [1997] 1 S.C.R., 241, para. 67.
33. Supreme Court of Colombia. Judgment T-259 of 27 May 1998.
34. Supreme Court of Canada. Eaton v. Brant County Board of Education, [1997] 1 S.C.R., 241, para. 67.
35. Federal Court of Australia. A school v Human Rights & Equal Opportunity Commission & Anor [1998] 1437 FCA, 11 November 1998.
36. Federal Constitutional Court of Germany. Decision of 8 October 1997, 1 BvR 9/97.
37. European Commission on Human Rights. Martin Klerks v. the Netherlands, Application No. 25212/94, Decision on admissibility of 4 July 1995, Decisions & Reports, Vol. 82, 1994, p. 129.

Inequality in Access to Employment: A Statement of the Challenge

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The context of discrimination

In response to concerns expressed by International Labour Organisation (ILO) constituents and those arising out of the Organisation's own mandate, in 1991 the ILO launched a project "Combating discrimination against (im)migrant and ethnic minority workers in the world of work". The project aimed to document and seek remedies to discrimination in access to employment in a number of Member States of the ILO in North America and Western Europe. The countries involved in one or more of the components of the project included Belgium, Canada, Denmark, Finland, France, Germany, the Netherlands, Spain, Sweden, the United Kingdom and the United States. The project terms of reference, methodologies, findings and impact can be found below.

The present article* presents the background and basis for efforts to eliminate discrimination in access to employment, reviews the ILO project and its findings, and offers a few conclusions towards continuing efforts in this field. A companion document, "Approaches to Promote Equality", offers a structure for defining and understanding the different categories of measures and mechanisms which can serve to reduce discrimination and promote equality of opportunity in national and international contexts.

The global stock of migrant workers is difficult to estimate with precision, due to the number of non-nationals whose situation is irregular, and the lack of data in many countries as to their foreign population. The ILO estimates that somewhere between 40 and 45 million people are working in countries of which they are not nationals. Accompanied by slightly more dependents,

* This article was aimed at orienting and preparing participants in ILO's High Level Meeting on Achieving Equality in Employment for (Im)Migrant Workers which took place in Geneva on 8-11 March 2000. The Meeting was both the culmination of the seven-year project and an opportunity to review and draw useful lessons from the project findings.

the total number of migrants living and working outside their home country is between 88 and 99 million people. As a percentage of the global economically active workforce, however, migrants constitute a mere 1.4% to 1.6%.

Comprehensive domestic anti-discrimination law is, however, by no means apparent in all migrant-receiving States. Coupled with the fact that international anti-discrimination law specifically protecting migrant workers is either weak or weakly adhered to, it is clear that migrants are, more than ever, in need of comprehensive protection of their rights and fundamental freedoms.

International Labour Standards adopted by the International Labour Conference of the ILO specifically referring to migrant workers are the Convention (N° 97) concerning Migration for Employment (Revised 1949), and the Convention (N° 143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975). These Conventions, as well as the Convention (N° 111) concerning Discrimination in Respect of Employment and Occupation (1958) deal with equality in almost all aspects of the work and life of non-nationals, such as recruitment matters, entry procedures, contract conditions, medical services, assistance on settling into the host society, vocational training, promotion at work, job security and alternative employment, freedom of movement, participation in the cultural life of the state as well as the maintenance of their own culture, transfer of earnings and savings, family reunification and visits, termination of employment, expulsion and assistance in coping with return to the home country.

There is a distinct need to assist countries in applying international standards, if protection of the rights of migrants and, in particular, migrant workers is to be achieved. Specifically, in the fields of employment and access to it, research has provided evidence that migrants face numerous problems in the labour market, and that they are, in many ways, at a disadvantage when compared with members of the host society. This is true even in countries which have ratified the specific migrant workers' conventions mentioned above. Some of the problems faced by migrants are connected with objective, factual handicaps such as inadequate education and training, non-recognition of qualifications gained abroad or inadequate command of the host country's language. But, in addition, migrants and ethnic minorities experience discrimination on the grounds of their actual or perceived nationality, colour, "race" [1], or ethnic origin. As a result, migrants face disproportional un- and under-employment in host countries. Moreover, over-representation in the ranks of the long-term unemployed further increases their risk of marginalization and social exclusion.

Inequalities faced by (im)migrant and ethnic minority workers

Defining the target group

The term "migrant" or "immigrant" may be used to cover a whole range of individuals. It includes those persons who have been admitted to the country temporarily, as well as persons who have obtained a permanent residence permit or persons allowed into a country for permanent settlement. The term also covers individuals whose status in a particular country is legally irregular or undocumented. Migrants may live alone or may establish residence with dependants under their care. Their reasons for migrating as well as their legal status may be very different. In addition, the length of a migrant's stay in the host country may be brief, clearly defined or indefinite.

The ILO's Convention N° 97, mentioned above, defines a migrant worker as "a person who migrates from one country to another with a view to being employed otherwise than on his own account" [2]. More specifically, migrant workers are those individuals "who are economically active in a country of which they are not nationals".

Following the definitions given in Convention N° 97 and N° 143 [3], a number of categories of short-term migrants were not included among the primary target group of the research. These include seasonal workers, project-tied workers and time-bound workers. In the eyes of the State and in relation to specific problems they may face on a day-to-day basis, the status of these workers can be very different than those of regular entry, and long-term migrants.

Migrants who have entered a country without proper documents or port-of-entry inspection, or those whose legal residency in a country has expired, as well as those who are legally resident in a country, but are working without the permission of the State are especially vulnerable groups in many regards. Little international or national protection of the rights of these individuals exists. Convention N° 143 was the first international standard which attempted to provide some protection for their rights. The legal nature of the problems facing these workers are distinct from those facing regular status migrants and ethnic minorities who suffer discrimination despite holding all the necessary documentation required by the State. Specific guidelines for the protection of irregular migrant workers were not addressed by this study, but urgently need to be addressed in subsequent research and response activity.

In addition to regular migrant workers, the research dealt with employment of members of ethnic minorities. Ethnic minorities are those persons of physiological, cultural and other characteristics distinct from that of the dominant or majority population, who have the nationality of the State. They are often offspring or descendants of migrants; however, some ethnic minorities have shared the same territory for centuries or more. Despite their status as nationals,

members of ethnic minorities often continue to be viewed by sections of the majority population as 'foreigners' due to phenotypic, cultural or other differences, even generations after naturalization has taken place. The problems facing ethnic minorities in this regard are, for the large part, identical to those faced by first generation or non-naturalized migrants and, for this reason, the study dealt with discrimination as experienced by both of these groups.

Defining the issue

Migrant and ethnic minority workers have disproportionately higher rates of unemployment and underemployment than nationals in the countries surveyed by the ILO[4]. One of the reasons for this relatively poor performance is discriminatory practices by labour market gate-keepers[5]. Additional factors, however, include lack of sufficient knowledge of the host country's language, lack of appropriate education or training, unfamiliarity with local customs and culture, and lack of a network of contacts in the world of work[6]. Such unequal starting points or disadvantages, together with discriminatory behaviour, are the key reasons why migrant and ethnic minority workers face greater obstacles than the majority population[7].

Beyond linguistic disadvantages, some disadvantages faced especially by more recent migrants stem from poor educational opportunities in their home countries. However, the longer such migrants and their offspring live and work in a host society, the more likely it is that prejudice and discrimination prevent minority groups from reaching similar economic and educational attainments as the majority population. In some countries, the accumulated effects of discriminatory acts in the past may have led to a contemporary environment which is discriminatory in itself. In contrast to individual acts of discrimination, such societal discrimination consists of arbitrary barriers against the advancement of minorities; the whole system disfavours individuals because they are members of a certain group.

The term 'disadvantages' is used to refer to the results of less favourable treatment by specific groups or the society as a whole. The term includes disadvantages that are generated as a result of past discrimination. The term 'discrimination', direct or indirect, is used only for acts which can be attributed to individual, natural and/or legal persons.

Why is discrimination a problem?

As shown in the first phase of the ILO project, labour market discrimination does exist, and migrants and ethnic minorities are particularly adversely affected by it. So what is the basis for policy-makers, legislators, employers, consumers, non-governmental organizations, trade unions and service-providers to change the state of affairs? A number of reasons can be given, several are outlined below.

Moral reasons

The moral argument for non-discrimination carries a great deal of weight in both the international and national domains. It stems from the basic human rights premise that all human beings are equal and deserve to be treated as such. Such principles are embedded in the United Nations Charter, the Universal Declaration of Human Rights, and the ILO Declaration of Philadelphia. These principles have received virtually universal acceptance. In committing to outlaw discriminatory practices, many States have voluntarily undertaken obligations under human rights instruments and international standards against various forms of discrimination[8]. The moral reasons for treating all human beings equally often appear to be intuitive, and are regularly cited by politicians as justifying a specific policy, or signature of a human rights instrument.

Social reasons

The social argument to combat discrimination is that social order and peace degenerates under discrimination. Race riots, race-related arson attacks, racially motivated murders, the proliferation of neo-Nazi and skinhead organizations, all these are the socially detrimental consequences of discrimination. Equally, violent backlashes against inequality are also more likely to occur when discrimination is not addressed. With considerable numbers of non-nationals and members of ethnic minorities living permanently and legally in migrant-receiving countries, failure to establish or to implement effective anti-discrimination measures, indifference to discrimination and discriminatory practices in the workplace, and inertia in taking collective action towards achieving equality may all contribute to societal disintegration.

Economic reasons

It is not only the worker but also the individual employer and society as a whole that pays the costs of discrimination. By discriminating, employers are not tapping into the full potential of human resources available to them. A number of economic arguments against discrimination and in favour of equal treatment can be given as follows:

- Firstly, by discriminating in recruitment, employers may be passing over some of the best qualified candidates for the job, on irrelevant grounds, such as nationality or race. If they recruited only on the basis of aptitude, where there is no place for discrimination, there need not be any sacrifice of potential productivity.
- Similarly, it has also been shown that where discrimination occurs in the workplace, a more frequent disruption of team work tends to occur, together with higher absenteeism, and reduced morale and commitment. Bad publicity, where discrimination is alleged, may also harm a firm's reputation and consumer loyalty.

- On the positive side, particularly with regard to globalization of trade and investments, migrants may offer privileged insight into markets abroad and may speak the language.
- Migrants and ethnic minorities are also consumers and often make up large communities.
- The employer of a multi-ethnic workforce is more likely to attract custom, talented job applicants and investors than the employer who discriminates.
- Diverse workforces add value to business activities through increased creativity and better problem-solving capacities.

The economic argument against discrimination is a strong one and is well-documented. However, the fact remains that it is prevalent in the countries studied, suggesting that there is still much need for informative work to be done.

International commitments to eliminate discrimination and achieve equality

The international community has repeatedly recognized the need for more complete legal protection of migrants and ethnics minorities, two very vulnerable groups. At the World Conference on Human Rights (Vienna, 1993), the adopted Declaration and Programme of Action urged: "… all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena".

Subsequently, in the Programme of Action adopted by the International Conference on Population and Development (Cairo, 1994), the following conclusion was reached: "Governments of receiving countries are urged to consider extending to documented migrants who meet appropriate length-of-stay requirements, and to members of their families whose stay in the receiving country is regular, treatment equal to that accorded to their own nationals with regard to the enjoyment of basic human rights, including equality of opportunity and treatment in respect of religious practices, working conditions, social security, participation in trade unions, access to health, education, cultural and other social services, as well as equal access to the judicial system and equal treatment before the law. Governments of receiving countries are further urged to take appropriate steps to avoid all forms of discriminatory practices concerning their nationality and the nationality of their children, and to protect their rights and safety".

In the Declaration and Programme of Action adopted by the World Summit for Social Development (Copenhagen, 1995), governments were urged to: "… formulate or strengthen measures to ensure respect for, and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in sector of many societies and to promote greater harmony and tolerance in all societies".

On the regional level, similar recommendations have been made, specifically aimed at preventing discrimination against ethnic minorities and migrants. The Commission of the European Communities, for example, proclaimed 1997 as the "European Year Against Racism", and stated that its aim was, among other things, to: "… encourage reflection and discussion on measures required to combat racism, xenophobia and anti-Semitism in Europe [and] to promote the exchange of experience on good practice and effective strategies devised at local, national and European level to combat racism, xenophobia and anti-Semitism".

One of the most prominent events during the European Year Against Racism was the insertion of a specific anti-discrimination clause into the Treaty of Amsterdam, which allows the European Council to intervene and take appropriate action to combat discrimination based upon, among other things, racial or ethnic origin. The second significant event of the year was the decision to establish a European Monitoring Centre on Racism and Xenophobia. Now established in Vienna, this centre provides data on the occurrence of racism, xenophobia and anti-Semitism, with a view to enhancing the exchange of information and experience in this field.

The Social Dialogue Summit organized by the European Commission (Florence, 1995) also produced a declaration which specifically condemned discrimination in employment and set out a clear list of recommendations on combating such discrimination in the world of work.

The Council of Europe has also contributed significantly to the anti-discrimination debate. Besides the ongoing activities of the Council, the 1993 Vienna Summit lay the groundwork for the establishment of the European Commission against Racism and Intolerance (ECRI) which, in 1996, made a general policy recommendation that Member States should: "… ensure that the national legal order at a high level, for example in the Constitution or Basic Law, enshrines the commitment of the State to the equal treatment of all persons and to the fight against racism, xenophobia and intolerance [and] ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-Semitism and intolerance ... by providing that discrimination in employment and in the supply of goods and services to the public is unlawful and that racist and xenophobic acts are stringently punished".

More importantly, there are several relevant ILO Conventions that, upon ratification, have become binding upon Member States. The first is Convention N° 97 (ratified by 41 States[9]), which prohibits "discrimination in respect of nationality, race, religion or sex" (Article 6, paragraph 1) in respect of working conditions and related matters such as training.

Another is the Convention N° 143 (ratified by 18 countries). Its Article 10 stipulates that: “Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation...”.

As regards foreigners who have been naturalized, and ethnic minority workers, there is the Convention N°111, which does not permit discrimination on grounds of “national extraction or social origin” (Article 1, paragraph 1(a)). By the middle of 2001, it was ratified by 148 States.

The ILO project on combating discrimination

The ILO launched the project “Combating discrimination against (im)migrant and ethnic minority workers in the world of work” to shed light on the scope and consequences of discrimination, as well as to propose some concrete measures which could be taken to combat it. It aimed to reduce discrimination against regular-entry, long-stay migrant workers and ethnic minorities by informing policy-makers, employers, workers, non-governmental organizations and persons engaged in anti-discrimination training, on how legislative measures and training activities can be rendered more effective, based on an international comparison of the efficacy of such measures and activities.

The scope of this project was sculpted by the mandate of the ILO. That is to say, it focused upon the employment relationship as it relates specifically to migrant and ethnic minority workers. The normative basis for this investigation is the three ILO Conventions just referred to above. For the purpose of extending protection also to ethnic minorities who, it has been shown, often face similar problems of discrimination to non-national workers, the scope of the study included discrimination on the grounds of colour and national and ethnic origin.

In line with the mandate of the ILO, only discrimination covering various aspects of the employment relationship – from access to employment through conditions of work and access to vocational training to termination of employment – was addressed. It is hoped that many of the lessons learned through the ILO’s work in the field of employment discrimination will be extended to such areas.

Findings and impact of the ILO research

Documenting occurrence

Following the elaboration by Professor Frank Bovenkerk of the methodology for the documentation of discrimination[10], research to determine the occurrence of discrimination in access to employment was carried out in Belgium, Germany, the Netherlands, Spain and the United States. The methodology prescribed in detail how to document whether or not migrant or minority workers were discriminated against when trying to find a job. In these so-called 'practice tests', equally qualified (im)migrant/ethnic minority and citizen-profile candidates applied for advertised vacancies and their acceptability was examined. By testing migrants' and minorities' chances in numerous application procedures for different sorts of jobs comprising a cross-section of the labour market, the programme documented the incidence of discrimination against these workers in different sectors of the labour market.

The project's findings[11] showed discrimination in access to employment to be a phenomenon of considerable and significant importance in all countries covered by the research. Overall net-discrimination rates of up to 35% were not uncommon, meaning that in at least one out of three application procedures migrants/minorities were discriminated against. In interpreting these results, it should be kept in mind that, as a consequence of the rigorous research methodology, the discrimination rates uncovered by the project were assumed to be conservative estimates of what is happening in reality.

The research findings showed discrimination occurring in, broadly, three stages of the recruitment process. The first, and most common form of discrimination tended to occur at the first contact between migrant/minority applicant and employer. Blatant, direct discrimination at this stage meant that migrant/minority applicants were often not even able to present their credentials. Often the migrant/minority applicant was simply told that the vacancy was already filled, whereas the citizen-profile applicant was invited to be interviewed for the post. In other instances, the migrant candidate – identifiable by his/her foreign-sounding name – was told straight away that foreigners were not wanted. The second stage of discrimination occurred when both applicants were invited for an interview. At this stage, there were a considerable number of cases where the migrant/minority candidate was subjected to additional qualification requirements while the national candidate was not. The third stage showed that, if the migrant/minority candidate was offered a job, the terms and conditions of employment tended to be inferior to those offered to the citizen-profile applicant. Above average discrimination rates were detected particularly in privately owned small and medium sized enterprises in the services sector, especially for jobs which involve direct contact with clients. This is all the more troubling as it is notably the services sector in which demand for labour is relatively high and new jobs are being created.

Assessing effectiveness of legislation and other measures

Studies on the effectiveness of anti-discrimination legislation – the project's second phase – were carried out in Belgium, Canada, Denmark, Finland, Germany, the Netherlands, Spain, Sweden, the United Kingdom and the United States.

The research findings[12] pointed to the limited utility of penal code provisions in providing redress to victims of unlawful discrimination in employment. Comprehensive civil legislation appears to provide victims of employment-related discrimination with more possibilities to claim their legal rights to equality of opportunity and treatment. Research indicated that application was facilitated when such legislation not only clearly outlawed both direct and indirect discrimination, but also contained straightforward definitions of both types of discriminatory acts. To be of relevance for non-national migrant workers as well as ethnic minorities, nationality, colour, religion, race and ethnic origin must be among the grounds of discrimination covered in such a comprehensive statute. Given the substantial difficulties of proving discriminatory practices, some studies indicated the need for civil anti-discrimination legislation to contain provisions that place the burden of proof on the person against whom discrimination is alleged. He/she should be required to prove that the disadvantageous treatment was not based on any of the prohibited grounds when the complainant has produced plausible or *prima facie* evidence of discrimination.

Experience in several countries showed that mandatory monitoring and reporting by employers on the composition of their workforce according to nationality, ethnic group, and any other ground of discrimination and/or minority group status as specified in the law, are extremely useful tools. Requirements to adopt positive action programmes so as to promote actively migrants' and minorities' equal participation in employment, as well as provisions which exclude companies proven to engage in discrimination from the awarding of governmental contracts for the provision of goods and services ('contract compliance') appear to be equally indispensable[13].

As regards the crucial issue of law enforcement, the findings clearly demonstrated that a specialized institution in the field of equality of treatment and non-discrimination provides the most effective way of guaranteeing effective enforcement and promotion of anti-discrimination legislation. Such an institution should handle all individual allegations of discriminatory treatment and try to arrive at a mediated solution. To be fully effective, the institution should have wide investigative powers. Should mediation fail, the agency should be empowered to issue "cease and desist" orders aimed at obliging the discriminator to cease the practice and to put equal opportunity policies in place. It also ought to have the power to bring cases to court. As discrimination is rarely a one-off act, provisions which allow for group complaints would also enhance the impact of anti-discrimination legislation[14].

Inventory and evaluation of anti-discrimination training activities

The project's third activity consisted of making inventories and evaluation of training in equal opportunity and treatment or non-discriminatory behaviour, the training material used and its effects on trainees. Here too, a standard methodology was developed[15]. Based on this standardized evaluation methodology, research was carried out in Belgium, Finland, the Netherlands, Spain, the United Kingdom and the United States.

The research covered the efficacy of anti-discrimination training where such training is imparted to persons involved in hiring decisions, the so-called "gate-keepers" of the labour market. This group of persons comprised personnel managers, trade union officials, staff of public and private employment placement services, etc., who all shared the basic characteristic of having far reaching effects on the employment prospects and career decisions of workers. In a number of countries, equal opportunities and anti-discrimination training activities had been developed. However, prior to the launching of this research, little was known about the content, methodology and, most importantly, the effects of these various training efforts.

The results[16] showed a great disparity, both qualitative and quantitative, between training and education measures implemented. In some countries, such as the United States, a high demand for anti-discrimination training has existed for several decades, which is mirrored on the supply side by a vast array of training approaches. In the Netherlands and the United Kingdom, anti-discrimination training has been developed notably during the past decade. In other countries, such as Finland and Spain, significant demand for this type of training are not yet apparent, although measures aimed at migrants, such as language and cultural training were relatively widespread. In Belgium, attempts to move from training directed at migrants to training aimed at representatives of the societal majority has met with significant resistance, which countered some of the potential effects of a wide variety of anti-discrimination training measures and led to a number of initiatives being discontinued.

The research findings pointed to the limited utility of training approaches which aim to provide information on international migration and the migrants' culture. The assumption that correct and balanced information will automatically yield non-discriminatory behaviour, was not borne out by the evaluation. Similarly, training which aims to change trainees' attitudes did not appear to be effective in changing actual behaviour and resulted, in several instances, in achieving a contrary effect. By contrast, training which combines information on statutory obligations with respect to equal treatment and wider governmental and company policies appeared more successful than stressing cultural differences in changing trainees' behaviour in day to day contact with migrant workers. For this type of training to be successful in changing behaviour of employees throughout an organization, it appeared to be imperative that all employees were trained, that it was part of wider equal opportunities policies and that these policies were actively

promoted by the organization's top-management. It is notably with respect to these conditions relating to the environment in which training takes place that much needs to be improved. The research findings pointed to the fact that not only training providers needed to improve on training delivery, but that both employers and workers could play a pivotal role in creating an environment conducive to reaping the full benefits of anti-discrimination training.

Discussion and dissemination of findings

The fourth main activity of the ILO project consisted of disseminating the project's research findings at the occasion of national and international seminars organized throughout 1997 and 1998, to feed project findings into national policy-making processes. National and regional seminars were held in Belgium, Finland, the Netherlands, Spain and the United Kingdom[17].

This high level meeting is the concluding event of this final stage of the current ILO project. A book has been prepared, and a training manual entitled *Achieving Equality for Migrant and Ethnic Minority Workers* has been drafted. The manual is not only intended to serve as an awareness raising tool on the subject of discrimination in the world of work, but also to give examples of concrete measures that have proved effective in remedying it.

Impact of the project

The project activities appear to have contributed to raising awareness, both at the level of participating countries as well as internationally, to the problem of discrimination against migrant and ethnic minority workers, its extent and severity and its negative implications on society as a whole.

Being one of the agencies engaged in fighting discrimination against migrant and ethnic minority workers, the ILO has taken an active part in numerous national and international meetings on the subject of discrimination against (im)migrant workers. Notably, close working relations were established with the Council of Europe and the European Commission with the aim of cross-fertilizing the work of these institutions and the ILO, while at the same time avoiding any duplication of work and thus wasting of scarce donor resources.

The ILO has provided inputs to several work items and declarations adopted by European Ministers responsible for migration under the aegis of the Council of Europe, and was represented in the Steering Committee of the anti-racism programme of the European Foundation for the Improvement of Living and Working Conditions. This programme resulted in the Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace, adopted by the European Social Partners in October 1995. This declaration was, in turn, one of the inputs to the 1997 European Year Against Racism, in which the ILO participated actively. In this regard, special mention should be made of the European Conference on Preventing Racism in the Workplace – From Theory to Practice (Lisbon, 1997).

At the global level, project findings have contributed to the work of the Office of the United Nations' High Commissioner for Human Rights (OHCHR) and the United Nations Commission on Human Rights, as well as of its Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities). Contributions on the specific subject of labour market discrimination against (im)migrant and ethnic minority workers are made through ILO reports and statements to these bodies. The project findings were also fed, on a regular basis, into the work of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance as well as into the Committee overseeing the application of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In May 1997, the ILO provided inputs to the United Nations Seminar on Immigration, Racism and Racial Discrimination held in Geneva. The project team also provided inputs to the work of the UN Working Group of Intergovernmental Experts on Human Rights of Migrants. Results of the research have been forwarded to the recently appointed United Nations Special Rapporteur on Human Rights of Migrants, and to the Preparatory Committee for the World Conference on Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance (WCAR).

A detailed survey of the impact of the project and utilization of its findings at national level has not yet been attempted. However, reports suggest that the project has directly influenced elaboration of new legislation and policies in a number of countries. Examples include a proposal for a new anti-discrimination law in Germany and a new anti-discrimination legislation and administrative policy being elaborated by the Danish Board for Equality.

The research phase of the ILO project 'Combating discrimination against (im)migrants and ethnic minorities in the world of work' has been completed. Despite the politically sensitive nature of the subject of discrimination, the project appears to be generally well-received in participating countries. Research has provided evidence that discrimination in the world of work is widespread and persistent. This seminar constitutes the last activity of this stage of international effort. It is hoped that it will point the way towards a new set of activities at national, bilateral, regional and global levels to utilize the lessons learned and the models identified to further the global effort to combat discrimination and achieve equality for migrant and minority workers.

Notes

1. The concept of "race" has long been exposed as a fallacy and as scientifically void. The term "race", however, continues in wide usage, and its derivative "racial discrimination" has come to mean discrimination on the ground of perceived race, as opposed to factual race (which does not exist). Acknowledging that "race" is a subjective concept, the term "race" should be read as "perceived race" and "racial discrimination" as "discrimination based on the grounds of perceived race". For ease of legibility, quotation marks are not inserted around the term.

The ILO Committee of Experts on the Application of Conventions and Recommendations adopts a similar position.

2. ILO Migration for Employment Convention (Revised), 1949 (N° 97), Article 11.
3. Article 11 of Convention N° 97 states that it does not apply to (a) frontier workers; (b) short-term entry of members of the liberal professions and artistes; and (c) seamen"; while Article 11 of Convention N° 143 extends this exclusion to (d) persons coming specifically for purposes of training or education; and (e) employees of organisations of undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on completion of their duties or assignments".
4. The countries surveyed are Belgium, Canada, Denmark, Finland, France, Germany, the Netherlands, Spain, Sweden, the United Kingdom and the United States.
5. Throughout this paper, the term "labour market gate-keeper", shall be used in this manner.
6. One must realize, however, that some of the reasons perceived at first sight as "objective" handicaps, are but forms of indirect discrimination. Thus, to insist upon perfect, accent-free knowledge of the host countries' language for a manual or semi-skilled job, where this is not necessary for the performance of the job, constitutes indirect discrimination, since it adversely affects migrant and ethnic minority workers more than the majority population. See also the section on "indirect discrimination".
7. Additional explanations for the high under- and unemployment of migrant and ethnic minority workers can be found in macro-economic developments, including the constant reduction of unskilled industrial manual labour.
8. The most important international instruments in this area, which are binding for the states that have ratified them, are ILO Migration for Employment Convention (Revised), 1949 (N° 97); ILO Discrimination (Employment and Occupation) Convention, 1958 (N° 111); ILO Equality of Treatment in Social Security Convention, 1964 (N° 118); ILO Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1978 (N° 143); ILO Establishment of an International System for the Maintenance of Rights in Social Security, 1986 (N° 157); United Nations International Convention on the Elimination of All Forms of Racial Discrimination (1965), United Nations International Covenant on Civil and Political Rights (1966); United Nations International Covenant on Economic, Social and Cultural Rights (1966); United Nations Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990) (not yet in force).
9. Listing of ratifications of ILO instruments can be found on the ILO website at www.ilo.org under ILOLEX, the ILO data base on International Labour Standards.
10. F. Bovenkerk: Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin, ILO, Geneva, 1992.
11. See F. Bovenkerk, M. Gras and D. Ramsoedh, *Discrimination against Migrant Workers and Ethnic Minorities in Access to Employment in the Netherlands*, ILO, Geneva, 1995; A. Goldberg and D. Mourinho: "Empirical proof of discrimination against foreign workers in labour market access", in A. Goldberg, D. Mourinho and U. Kulke, *Labour Market Discrimination against Foreign Workers in Germany*, ILO, Geneva, 1996; Collective IOE "Discrimination against Moroccan workers in access to employment", in Collective IOE and R. Pérez Molina, *Labour Market Discrimination against Migrant Workers in Spain*, ILO, Geneva, 1996; M. Bendick, Jr., *Discrimination against Racial/Ethnic Minorities in Access to Employment in the United States: Empirical Findings from Situation Testing*, ILO, Geneva, 1997; B. Smeesters et A. Nayer, *La Discrimination à l'accès à l'emploi en raison de l'origine étrangère: le cas de la Belgique*, ILO, Geneva, 1998.

12. See R. Zegers de Beijl, *Although Equal Before the Law ... The Scope of Anti-Discrimination Legislation and Its Effect on Labour Market Discrimination against Migrant Workers in the United Kingdom, the Netherlands and Sweden*, ILO, Geneva, 1991; G. Rutherglen, *Protecting Aliens, Immigrants and Ethnic Minorities from Discrimination in Employment: The Experience in the United States*, ILO, Geneva, 1993; C. Ventura, *From Outlawing Discrimination to Promoting Equality: Canada's Experience with Anti-Discrimination Legislation*, ILO, Geneva, 1995; R. Zegers de Beijl, "Labour market integration and legislative measures to combat discrimination against migrant workers", in W. R. Böhning and R. Zegers de Beijl, *The Integration of Migrant Workers in the Labour Market: Policies and Their Impact*, ILO, Geneva, 1995; U. Kulke, "Employment protection of migrant workers: Legal facilities and their improvement", in A. Goldberg, D. Mourinho and U. Kulke: *op. cit.*; R. Pérez Molina, "Discrimination against immigrant workers in access to employment in Spain: From worthless paper to effective legislation", in Collective IOE and R. Pérez Molina: *op. cit.*; K. Vuori, *Protecting (Im)Migrants and Ethnic Minorities from Discrimination in Employment: Finnish and Swedish Experiences*, ILO, Geneva, 1996; D.N. Addy, *The Quest for Anti-Discrimination Policies to Protect Migrants in Germany: An Assessment of the Political Discussion and Proposals for Legislation*, ILO, Geneva, 1997; N.-E. Hansen and I. McClure, *Protecting Migrants and Ethnic Minorities from Discrimination in Employment: the Danish Experience*, ILO, Geneva, 1998; J. Doomernik, *The Effectiveness of Integration Policies Towards Immigrants and Their Descendants in France, Germany and the Netherlands*, ILO, Geneva, 1998; B. Smeesters and A. Nayer, *Approche juridique de la discrimination à l'emploi en Belgique en raison de l'origine étrangère*, ILO, Geneva, 1999.
13. For similar recommendations see ILO, Equality in employment and occupation, Report III (part 4B), Geneva, 1996; Consultative Commission on Racism and Xenophobia: Final report, European Commission, Brussels, 1995.
14. For more details, see R. Zegers de Beijl: "Labour market integration and legislative measures to combat discrimination against migrant workers", in W.R. Böhning and R. Zegers de Beijl, *op. cit.*
15. John Wrench and Paul Taylor, *A Research Manual on the Evaluation of Anti-Discrimination Training Activities*, ILO, Geneva, 1993.
16. Collective IOE, *Anti-Discrimination Training Activities in Spain*, ILO, Geneva, 1996; K. Vuori, *Anti-Discrimination Training Activities in Finland*, ILO, Geneva, 1997; J.P. Abell et al., *The Documentation and Evaluation of Anti-Discrimination Training Activities in the Netherlands*, ILO, Geneva, 1997; P. Taylor *et al.*, *The Evaluation of Anti-Discrimination Training Activities in the United Kingdom*, ILO, Geneva, 1997; F. Castelain-Kinet *et al.*, *Pratiques de formation antidiscriminatoires en Belgique*, ILO, Geneva 1998; M. Bendick, M. L. Egan and S. Lofhjelm, *The Documentation and Evaluation of Anti-Discrimination Training in the United States*, ILO, Geneva, 1998.
17. See ILO, "Is anti-discrimination training effective?", Report of a workshop held at the Department for Education and Employment, 19 May 1997, Geneva, 1997; ILO: Report on the Regional Seminar in Catalonia, Barcelona 12 May 1997, Geneva, 1998; ILO, Report on the National Seminar in Spain, Madrid, 27 November 1997, Geneva, 1998; ILO, Report on the seminars organized in Belgium to evaluate the results of research conducted in association with the ILO project, Geneva, 1998; ILO: Ethnic Relations and Discrimination in the Labour Force; Report of a seminar held in Helsinki, Finland, 17 October 1997, Geneva, 1998.

Priming Ethnic and Racial Conflict Management*

Berhe Tesfu Costantinos

Introduction

At the climax of the drive, led by peoples' movements, for independence and self-reliant development, countries in political crisis were set to become the source of hope and inspiration to the many who had paid dearly to achieve that objective. The prospects for popular participation and accountable governance were never brighter, and encouraged the aspirations of many that the crisis countries would after all become the beacon of new hope for the oppressed and dispossessed. Alas! Those high hopes soon were replaced with a general acknowledgement that we had lost the capacity to form the identity that the world community had held self-evident, and had bred, in its place a socio-entity that had wildly spun off its axis.

For a third time in a generation, we are faced with the daunting task of building up new nation states. After decades of internal strife, recent genocide, economic crises manifested by the destitution of the majority of the population and a sociocultural fabric that has been woven over and again to precipitate only the desires of the strong, many nations and nationalities are left to act out the tragic scenes of the modern day human crisis. The erstwhile trepidation generated by excessive concern with religious differences, coupled with the perplexing racial, linguistic and cultural rivalry entrenched by tribal and ethnic differences, have synergistically conspired to create an atmosphere of pervasive antagonism among its peoples. On the other hand, the idealism of a community – the feeling of oneness, unity of purpose and kinship that the destitute have developed as a result of mutual interdependence for survival – have been deliberately manipulated by doctrinaire regimes who remained faithful to the percept of divide and rule.

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This article advocates for and provides the tools for some important attitudinal shifts that have inspired new orthodoxies on emerging ideals of disaster mitigation and conflict prevention. The paradigmatic crisis that has surfaced as a result, has enabled us to cover fresh ground in the new conceptualization of the conflict-relief-development-sustainability *continuum*, paving the way for the furtherance of prevention-based preparedness modalities and the philosophical underpinning of the *continuum* itself. With this objective, the first section of this article deals with the strategy of racial/ethnic politics; the second section dwells on analytical limitation in ethnic/racial conflict management, and the third presents the premises for alternative conflict management. The fourth section comprises factors that shape ethnic/racial conflict management process and the last section outlines recommendations, process, and strategy in the management of racial-ethnic conflict.

The strategy of racial/ethnic politics and the ethnic vote in 'democratic' elections

In much of the post-Cold War political liberalization process, the single most important influence over how political devolution and democratic decentralization has been conceived, initiated and is currently being constitutionally formalized, is the politics of ethnic self-determination and self-government favoured by the transition rules and institutions. The "national liberation" struggle and the particular form of political consciousness acquired at the inception and in the course of that struggle have made ethnic-based "national self-determination" the linchpin of the new political order strategy. Consistent with this strategy, revolutionary forces have undertaken a major restructuring of the nation-State, cutting it up into a score of regional governments based on ethnic identity.

Nevertheless, this is not to suggest that the strategy is uncontroversial or uncontested. On the contrary, it has provoked a lot of controversy and criticism. Partisans, allies and supporters of the movement towards ethnic decentralization seem to be sure that the ethnocentric approach to political devolution and reform is sound, and, indeed the only way to a new democratic order. On the other side, individuals and groups who are critical of the strategy and its accompanying democratization process, are equally convinced that, left unchecked, the strategy will lead to the disintegration of the Nation-State. They regard this outcome as a tragedy much worse than any sort of suppression of ethnic identity or difference.

It is not only among opposition groups and ordinary citizens that the ethnic-based transition strategy has raised doubts and fears. Observers of the new political order have also expressed concern about it. Reportedly, while supportive in public, privately, many in the international community have serious misgivings about the economic effects of a highly devolved system of regional governments based on ethnic identity. International observers have also

noted the problems that the strategy poses for political parties seeking to generate support and membership across tribal lines, and to develop platforms accordingly. Yet, notwithstanding the doubts and worries it has raised amongst the public and within the international community, ethnocentric devolution[1] remains the bedrock of the transition strategy. It is important, therefore, to give an account of the key problems, goals, tasks and activities that constitute the strategy. The strategy appears to have been effective not only in allowing the new political order to carry out its specific political agenda and ideological goals, but also in setting the tone for the political organization and activities of alternative and opposition groups. It has also decidedly channelled their activities along generally ethnic lines. In this sense, the experiment can be said to have instituted a new paradigm of political discourse and action, dissecting the country into a highly devolved political and social order that has empowered the vast majority of the population.

Eboe Hutchful points out the well-nigh-paradoxical concurrence of "the globalization of the capitalist economy" in the wake of the collapse of the Communist order, and the emergence of ethno-nationalism. Ethnicity has indeed become a force to be reckoned with, and social scientists have increasingly been forced to address it. To what extent it has deep historical roots and to what extent it is an ideology of the elite – legitimized on occasions by the very social scientists that presume to investigate it – remains uncertain.[2] Historians, looking at the issue from a relatively longer perspective, generally tend to question the permanence of the ethnic factor. As Terence Ranger has argued with reference to pre-colonial Zimbabwe, "People defined themselves *politically* – as subjects of a particular chief – rather than linguistically, or culturally, or ethnically".[3] Elsewhere, too, the picture in pre-colonial times was not so much of compartmentalized ethnic communities as of multi-ethnic societies interdependent and interacting with each other.[4]

On the other hand, although one might be able to perceive nuances in the emphasis given to ethnic identity in British and French colonial policy, it is difficult to attribute the emergence of ethnicity entirely to colonialism. As a matter of fact, one can even argue that colonialism often ended up creating nation-States out of diverse ethnic groups. Conversely, the democratization process and its attendant political pluralism seem to have the potential of accentuating ethnic identity. The question currently faced is thus whether ethnicity threatens to bring about a basic restructuring of State systems or whether the issues it raises will turn out to be transient phenomena, likely to disappear as soon as they get 'satisfied', partly perhaps through their very articulation. The preoccupation with the "liberation" and "self-determination" of ethnic and cultural communities represents a larger issue connected to the restructuring of the polity as a whole. The fundamental transition problem for the leading parties is not one of simply changing or improving the position and status of "nationalities", or, in simpler terms, ethnic groups, within. It is the radical transformation of the values, traditions and institutions of the nation-State itself in their historic and contemporary forms.

This leaves the leaders of the new political order and the transition to democracy with practically nothing but problems to solve! The nation-State was built – and built democratically – virtually from scratch. Politically, its past is more a liability than an asset. Because nationalism was imposed on nationalities by force, it was inauthentic and unstable, chronically beset with rebellions and civil wars. Because it contradicted the rights of peoples to their own identity, culture and socio-economic and political life, it was undemocratic and held back the development of the country. The brutal military dictatorship of the dictatorial governments, which in the end brought the country to the edge of disintegration, was in essence a continuation of previous regimes.

Analytical limitations in managing ethnic/racial conflicts

By way of setting the stage for its analysis, there are first some basic issues related to existing approaches to conflict management to consider. Throughout the fifty years since the Second World War and until the escalation of the ethnic/racial conflicts as seen by the Rwanda genocide, discussions and analyses of peace in racial and ethnic conflicts generally are marked by the following limitations.

1. A tendency to narrow the conflict to the terms and categories of immediate, not very well considered, political and social action, a sort of naive realism. The nation of naive realism is invoked here to point to certain conceptual shortcomings in current perspectives on the racial-ethnic conflict. These shortcomings can be seen as outcomes of more or less conscious attempts of the governments and their international backers to get their hands quickly on ‘urgent’ or ‘practical’ and more symptomatic matters of ‘border’ issues without analyzing the root causes of the conflict. These root causes have economic, monetary, trade, political, social, psychological and geopolitical roots that need to be detailed.
2. Inattention to problems of articulation or production of the conflict management system and process within the *Realpolitik*, which has rather been considered in terms of formal or abstract possibilities. When it is not dissolved into the immediate reality of political, often-partisan activity, conflict management is likely to be represented as ‘pure’ principle that needs only proper ‘application’. Practitioners and analysts of conflict management tend to quickly pass over the particular nature of the conflict, ‘adjusting’ it against an ideal-general conception of what it might be. On the implicit, theoretically complacent assumption that formalistic, rhetorical modes of circulation of conflict management ideas and values nearly exhaust their articulation there, one often rushes to matters of ‘implementation’. Consequently, critical problems concerning the philosophical and practical entrenchment of conflict management systems and processes in the ethnic/racial conflict receive scant attention.

3. The fundamental issues of how the concepts, standards and practices of conflict management could be generated and sustained under historically hectic conditions, and the manner in which they are likely to gain systemic integrity and autonomy as well as broad social currency are inadequately addressed. This relative inattention leads analysts and practitioners to make internal observations and assessments in terms of the conflict management "performances" of polities without raising the question of setting up or securing the polities as peace constituencies in the first place. As long as existing perspectives on political reform neglect to pose the problem of articulation of conflicts and peace as relatively autonomous modes of analysis in which peace projects pressure ideology upon socialites from the outside, conflict management will consist of a set of activities which apply universal, mainly Western, concepts and standards. These are neatly 'applied to', as distinct from produced or re-produced in, contexts and conditions. Even at the level of application alone, it is largely overlooked that international models may enter governments and societies through a proliferation of programmes and mechanisms that hinder the growth of an open and effective process, that they may retard the development of internal conflict management-system experience and capacity.
4. Ambiguity as to whether civil society is the agent or object of conflict management. In the current drive for peace and development, civil society and institutions (such as the religious organizations) within it are 'foregrounded' as the arena, agents and instruments of the movement. Internal and external demands for good governance and the need to reform the indigenous state into a system of transparent practices have placed a heavy emphasis on social institutions as autonomous actors within conflict management projects. While the co-operation of governments or would-be governments must be secured for the development of peace, "it cannot be expected that pressure for peace will come from above. The most likely and most effective initiative will come from below, outside the decrepit, authoritarian state, in civil society". Society yields the spontaneous interests, demands and institutional mechanisms for peace. On the other hand, the underdevelopment of civil society and the incapacity of institutions within it are seen as major barriers to conflict management.[5] The overwhelming majority of the people have no role in governance and are unfamiliar with their rights and obligations as citizens. The system of rule is an authoritarian top-down style of governance, with an urban-based power structure and authority radiating from the centre.[6]
5. A nearly exclusive concern in certain institutional perspectives on conflict management involving generic attributes and characteristics of social and political organizations and consequent neglect of analysis in terms of specific strategies and performances of organizations. Institutional approaches to the analysis of conflict management reforms call for analysis of the effectiveness of government and non-government

organizations in contributing to the reforms in terms of the generic characteristics of the organizations. The characteristics include: autonomy, capacity, complexity, cohesion and a combination of these. Presumably, the more attributes organizations and institutions are endowed with, the greater their strength, and the more likely they are to promote conflict management. However, the stress on standard organizational dimensions and traits in explaining conflict management, which borders on over-emphasis, is problematic. We can here identify three problems with it:

- First, it assumes or requires a level of development and strength of institutions and societies beyond that of the societies in question. This is particularly the case with countries severely impoverished and weakened by chronic under development, the ravages of civil war, political instability and massive social dislocation. The emphasis on generic organizational attributes begs the crucial question of how societies not very well endowed with strong indigenous institutions characterized by autonomy, capacity, complexity and cohesion will make a successful transition to peace.[7]
- Second, the stress on generic traits of government and non-government institutions largely overlooks substantive gaps in their knowledge of conflict management ideas and practices as a source of problems, along with structural incapacity. While differences in general institutional characteristics provide a significant measure of effectiveness of contribution to political reform, they cannot account for improvements in conflict management impact which can be made within an organization through institutional learning and practice. Through particular strategies, performances and self-evaluations, agencies can make significant contributions to conflict management even when the generic endowments they bring to the task are limited. Capacity building for peace is important. However, it is also important that institutions in civil society and the state make the most effective use of whatever actual capacity they have for promoting conflict management.

6. Inadequate treatment of the role of international agencies and of relations between global and indigenous aspects or dimensions of conflict management. Multilateral, bilateral and non-governmental external agencies have taken a large number of initiatives aimed directly or indirectly at helping countries ‘democratize’ their way out of economic chaos and political instability. In doing so, they rely on a wide variety of programmes, institutional mechanisms and policies. Indeed, growing external involvement in projects of conflict management has resulted in increasingly challenging problems of conceptualizing and understanding the role and function of international agencies. The growth of foreign interventions seems in marked contrast to the limited thought and effort exerted by democratizes of the racial/ethnic polity to put the interventions into a coherent theoretical or strategic perspective.

- What is the overall rationality or significance of the great traffic of international programmes and projects of conflict management with their proliferating activities that seem to show little regard for economy of co-ordination?
- How far and in what ways do various international agencies, programmes, mechanisms, forms of knowledge and technical assistance feed on one another in helping set the boundaries of conflict management reform.

The important issues that these questions raise are not sufficiently addressed, or even mentioned, in much of the current discussion of politics. As long as the activities of external agencies in racial and ethnic communities are not understood and engaged in partly as indigenous societal potentialities developing gradually into actual structures, functions and characteristics of government and society, their conflict management impact may diminish with their proliferation. This would result in little more than a weakly co-ordinated multiplication of programmes and projects which have immediately recognizable or measurable effects in limited areas, but which seem to suspend rather than serve the ultimate goals of conflict management. The strategic co-ordination of diverse international activities supportive of democracy and development can become a challenge both for the international agencies involved, and for recipient governments. This is in part because of limitations in the individual characteristics of the activities, for example, their narrowly technocratic orientation. It is also because of shortcomings in the relational and contextual articulation of external programmes and projects, their limited generalizability and variability.

These, then, are some of the analytical limitations that characterize existing perspectives on racial/ethnic peace. The Governments undoubtedly depend on international assistance in their projects of reform. Such assistance is vital for the projects in many areas and at many levels. Yet, it must be recognised that external support creates problems as well as opportunities for conflict management. In confronting the imperatives of political change that lead to peace, nothing is more challenging than the strategic co-ordination of diverse global and local elements, relations and activities, nor has anything greater potential for enabling the achievement of peace.

Premises of alternative conflict management: recommendations and practical guidelines

ACSICM is a multi-disciplinary field of research and action that seeks to address the question of how people can make better decisions together, particularly on difficult, contentious issues. The techniques have been used as means to address environmental disputes over land and water use, air quality, allocation of commercial logging concessions and the disposal of toxic waters.

ACSICM refers to a variety of collaborative approaches that seek to reach a mutually acceptable resolution of issues in a conflict through a voluntary process. Such approaches were developed as alternatives to adversarial or non-consensual strategies, such as judicial or legal recourse, unilaterally initiated public information campaigns, or partisan political action. Choosing the correct strategy through which to address a particular conflict is in itself a strategic choice. Parties to a dispute must first decide whether to seek resolution to a conflict through a non-consensual process or through a more collaborative means. Once the decision has been made to use ACSICM processes, the parties must decide on which specific approach to employ. No single approach is effective in all cases.[8]

The voluntary problem-solving and decision-making methods most often employed in ACSICM are conciliation, negotiation and mediation. Conciliation consists of the attempt by a neutral third party to communicate separately with disputing parties for the purpose of reducing tensions and agreeing on a process for addressing a dispute. Negotiation is a voluntary process in which parties meet face to face to reach a mutually acceptable resolution of the issues. Mediation involves the assistance of a neutral third party in a negotiation process, where a mediator assists the parties in reaching their own agreement but has no power to direct the parties or attempt to resolve the dispute. The processes are often combined with each other in practice. Thus, an effort originally focused on conciliation may develop into a negotiation, which may in turn be enhanced by mediation. Similarly, individuals may play more than one role in addressing a dispute.

In the process of employing ACSICM strategies, participants generally make a series of rapid decisions, more often than not with limited information. To understand and apply these, the premises listed below will assist a country in deciding, first, whether to enter into a negotiation, mediation or conciliation, and second, how to engage in the process more successfully.

- **Negotiation:** Negotiations are typically unstructured and often lack formal procedures, suggesting a format which caters to the uniqueness of each negotiation. If the parties have received training in negotiation skills, they will have learned, among other things, how to gather and organise information, how to distinguish phases of the negotiations, how to move from a discussion of positions to a discussion of specific interests, how to develop options and search for common ground, and how to work towards implementable agreements. Often a convenor or facilitator will emerge during a negotiation, perhaps from one of the parties themselves, who assists in moving the negotiation from phase to phase, helps in time management, keeps track of agreements, and generally helps give the process some structure. However, if negotiations can be carried out by the parties themselves, using procedures appropriate to each situation, its lack of formal structure can also be its weakness.

- **Mediation and Conciliation:** Trained, neutral, third party mediators and conciliators are engaged to facilitate ACSICM processes for a variety of reasons. One important reason regards the complexities inherent in the unstructured nature of many negotiations, mentioned above. Another is that it is unlikely that a facilitator or convenor that comes from one of the opposing negotiating parties will have the necessary detachment and neutrality to ensure that all parties are heard equally. Nor is such a person likely to have the skill to deal with power inequities. Professional mediators and conciliators are trained in these areas, as well as in such skills as discerning interests from positions, reframing issues and questions, giving fair consideration to different options, assisting in finding mutual-gain ("win-win") solutions, and writing up agreements in contractual language that can facilitate implementation. All of these are strong arguments for resorting to mediation or conciliation rather than employing simple negotiation.

Conciliation, negotiation and medication processes are found in traditional as well as modern dispute resolution systems. Many traditional leaders have extensive experience in dealing with disputes within their own countries or between a particular country and outside interests, though not enough information is available about how these and other processes are carried out by local political systems in addressing disputes. In addition, in many countries, the terms conciliation, negotiation and mediation refer to processes that have been formally institutionalized and are increasingly conducted by professionals. In the process, a body of information is being developed about what works best in managing various types of contemporary conflicts through collaborative rather than adversarial means. In the ethnic/racial conflict case, ACSICM approaches derive from several basic premises about the nature of conflict, change and power.

In the ethnic/racial conflict, while attitudes about the conflict can differ radically between the communities, it is assumed here that conflict is a normal process in society; that is, it is a "given". The problem lies rather in how conflict is managed. Such an approach to conflict recognizes that the parties in a dispute have different and frequently opposing views about the proper solution to a problem, but acknowledges that each group's views from its perspective, may be both rational and legitimate. Thus, the goal of people working in civil society-initiated conflict management is not to avoid discussing the conflict. Rather they focus on the skills that can help people express their differences and solve their problems in such a manner that more people's needs are met.

In many societies that are both heterogeneous and change-oriented, conflict is seen as a normal element of social interaction. In some, it is seen as a positive and necessary force, desirable because political groups are naturally seen as having different needs and interests, valued because it is realised that conflict often serves as an important impetus for positive change. In others, while its potential for creating change is acknowledged, dominance patterns in

the society are such that conflict can be very destructive. More homogeneous and tradition-oriented societies often do not place a positive value on conflict. In some preliterate societies, for example, agreements about borders, social and economic relations, and land and trade rights are rooted in common understandings and expectations based on the shared value system, and possibly in mutual perceptions of shared vulnerability to vagaries of the physical and institutional environment. Patterns of reciprocity and exchange engender a feeling of security, and a high value is placed upon quick resolution of public disputes, even if agreements reached might not address the underlying issues.

Another important premise is that successful ACSICM relies on the participation of all legitimate parties or "stakeholders" in a dispute – in this case, the protagonists from racial and ethnic groups. They must accept the right of other stakeholders to take part. No conflict can be considered resolved if any group whose interests are affected has been left out of the negotiation or mediation. The importance accorded to inclusiveness stems from a philosophical commitment to participatory processes, as well as from several practical considerations.[9] In many countries where decision-making is centralized in the hands of a political or technical elite, this premise of inclusiveness, participation and broad representation can imply major challenges to the established order. This can be an important impediment to the application of these approaches to civil society-initiated conflict management.

Power imbalances are virtually always an issue in a negotiation, and problems that result from negotiating in situations of unequal power may seriously undermine efforts at reaching a lasting accord. Parties will not negotiate in good faith or submit a dispute to mediation unless they believe it is in their best interest to do so. Stakeholders may differ in wealth, numbers, education and eloquence, familiarity with the process, extent of preparation and focus, or recognised legitimacy as an entity or institution. It is often difficult for very unequal parties to engage in productive, let alone fair, negotiation, which could lead to mutual gain. This is obviously a risk that a mediator or facilitator incurs in including all parties in a dispute. However, less powerful parties might be in a position to oppose resistance or withhold compliance, frustrating some of the interests of more powerful stakeholders. There are cases where powerful stakeholders might find it in their best interest to compromise, yielding on some interest in order to gain on others, often because the status quo is untenable and they recognize that more collaborative solutions might serve their needs better.

Another premise is that however intransigent a more powerful party might appear, it is useful for weaker parties to realize that opposing stakeholders are neither monolithic nor uniformly adversarial. Parties of unequal power enter into negotiations with different motivations and different expectations. Where the more powerful party in a dispute has a commercial interest at stake, ACSICM might be attractive because approaches different from a negotiated settlement are often ineffective and expensive. The weaker party might agree to participate in such a negotiation because a negotiated agreement is presumably more

in its interest than the existing situation. Furthermore, the legitimization of the weaker party's perspective and the validation of its position through the negotiation process can also result in empowerment and transformation.

Factors that shape the civil society-initiated conflict management process

Three key factors have been found to be helpful in analyzing a conflict, to decide whether it could be addressed through an ACSICM approach. If careful analysis suggests that a dispute could be negotiated or mediated, these same factors are important in determining the structure and conduct of the dispute resolution process. What are the best alternatives to a negotiated agreement? What would the communities do if they do not negotiate? Could they successfully bring a lawsuit or lobby politically to get what they want? Do they have any reasonable alternatives at all? What are the costs and benefits of each alternative? Would a country enter into a negotiation, mediation or other ACSICM process if it believes that it can do better, overall, through other means? Conversely, communities entering into negotiations with strong alternatives enter with an important source of negotiating power.

A careful and sophisticated analysis of each party's interests can, first, clarify the extent to which one party needs the others to achieve what it wants. If one party depends on the others to achieve its goals, then negotiation may be needed. In addition, an analysis of each party's interests can help point out which groups have common or competing agendas. What are several options for solution of the problem that could be presented at the negotiation table? Governments enter into negotiations with only one solution in mind. That is, they have identified the positions they wish to take rather than the interests that they wish to defend. This can quickly lead to an impasse. A country will be in a stronger negotiating position if, after analyzing its interests, it develops a range of options for satisfying them. This implies being flexible about the way in which basic interests are satisfied – not about whether they should be satisfied.

There are a variety of ways to begin building local capacity for civil society-initiated conflict management, including training in specific civil society-initiated conflict management skills such as negotiation and mediation, developing training material for inclusion in broader grass-roots planning and development strategies, and establishing networks and information systems.

- **Negotiation Training:** The decision to develop training programmes in negotiation for representatives of communities raises several issues. Accepting the premise that negotiations are more effective if all sides are well prepared implies that representatives of all parties involved in the dispute would benefit from training in conflict analysis and techniques of negotiation. Should the representatives of all parties receive the same training? Are there different levels of training? What kind of preparation do negotiators need? What specific techniques and methods

can be taught when each negotiation is different and there is no formal structure or set of guidelines? Who is to be trained to carry out this site-specific training of local representatives (training of trainers)?[10]

- **Mediation and Conciliation Training:** The decision to train mediators and conciliators raises other issues. It is important that the mediators and conciliators merely facilitate the process and do not direct the parties, who must fashion and "own" the agreements that come out of the mediation process every bit as much as if there were no facilitator present. However, the reality is that the mediator or conciliator does largely direct the process, working within a set of guidelines and a formal structure. The tools of mediation and conciliation training are more easily defined than is the case in negotiation, but identifying whom to train for this delicate role is more problematic. What kinds of people could be trained in mediation and conciliation skills? What kinds of preparation do mediators and conciliators need? What general (transferable) techniques should be taught? What kinds of credentials would give this person the legitimacy (as well as the presumed neutrality) to facilitate the resolution of a conflict?

To answer these questions, a number of models could be considered. Two of the more promising options include the development of ACSICM centres and the use of peer mediation or conciliation training. The availability of a cadre of trained third-party mediators and conciliators would probably tend to make civil society-initiated conflict management efforts less participatory and more efficient", and in the process, perhaps, less empowering and "transforming" for the communities.

Conclusions and recommendations for dialogue in the conference

The points made above, regarding the identification of problems of conflict management in racial and ethnic groups, applies to the setting of goals and tasks and to problem-solving activities. Its 'solutions', like its 'problems', can be seen in the large part as elements, features and effects of its revolutionary backdrop. They have taken shape and come into play as the articulation and operation of a particular doctrine. Yet, this intensive process of ideological mediation has allowed them to transpose unique political projects of self-determination into concepts, goals and methods of political work. Ostensibly, it has so far been not applicable to conflict.

Nevertheless, many nations and nationalities have yet to settle their ideological accounts with their past legacy, openly and unequivocally. This legacy continues to hold sway in politics below the level of declaratory goals and ideas, where it makes itself felt as ideology 'in operation', as taken-for-granted assumptions and habits of thought and action, and as 'common sense' rather

than ‘theory’. The evidence for this assertion is the prominence given to ‘social justice’, equitability, and development from ‘below’, when the actual case is that there is a bureaucracy that has yet to reach the starving masses, ironically, in the bastion of the political struggle. This is manifested in the mutualizing of goals, objectives and discourse to the extent that they gain currency less as constitutive elements of an open public arena for conflict management debate and discussion, and more as ingredients of a political recipe pre-cooked by a particular organization or coalition of organizations. It shows up in the tendency to offer solutions in tight, formulaic terms, for the most part avoiding the uncertainty of their pluralism, and to resist the opening up of reform aims and purposes for alternative formulations.[11]

The upshot is undue partisan closure on the formulation of the ends, which, potentially, are marked by greater openness and variability, and belong to a more complex universe of conflict management thought than any political group’s particular representation.

To identify the root causes of the conflict: Ethnic/racial conflicts have claimed the lives of tens of thousands of combatants, displaced millions, destroyed essential infrastructure, and dislocated the economic production base of continents. It has ruthlessly driven back record achievements in the economic, social and political development of the recent past. In this sense, the author proposes the need to identify the root causes (going beyond the symptoms) of the conflict, if sustainable solutions are to be found to the problem. The following are some of the measures that need to be discussed:

- Developing analytical, conceptual and organizational elements to investigate and address the root causes of racial and ethnic conflict to help ensure long-term success in peace building and the application of conflict resolution skills and methods;
- Developing frameworks for sustainable peace by understanding the root causes of the ethnic-racial conflict;
- Overcoming obstacles to effective communications between the contending parties;
- Identifying the actors and facilitators for peace, setting a realistic timetable for conflict management, and evaluating success and failure.

Develop a culture of and constituency for peace: States and civil societies need to discuss how can they mobilise their populace for peace and develop a culture of peaceful co-habitation. Towards this end, the author proposes that all must open dialogue on ways and means to:

- Educate the public on the need to show wisdom on dialogue related to the conflict;
- Advocate for restraint of citizens in the use of arrogant propaganda that demeans and demonises races, tribes and peoples;
- Reinforce all capacities to fight back blasphemy and irreverence to cultures, beliefs and human bonds in all occasions and constituencies;

- Develop an extension communication methodology for psychological and psychosocial rehabilitation of displaced people, refugees, returnees and ex-servicemen.

Building bridges between civil society organizations and their governments: While the civil society organizations' essential constituency are the people, an important task in bringing the work of their leaders to fruition is their capacity to bridge trust and confidence with their respective governments.

Building peace bridges between the peoples: This endeavour focuses on extensive peace and civic education. Civic education is learning about and appreciating one's rights, duties, obligations and responsibilities as a citizen, and the immediate rules, laws and governance structures within which one exercises citizenship is the first and fundamental step in peace and development participation. Their religion, culture, language, history and human make-up bond the people of any race or ethnic group. Civil society leaders need to discuss how this cultural, spiritual and historical strength can be deployed to promote people to people peace and reconciliation:

- It is vital to build trust and confidence among the population and the facilitation of a process designed to achieve peace.
- Of crucial importance is the empowered involvement of the faithful grassroots groups through the design process and the establishment or reinforcement of linkages between those directly involved in the peace process.

To heal the wounds of war and displacement: Conflicts and genocide result in human displacement. People have exercised migration as a major source of livelihood security in the recent past. The psychosocial, economic and socio-political sources of vulnerability that led to the massive displacement of children, women and men, and options for reversing this horrendous human calamity, must be treated as an agenda item:

- ***Psychosocial trauma management:*** Our agenda in this effort will be to mitigate the effects of psychosocial trauma through creating an enabling environment for social counselling, trauma management and re-establishing livelihood security to returnees.
- ***Reintegration and rehabilitation:*** The most serious human distress and trauma arise from material deprivation of humans. The loss of property, the lack of shelter, food, fuel and water are often legitimate causes to deprive people of the mental preparedness for survival. The objectives are:
  - i) To assist in the development of the necessary programme environment, strategy, organizational framework and process for integrated area-based and community-based development.
  - ii) To develop in tandem with other organizations, poverty alleviation programmes in selected districts where the conflict has hit the hardest.

– iii) To enhance the capacity of local institutions to follow endogenous models of development.

- ***Advocacy and empowerment:*** The advocacy underpinning a *conflict-rehabilitation-development continuum* must be established. New policy, strategy, and programme development exercises are needed to ensure a comprehensive and coherent policy environment for going back to the status quo. It is necessary to address the issue of mass awareness, state preparedness and support of the international peace-loving community to create a national consensus on peaceful co-habitation between the people.

Process and strategy in the management of racial-ethnic conflict

- **Articulation of process and strategy**: It is easy to follow the current trend within the international community and advocate peace as a desirable form of government. Nor is it difficult to make normative judgements about how ruling strata should behave if peace is to grow: 'the rulers must be accountable to and controlled by the people'. Nevertheless, it is not so easy to conceptualize peace as a working process, balanced against strategy, to determine what makes for a real, as opposed to vacuously formal, conflict management process. This is particularly the case where the ruling strata view the relations of their particular political agendas as relatively simple and direct in the context of their broader governing roles and responsibilities, un-problematically reducing the latter to the former. As a way of contributing to the overcoming or lessening of these difficulties, we may suggest ways of perceiving conflict management as the dynamic interaction of strategy and process. It is possible to see conflict management as the playing out of objective and critical standards, rules and concepts of political conduct in the activities of all participants, those of public officials who make and administer the rules as well as those of ordinary citizens. The issue here is not simply one of 'application' of rules to particular activities. Nor is it one of dissolving agent-cantered strategies of reform into 'objective' principles and norms. It is rather the production or articulation of process elements and forms within and through the strategic (and non-strategic) activities of various participants. Highlighting the mutually constitutive and regulative articulation of strategy and process, we shift the centre of analysis away from the two as separate formations that enter only external relations with each other.

  This shift of analytical focus serves to emphasize the critical point that the task of broadly structuring peace as a political system is more important than that of promoting it within the specific programme of

a particular government or ruling party. The latter, which may manifest itself in a variety of efforts ranging from constitution drafting efforts to convening elections, is or should be only a second-order concern compared to the former, which constitutes specific reform measures taken under the leadership of a given ruling party. But the best direct action a single party by itself can accomplish in conflict management is no substitute for what impact the action can have as a component of a field or system of activity in which opposing groups are able to participate freely. The creation of a broadly inclusive process for conflict management should consist of an articulation of process and agency, which can be sustained, in its structure or system by any political party or government operating within it.

- **Process Openness**: Although the series of constitutive elements and mechanisms of the passage to peace cannot be seen in isolation from the strategic moves of participants, the former retain their relative autonomy and can be grasped accordingly. The range of actual and possible elements that characterize process openness is greater than what might be represented within a single strategy of conflict management. There is always an 'excess' of potential – in terms of the number, variety and forms of articulation of political ideas and institutions possible – in open processes relative to any one strategic actualization. There are of course, historical limits. Ideologically fledgling and institutionally weak democracies in the economically distressed contemporary Horn of Africa could not be expected to exhibit as wide a variety of elements and forms of articulation as does historically sedimented, robust peace in highly developed countries in the West.

  However, there is still, within the limits posed by history, greater potential for openness of conflict management process in the nation states than in any single participant strategy. Process openness or transparency can be analyzed at two distinct but closely related levels: *political agency and ideology*. The former refers to the full range of significant participants and their activities and relations in political reform. Participants include potential, actual and international actors, as well as domestic actors. The latter might relate to complexes of ideas, beliefs, goals and issues that can come into competitive and co-operative play in conflict management. It includes alternative definitions of problems and varying solutions offered for them. During any political event, actors and circumstances of action are likely to be uncertain and unsettled. Political agency and ideology are less stable organizations of participants' identities and of their ideas and goals than rapidly evolving and shifting formations.

  This uncertainty imposes a significant degree of openness on politics, creating objective conditions that can spawn peace. At the same time, it will generally be characterized by the existence of a number of

organized actors and ideas, one – or a coalition – of which will commonly be dominant. This determinacy makes for a certain degree of closure on political change possibilities and problems of conflict management in the context of both agency and ideology can be grasped in terms of this basic tension within the process.

- **Possibilities and problems of building bridges and relations between racial and ethnic constituencies**: The role of political agency refers to the full range of significant participants and their activities and relations in arena of political participation. Participants include actual (as well as potential) international and domestic actors. The following are the undercurrents that determine the scope and nature of agency specific needs, imperatives and causes for interaction in a "participatory political process" exercise that is prognostically dominated by certain stakeholders. Participants in and around projects of the ethnic/racial conflict management generally constitute a network or intersection of institutions and groups. This may include the following: governments that preside over formal processes, often dominated by a single party (ethnic) or coalition of parties (racial) in which one is hegemonic. There could also be political organizations not affiliated with ruling coalitions, but which may be more or less 'loyal' to them and opposition groups and intellectuals that operate outside official government channels and struggle for a share of power or influence. In some cases, a free, though constitutionally and legally not very well protected, press; local non-governmental organizations involved in promoting conflict management at the grassroots as well as in civic, humanitarian and civil society-initiated conflict management work; professional associations; and multilateral and bilateral agencies and private international aid groups which collectively exert far-reaching external influence over political reform.

  Generally, the larger the number and degree of diversity of participants actively involved, the greater the variation. Uncertainty and complexity of forms of agency and activity possible, and the more open and free the process is likely to be in tits formal as well as informal aspects. Admittedly, the interested actors typically have their own primary 'functions' quite apart from their role in promoting conflict management. Every one of the players is geared toward specific interests, concerns and activities beyond or outside the ends of conflict management reform. Even if they are expressly committed to promoting reform, it is always possible for participants to lose themselves in the specifics and 'forget' the process as a whole. Yet a particular actor in pursuit of a limited objective within the network, as a condition of maintaining coherence and effectiveness and enlisting needed support or co-operation from other participants, will have to modulate its agency and intentions such that their complex, differential

play in alternative institutional practices and in varying forms and contexts of political activity is possible. Each actor must formulate its own project in a spiral form that to some degree allows the project to 'escalate' or to open into other objectives and activities within the reform network.

To restate the basic point, the extent and nature of openness of ethnic/racial conflict management are conditioned by the breadth of the range of available participants and the degree of uncertainty and complexity that characterized their agency and functional relations. There are, however, countervailing currents and pressures within the intersection of participating organizations and groups, which tend work against or limit process openness. These forces of process closure manifest themselves in the structure of the network of participants and in participants' activities. The forces may or may not be transparent to the consciousness of the actors that channel them.

At the structural level, a certain hierarchy of agency and activity is evident within the network of participants, such that some actors assume primary position relative to others that are by comparison limited players. This hierarchy of agency effectively places some participants in the reform network in positions of subordination. It also places limits son the range of agents and forms of conflict management political practice, which can be networked through domestic and international support. Thus, although their legally recognised existence and growth are crucial for conflict management and good governance, opposition parties and groups tend to be neglected or marginalized. Often, they are forced into the background (or underground:) of the formal process, or into partial or total exclusion. Single-party dominated incumbent governments, on the other hand, while they have to reckon with external aid conditionalities, are often supported into becoming the source of al laws, constitutions and polices on the basis of which the agency and activates of alternative and opposition groups are 'regulated' or their participation in processes is allowed or disallowed. In some cases, this results in narrowness of political reform within the structure of global and local regimens and organizations whereby process creates participants, and participants create process in self-enclosed, formalistic, reciprocally constrictive articulation.

In short, the uncertain and, potentially at least, open political, institutional and intellectual environment in which conflict management s will have to be made is generally counter-balanced by a significant degree of stratification of organized actors and by relatively settled relations of power and authority into which the actors enter. The basic point here is that the extent and nature of livelihood sustainabilities are conditioned by the breadth of the range of available participants and the degree of uncertainty and complexity that characterized their

agency and functional relations. There are, however, countervailing currents and pressures within the intersection of participating organizations and groups, which tend to work against or limit process openness. These forces of process closure manifest themselves in the structure of the network of participants and in the participants' activities. The forces may or may not be transparent to the consciousness of the actors that channel them.

Questions such as these are important in examining and assessing the ideological openness of participants. Nevertheless, as important as it is, this is only one context, level, or analysis of the breadth and depth of process on the terrain of ideology. There is another level of analysis, concerned with the extent and nature of openness of distinct ideological constructs to one another, with modes of articulation of given sets of ideas and values and of representations of specific issues relative to others. The concern here is not so much the number and diversity of ideas, values and opinions allowed to gain currency during as modes of their competitive and co-operative articulation. For example, does "political participation" enter local processes as an external ideology, constructing and deploying its concepts in sterile abstraction from the immediacies of indigenous traditions, beliefs and values? Do ideas addressing participation in conflict management come into play in total opposition to, or in co-operation with historic values and sentiments? Do leading stakeholders in the conflict equate the articulation of their ideas and agenda with the production of broad-based concepts, norms and goals that should govern the direction of **national** development at all levels? In the light of these questions, it is possible to draw a conceptual distinction between two levels of articulation of ideology in conflict management process and to note the implications of their relations for process openness. There are first, representations of specific interests, identities, needs, wishes, goals, claims, and demands, different in different individuals, groups and communities. These are to be distinguished from a second level of production and circulation of conflict management ideology where broad-based concepts, principles and rules take shape and come into play. For convenience, we can designate ideological elements at the former level of particular representations or contents, and those at the latter level of explicit general forms. Particular representations have to do with ideologically loaded articulations of interests, needs and activities, which may appear or become so immediate as to be taken for spontaneous realities. Explicit general forms of empowerment refer to systemic categories and institutional mechanisms they objectively mediate and generalize particular representations. One way is to think of it in terms of concrete instances and abstract system. A system of concepts, principles, rules and procedures provides objective standards to which every instance of representation of interests, needs, demands, intentions of human

self-empowered development must conform. In this light, political participation in conflict management appears as a process in which a global structural model of ideology is applied to local contexts. It is seen as the extension of the ideological and institutional contents of the global model. This conceptualization may not be entirely mistaken, but it is far from satisfactory. Holistic forms of participation (good governance, peace, etc.) are not simply "pure" ideology devoid of practical content; and particular constructs are not merely points of "application" of systemic good governance elements, which are wholly external to them and in whose articulation they have no role to play. If general forms are seen as pre-given standards to which every instance of representation of particular interests must conform, the effect will be the restricting the openness and transparency of the sustainable livelihood approach.

For that will mean pushing ideas and values produced in the plenitude of social experience to the background and accord primacy to a mere system of abstract categories. It will mean giving primacy to the ideologies of "thinkers" and activists and intellectuals. It must also be noted here that the conceptual and institutional mechanisms of empowerment cannot "come alive" in local contexts merely as holistic forms. They make themselves felt only to the extent communities address through them their felt needs and concerns and the circumstances they face. So alternative way of looking at the relation between general forms and particular contents in human empowerment for peace would give precedence to the latter over the former. Within this perspective, specific organizations and groups appear to have more leeway articulating systems of abstract categories according to their particular interests and intentions. "Political participation" as a system of universal concepts and practices will necessarily be instantiated in contexts, but only in line with the specific conflict management aims and strategies of particular stakeholder rather than within a simple application of its concepts in their pre-given abstract form. Instead of being applied to local contexts, global forms or models of "political participation" provide ideological materials for human empowerment in those contexts. This perspective has merits. It can work as a corrective to the view of "political participation" as a mere extension of a system of abstract categories to concrete instances. However, the issue here is not one of simply giving primacy to specific contents over general forms. The concepts and principles of "political participation" may allow particular interests and intentions to permeate them, yet should take shape through such particularities as distinct, relatively autonomous articulations.

Notes

1. This is an extreme form of transfer of State authority and power, involving the legal conferment of powers upon formally constituted local authorities to discharge specified or residual functions. It entails an inter-organizational transfer of power to geographical units of local government lying outside the command structure of the central government.
2. For an argument on the mass basis of ethnicity, see Eghosa E. Osaghae, *A Re-examination of the Conception of Ethnicity in Africa as an Ideology of Inter-Elite Competition*, African Study Monographs, 12 (1) (June 1991), pp. 43-60. Martin Doornbos calls ethnicity "the resilient paradigm" ("Linking the future to the past", *Review of African Political Economy*, No. 52, 1991, p. 53), thereby implicitly underlining its epistemological, more than its objective, value.
3. Terence Ranger, *The Invention of Tribalism in Zimbabwe*, Gweru, 1985, p. 4.
4. Bayart, p. 7. For the Ethiopian dimension of this historical process of interaction, see Taddesse Tamrat's articles: "Processes of ethnic interaction and integration in Ethiopian history: the case of the Agaw", *Journal of African History*, 29 (1988); "Ethnic interaction and integration in Ethiopian history: the case of the Gafat", *Journal of Ethiopian Studies*, 21 (1989); and Donald Crummey, "Society and Ethnicity in the Politics of the Christian Ethiopia during the Zamana Masafent", *International Journal of African Historical Studies*, VIII, 2, 1975, pp. 266-278.
5. The activities of some social institutions may have the salutary effect of bringing into transparency the work of government, and of opening up state institutions and practices to public suiting. Nevertheless, the overall weakness of civil societies is often cited as a fundamental structural constraint on conflict management. Rather than being perceived as agents and arenas of peace, civil societies are generally seen as objects and problems of reform. Indicators of their weakness include low levels of economic, technological, professional and cultural development and high levels of illiteracy. This major problem inherent in the conflict management process emanates from the extreme weakness of the social movements and their failure to develop coherent strategies for promoting broad based and well organized citizenry.
6. Various efforts to devolve authority and involve people's organizations have been unsuccessful. As a result, there was little popular participation in the political process and the populace has become distrustful and critical of the state, and is wary of having any contact with it. The lack of democratic culture is also clearly manifest in the disarray and inability of social forces to achieve an alternative vision ofpeace. While there are many and varied groups, they have been unable to unite or put together a coherent political alternative. Most of the more militant opposition leaders tend to personify power and broadly exercise conflict management principles within the definition and context of internal structures of their organizations; seemingly more interested in taking political power rather than effecting genuine conflict management changes.
7. In assessing the effectiveness of indigenous organizations in contributing to conflict management, the measure of the ideas and practices articulated by the organizations and the strategies and forms of that articulation must not be neglected. One should be awake to the possibility that actual performances of such institutions may be indifferent, or even contrary to conflict management principles, notwithstanding the formal profession of such principles by the institutions in question.
8. The circumstances of conflict and therefore the obstacles to agreement vary from one case to another. Disputes may involve many or few parties, the problem may be more or less urgent, emotional investment of the stakeholders may vary, the public interest may or may not be at stake, and the factors involved may be well understood or more uncertain. Gaining expertise in civil society-initiated conflict management includes learning about the specific advantages and disadvantages of the various

strategies, and assessing which one is best in addressing a particular conflict situation.

9. For example, those involved in a conflict tend to be highly informed about the technical and institutional issues of the conflict. In the process of resolving a dispute, this information can be shared among the different parties, and this might lead to more in-depth and creative exploration of potential innovative options for solving the problem. Some parties' knowledge of the local area may make the others more sensitive to implementation concerns. Conversely, if one of the stakeholders is poorly represented or unprepared in the negotiation process, there is little reason to believe that any agreement reached will be implemented. Solving the problem of representation improves the possibilities for parties to make decisions that are informed, appropriate and likely to be implemented.
10. While training of all sides involved in a dispute suggests an even-handed approach to problem-solving (because there are mutual benefits to negotiated settlements), it is necessary to consider that the interest in ACSICM programmes is often prompted by a concern that countries might suffer injustices at the hands of more powerful state and commercial interests. There may thus be a concern that making negotiation training available to all parties would further empower the already powerful. The expectation is that exchanging information about problem solving, decision-making and civil society-initiated conflict management approaches would address this need, and help rectify the power imbalance that countries face.
11. Under these circumstances, interpretative possibilities within concepts and goals of peace are pre-emptively 'frozen' or short-cut, turning immediately into the actualities of tired socialist formula and rituals. The influence of decades of authoritarian legacy over racial and ethnic politics is also manifested in an activist impulse of organizations' self-assertion. This involves a highly polemical and combative mode of 'communication', and sensitivity but unresponsiveness regarding criticism of its goals and strategy.

Racial Discrimination and Vulnerable Groups: Some Instances of Light and Shadow*

Virginia B. Dandan

The International Covenant on Economic, Social and Cultural Rights states under Article 2, paragraph 2, that States Parties: "… undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

In the first paragraph of this same article, States Parties are required to achieve progressively all the rights recognized in the Covenant: "by all appropriate means, including particularly the adoption of legislative measures", implying the provision of judicial review and other recourse procedures should discrimination occur[1]. This provision imposes on States Parties the obligation to respect by desisting from discriminatory practices and by amending laws and administrative measures which allow discriminatory acts either by the State itself or by private persons or bodies.

The principle of non-discrimination is, in fact, one of the essential doctrines of the international legal order, and aside from the International Covenant on Economic, Social and Cultural Rights, is contained in all major human rights treaties, particularly in the following instruments: Universal Declaration of Human Rights, Article 2; International Covenant on Civil and Political Rights, Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 2; Convention on the Rights of the Child, Article 2; Convention on the Elimination of All Forms of Discrimination Against Women, Article 2.

Furthermore, the principle of non-discrimination is also protected and recognized in Article 2 of the International Labour Organisation Convention N° 169 concerning Indigenous and Tribal People in Independent Countries, in Article 2.

This chapter derives from the primary sources in the experience of the Committee on Economic, Social and Cultural Rights in their consideration of States Parties' reports and from secondary sources in the quest for information regarding vulnerable groups and their particular situations of disadvantage. It was not possible within the short period of study to come up with an exhaustive and comprehensive examination of recourse procedures for non-nationals,

let alone to identify the wide range of remedies that are hopefully available to victims of racial discrimination. We aim to provide snapshots of a complex landscape that needs to be sorted out and understood before we can apply our collective efforts at damage control and rebuilding.

In the experience of the Committee over many years of considering States Parties' reports, it is rare indeed to come across a States Party that does not provide judicial and administrative remedies to victims of racial discrimination. Often enough, reports provide an inventory of laws, administrative policies and measures designed to protect vulnerable groups against discrimination in employment, education, housing, health care and social security among other things. This is the easier part. How these remedies are implemented is another matter altogether. In this article, time and space constraints have limited the sampling of relevant information provided by States Parties in their reports to the Committee on Economic, Social and Cultural Rights. The other more important reason is that States Parties themselves do not provide more concrete information regarding the actual implementation of judicial and administrative measures undertaken to remedy or redress situations that disadvantage the vulnerable.

The following data are extracted from reports of Western States which are parties to the International Covenant on Economic, Social and Cultural Rights, regarding the enjoyment of various economic, social and cultural rights by particular groups in society – refugees, asylum seekers, migrant workers/migrants, indigenous peoples and national minorities – who are particularly vulnerable to acts of racism and racial discrimination.

Canada

Refugees are provided transitional assistance by the Canadian government for a period of up to one year after arriving in Canada, or until the refugee becomes self-sufficient, whichever comes first. The assistance includes clothing, shelter and basic household needs such as essential furnishing and household articles. The Government also provides income support consistent with prevailing social assistance rates.

The Canadian Aboriginal Economic Development Strategy provides support for aboriginal economic development. The Department of Indian Affairs and Northern Development, the Human Resources Development, and Industry Canada have been funding programmes to support aboriginal business activity and community-development capacity to generate employment, wealth and the capital base required so that aboriginal people can meet their economic self-reliance objectives.

Even while education is a provincial responsibility, the Federal Government has responsibility for the education of children who live on Indian reserves or Crown land. The Federal Government continues the process of transferring control of schools in reserves to Indian First Nations. In 1995-96, 57% of

students were attending schools operated by first nations compared with about 36% in 1988-89.

In order to respond to health concerns expressed by First Nations and Inuit, a working group was established to recommend practical changes to improve the health of aboriginal people in Canada. The federal Health Minister agreed to consult with the five national Aboriginal organizations for the development of a comprehensive health policy, and to report to the provinces and territories on these consultations.

In September 1994, the Minister announced the new health strategy for aboriginal people called "Building Healthy Communities". The funding for this strategy was devoted to priorities identified by First Nations and Inuit people in areas of mental health, solvent abuse and home-care nursing. The Federal Government has also taken steps to transfer health resources to First Nations and Inuit communities at a staggered pace determined by them. Almost 100 First Nations are already controlling their own community health resources as an outcome of this transfer initiative[2].

Germany

In Germany, State agencies at all levels are constitutionally obliged to respect the dignity of man and the law that no one shall be discriminated against or favoured because of their sex, birth, race, language, national or social origin, faith, religious or political opinions. These constitutional obligations bind parliament, government, administration and the courts and are expected to be upheld by public authorities. Protecting people by anti-discrimination laws is of outstanding importance in German law and politics. Germany regards it an important task to design the laws in such a manner that they offer the best possible protection against discrimination.

Over the last few years, the Federal Government considerably expanded its integration programmes which concentrate on the transition from school into working life. The aim is to provide as many young foreigners as possible with a work qualification. For this purpose, an integrated package of support measures is offered comprising German language courses, specific pre-training measures for foreigners and programmes to promote the vocational training of disadvantaged young persons. It is of great importance to improve the knowledge of the German language since language and communication are basic prerequisites for equal opportunities. These language courses are also available to foreign adults.

In the *Lander* of the Federal Republic of Germany, the schools are also attended by a large number of children of foreign workers who have the same rights and duties as German children. Owing to their special language and cultural situation, it is often more difficult for the children of foreign workers to adapt to the school environment and other circumstances. To overcome these difficulties, various measures have been taken including the establishment of

special classes with both the mother tongue and German as teaching languages, and the provision of remedial lessons and intensive courses.

The policy for the integration of foreigners who reside lawfully in Germany has a positive impact on the secondary education of second and third generation foreigners. The number of young people in medium or higher-level secondary education is rising and, consequently, they account for an increasing share in the number of high-grade certificates.

The field of vocational training/retraining is particularly suited to foster the living together of foreigners and Germans and to work against discrimination and prejudice. Furthermore, in the context of projects for the social and vocational integration of foreigners, joint activities with German projects and groups, including young Germans who are susceptible to xenophobia, are promoted. In this way, a contribution may be made towards improving mutual tolerance and acceptance and increasing the self-esteem of young foreigners[3].

Spain

With regard to the right to work, the law contains specific provisions against discrimination. One of the rules applying to foreign workers and refugees is the Royal Decree N° 1119/86 approving the implementation of the Regulations Organization Act N° 7/1985 concerning rights and freedoms of foreigners in Spain. Its Article 32 on working conditions stipulates: “The remuneration and other working conditions of foreigners authorized to hold employment in Spain may in no circumstances be inferior to those established under the rules currently applying on Spanish territory or determined by agreement for Spanish workers in the activity, category or locality concerned”.

Act N° 5/1994 regulating the right of asylum and refugee status, states in connection with employment in its Article 13: “The granting of asylum-seeker status entails authorization to live in Spain, authorization to engage in an occupation, a profession or business ...”. In Article 22, paragraph 3: “Anyone granted refuge in Spain, if he wishes to engage in gainful employment, whether or not on his own account may be issued with the requisite residence and work permits”.

The goal of the Educational and Vocational Training Assistance Programme is to provide technical and vocational training to refugees and/or asylum-seekers who stand in need of it and to support the education of the children of refugees and asylum-seekers.

Since 1989 there has been a specific budgetary allotment in the in the General State Budget for the financing of comprehensive action projects for gypsy communities in difficulty, including: information on job training availability, rights and duties and social security; vocational training, with on-the-job training programmes aimed at developing the skills of unemployed, preferably young, Gypsy men and women; and promoting entry into different types of employment by encouraging cooperatives and setting-up of small businesses[4].

Sweden

In January 1993, the Government appointed a parliamentary commission to review immigrant policy and immigration and refugee policy. One of the main tasks of the commission will be to study integration aspects, the situation for immigrants in the employment sector and knowledge of the Swedish language as a factor influencing integration.

Distinctions based on race, sex or other circumstances mentioned in Article 2 of the Covenant with effects on the recognition, enjoyment or exercise of equality of opportunity or treatment in employment or occupation are not allowed in Sweden. In December 1993 the Government presented a bill to Parliament concerning measures against racist crime, as well as against ethnic discrimination on the labour market. The bill proposes prohibition of discrimination against job applicants and employees on ethnic grounds and will apply to the entire labour market. The changes came into force on 1 July 1994.

The basic principle is that the situation of immigrants and refugees on the labour market must be dealt with in the context of general labour policy, supplemented if necessary by special measures.

One fundamental principle of the Swedish education system is that everybody must have access to equivalent education regardless of ethnic and social background as well as residential locality[5].

The Netherlands

Since its inception in 1985, the National Bureau against Racism (LBR) has given priority to combating racial discrimination on the labour market. This is reflected in its legal work and in its research and policy-making activities. The Bureau has systematically built up a body of information for use in advising policy-makers, civil servants, politicians, employers, union officials, etc. and for incorporation in LBR publications and the courses which the Bureau runs or supervises.

In February 1994, the Fair Employment of Ethnic Minorities Act was adopted by Parliament which obliges employers to produce public annual reports on the composition of their workforce and draw up plans for the future.

On 1 September 1994, the Equal Treatment Act entered into force. It prohibits direct and indirect discrimination on grounds of religion, race, colour, political or other opinion, nationality or social origin, civil status, sex or sexual orientation. Discrimination is prohibited in the fields of employment (including vocational training), the offering of goods and services, and educational and vocational guidance.

A new Commission was established charged with handling complaints with regard to matters covered by both the Equal Treatment Act and the Equal Opportunities Act. At the same time, the Equal Employment Opportunities

Commission was abolished. The Equal Treatment Commission, as it is known, has the same powers as the old Commission and can, in addition, apply to the courts to have actions which contravene either act declared unlawful or prohibited or to seek an order reversing the consequences of that action. The Commission also has the power to make recommendations addressed to the person deemed to have contravened the act concerned. The new Commission consists of nine members, including the president and two vice-presidents, and nine deputy members.

With regard to ethnic minorities, 3,000 persons are to be placed in jobs in the health care sector and 800 in jobs in old people's homes. Applicants of Turkish and Moroccan origin, in particular, who do not have the qualifications required by law for work of this kind, are being targeted and offered bridging courses to improve their qualifications[6].

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The preceding part of this article has thus far demonstrated the often vague generalities and lack of concrete information in States Parties' reports regarding non-discrimination. The listing of laws and measures only serves to indicate what is in place, particularly in terms of protection and promotion. A discussion of the remedies offered when violations do occur and how effective they are would be more useful in trying to arrive at a clear picture of the actual situation. It is often the case that the Committee must probe further, requesting for statistics and detailed accounts of actual cases in domestic courts in order to gather the kind of input required analyzing the effective implementation of Article 2, paragraph 2. In its revised reporting guidelines for States Parties, the Committee asks one all-encompassing question: to what extent and in what manner are non-nationals not guaranteed the rights recognized in the Covenant? What justification is there for any difference?[7] The responses from States Parties are again typically on the positive side. Understandably, why should a State Party be willing to discuss the way it is not fulfilling its treaty obligations. It is important to note that the State Party is expected to discuss the implementation of each of the rights under the Covenant on the basis of equality and non-discrimination. Clearly then, discrimination in all its forms is in the ambit of economic, social and cultural rights, particularly in relation to the situation of vulnerable groups, including non-nationals and women.

Refugees and asylum seekers belong to the category of the all-inclusive term 'non-nationals'. The Universal Declaration of Human Rights under Article 14 states that: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." The United Nations Convention Relating to the Status of Refugees of 1951 defined the 'refugee' as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to

avail himself of the protection of that country[8]. The most fundamental rights protection in this Convention is safeguarding refugees from being returned to a place where their lives, freedom and rights would be threatened[9].

In spite of the Convention Relating to the Status of Refugees, refugees are refused the asylum they seek in many parts of the world. Many are not even given the opportunity to make a refugee claim and are turned back either to other countries or worse, to the country of origin where the refugees have escaped persecution in the first place. Among those who are able to file a claim are those wrongly refused refugee status because of inadequate protection under existing procedures, or their lack of information, or the narrow interpretation of the definition of what qualifies an individual to be a 'refugee'. The gender-related nature of persecution suffered by women is recognized only by a few countries, hence women under such circumstances are refused protection. Refugees who are accepted into countries of asylum are often discriminated against, are denied equality with citizens especially in relation to economic, social and cultural rights, separated from their families and are subjected to racism and xenophobia.

Refugees overseas who have not found permanent homes have an opportunity to settle in Canada, where every year the government selects about 7,300 refugees for resettlement. The refugees must be interviewed and processed overseas in a procedure that can sometimes be very long. Refugees who have not been pre-selected in this manner can also claim Canada's protection at a border point or from within Canada. A refugee claim is reviewed and, if found eligible, it is referred to the Immigration and Refugee Board (IRB) which hears the claim. In cases where the decision is unfavourable, there is very limited legal recourse[10].

In relation to gender-based claims, there are two primary areas in which New Zealand jurisprudence has developed – persecution, and the Refugee Convention grounds (race, religion, nationality, membership of a particular social group, political opinion). In a paper prepared for the Symposium on Gender-Based Persecution organized by the Office of the United Nations High Commissioner for Refugees in 1996, Rodger P.G. Haines of the New Zealand Refugee Status Appeals Authority discussed the basic principles of New Zealand refugee jurisprudence which recognize and address gender issues. The following information has been extracted from Haines's paper[11]:

> "First, New Zealand refugee jurisprudence accepts that persecution may be defined as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection. More particularly, the Refugee Status Appeals Authority (RSAA) in Refugee Appeal N° 1039/93 Re HBS and LBY (13 February 1995)26 recognized that discrimination can affect gender-based groups to different degrees and that the RSAA should consciously strive to recognize and to give proper weight to the impact of discriminatory measures on women. The facts of the above-mentioned case show that various acts of discrimination can deny human dignity and should be properly recog-

> nized as persecution for the purposes of the Refugee Convention. Second, New Zealand refugee jurisprudence also accepts that there are four situations in which it can be said that there is a failure of state protection: persecution committed by the state concerned; persecution condoned by the state concerned; persecution tolerated by the state concerned, and persecution not condoned or not tolerated by the state concerned, but nevertheless present because the state either refuses or is unable to offer adequate protection.
>
> It can therefore be said that New Zealand jurisprudence explicitly recognizes that non-state or 'private' violence can constitute grounds for refugee status. Third, the standard applied in New Zealand for assessing whether there is a sustained or systemic violation of basic human rights is an international standard – the International Bill of Rights comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The RSAA's jurisprudence has been informed by Professor Hathaway's theory of persecution based on these instruments and the hierarchy of rights found in them[12]. Fourth, as a consequence of applying an international standard, we have rejected the argument based on cultural relativity, that New Zealand as a 'Western' country cannot assess human rights in the claimant's country of origin".

Haines's paper then goes on to discuss at length several specific cases of gender-based persecution and discrimination brought before the Refugee Status Appeals Authority of New Zealand. Since only a small part of his paper is discussed here, the conclusions of the paper cannot be presented because they would be taken out of context.

Conclusions and recommendations

It was not the intention of this article to discuss failures of State Parties to the International Covenant on Economic, Social and Cultural Rights to protect vulnerable groups against racial discrimination, especially since there is no call for it here. Therefore the conclusions that follow which derive from the experience of the Committee will not have the benefit of a discussion of their contexts. The issues related to these conclusions are integral to the effective implementation of recourse procedures for the protection of vulnerable groups and of remedies available to them when acts of discrimination are committed against them.

1. More and more developed and developing countries are now closing their doors to refugees. Limited rights of appeal and restrictive interpretations of the Refugee Convention of 1951 and its 1967 Protocol deprive refugees of international protection. Human rights treaty bodies are called upon to be more vigilant in monitoring the situation of refugees and asylum-seekers and to work with States towards solutions that satisfy the requirements of the Convention and its Protocol.
2. Vulnerable groups (refugees, migrants, asylum seekers, minorities, indigenous peoples) are ignorant of their rights and are often even more disadvantaged in this regard because of language. Human rights education programmes should have as wide a coverage as possible to include the most vulnerable groups.
3. National human rights institutions are better equipped than the courts in determining acts of discrimination but they offer no effective guarantee of redress. The guarantees provided for by law and the authority given to courts of competent jurisdiction should provide appropriate and just support to national human rights institutions to ensure that there are no contradictions in their respective decisions.
4. Redress available through varied national human rights laws and measures are often inaccessible and/or selectively implemented. The merits of legal and administrative procedures should be decided upon with as much transparency as possible and with greater diligence on the part of the courts which are the principal means available for individuals to ensure that their basic human rights are respected.
5. Legal processes alone cannot address and effectively rectify racial discrimination and injustice. A genuine process of accommodation is needed beyond the legal process to ensure that every individual is treated with dignity and equality as required by fundamental law.
6. Most refugee claims are based to a certain degree on discrimination and such discriminatory measures can have a severe impact particularly on women. The special needs of female refugee claimants call for just as much special sensitivity. Emphasis should be given on understanding the ways and means by which women can be persecuted.
7. Health and the criminal justice system remain two main areas of chronic disadvantage for indigenous peoples. More effective means of relevant information dissemination and education campaign should be undertaken and pursued with vigour.
8. Rarely do government policy or court decisions make reference to international human rights standards, so that there is a limited recognition in law and in public consciousness of the international human rights standards. States Parties are called upon to bring their domestic laws into conformity with the various international human rights treaties in compliance with their obligations. In addition, special training courses should be undertaken for judges and government officials about the obligations of States under the international human rights treaties which they have ratified.

We can begin to address and rectify racism and injustice through the legal remedial processes that already exist. We certainly have sufficient international treaties and national laws and administrative measures that can provide us with the structural framework. What we need to do now is to roll up our sleeves and start working.

* This article was presented at the United Nations 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 in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Geneva from 16 to 18 February 2000.

Notes

1. United Nations Fact Sheet N° 16 (Rev.1), *The Committee on Economic, Social and Cultural Rights*, p. 8.
2. ECOSOC (E/1994/104/Add.17).
3. ECOSOC (E/1994/104/Add.14).
4. ECOSOC (E/1994/194/Add.5).
5. ECOSOC (E/1994/104/Add.1).
6. ECOSCO (E/1990/6/Add. 11).
7. ECOSCO (E/C.12/1991/1) p. 2.
8. Convention Relating to the Status of Refugees, Article 1 A(2).
9. *Ibid.*, Article 33 (enumerating the principle of "non-refoulement").
10. Canadian Council for Refugees. *Refugees and Canada*. available online. 1998.
11. Rodger P.G. Haines, *Gender-Based Persecution: New Zealand Jurisprudence*. Available online. February 1998.
12. James Hathaway, "The law of refugee status", *Gender-Based Persecution: New Zealand Jurisprudence*, op. cit., p. 8.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance from the Point of View of a Non-Governmental Organization

Michael Banton

Social research has made fundamental contributions to the struggle against racism. The first was to the overcoming of biological determinism in social affairs. Once many people of European origin thought that the subordination of blacks by whites in South Africa and the Deep South of the USA was the expression of natural differences. The conquest of this assumption required research in social as well as biological science. In the 1920s it was shown that racial prejudice was not inherited but learned. Then in the 1950s UNESCO-sponsored research in Brazil described a very different pattern of Black-White relations[1]. This helped the anti-racist movement in the West argue that the so-called 'race problem' could be solved when there was sufficient political will.

Social scientists went on to demonstrate that most of the differences between peoples are to be traced to cultural rather than to biological causes. Their achievement was the greater because much social research entails telling people things they do not want to hear. For instance, Gunnar Myrdal's great book *An American Dilemma* compiled a mass of evidence to contend that the so-called 'Negro problem' in the USA was really a 'White problem', that of living up to the promise proclaimed in the country's constitution[2]. When, in 1948-50, the UN Secretary-General prepared for the Commission on Human Rights his important memoranda *The Main Types and Causes of Discrimination and Definition and Classification of Minorities*, the extensive bibliographies to these studies consisted very substantially of sociological works[3]. They made a vital if indirect contribution through their influence upon informed opinion.

Myrdal's book, along with the findings of research by Kenneth Clark into the effect of segregation upon Black children, was cited in the US Supreme Court decision of 1954 outlawing segregation in schooling. Their research proved very important to the political history of the USA but it was not immediately

welcomed because it challenged the general public to re-examine ideas underlying their everyday life.

With the overcoming of biological determinism there came a stress upon the influence of ideas. UNESCO's constitution of 1945 declared that 'Wars begin in the minds of men' and went on to state that the recent war had been 'made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races'. At this time the anti-racist movement had to concentrate upon combating an erroneous biological doctrine. In 1963, adopting the Declaration on the Elimination of All Forms of Racial Discrimination, the UN General Assembly 'affirmed the necessity of speedily eliminating racial discrimination throughout the world'. It assumed that racism sprang from doctrines which were generated by social structures like those of fascism and colonialism.

Another fundamental contribution of social science research has been to explain why racial discrimination can no more be completely eliminated than crime can be eliminated, and why, though its incidence can be reduced, the reduction cannot be so speedy as the General Assembly then hoped. Popular assumptions and habits can be changed, but programmes for their reform have often failed. Social engineering cannot call on all the technical sophistication of aeronautical engineering but it has to cope with a comparable complexity.

Research in the universities threw light on the psychological factors that are responsible for individual differences in prejudice. People of a certain personality type were found to be predisposed to accept fascist or racist doctrines and others to be resistant to them. Racial prejudices were associated with low levels of education, with membership of older age groups, and with downward social mobility. Then the spotlight shifted to the power of social institutions to give prejudice and discrimination a customary form, causing these to be taken for granted. It was shown that racially discriminatory practices could be sustained in ways that did not depend upon old-style doctrines of racial inequality. Research workers in the industrialised countries of the West had then to generalise their theories and techniques so that they could be useful in other regions. UNESCO encouraged the formation and growth of the International Sociological Association, which, in 1966, established its Research Committee 05 on Ethnic, Race and Minority Relations, on whose behalf this memorandum has been prepared.

The political problem is to expand networks of co-operation, encouraging competition without allowing it to change into conflict. This has posed acute difficulties for the new nations of Africa where ethnic tensions have complicated the tasks of nation-building. The world now knows of the tragedies of Rwanda, Burundi and the Great Lakes region. It is less well-informed about the success stories in which the descendants of European settlers have found a place in the newer and more truly democratic societies. Social research has contributed to these changes by helping people to understand the processes

in which they participate that improve on the popular philosophies of the colonial era[4].

That era also led to the formation of so-called 'plural societies' where the colonial power had introduced a new ethnic group into countries like Indonesia, Malaysia, Guyana, Fiji and Mauritius. Social research has helped identify the special problems of these societies[5].

The changes that came over the societies of Eastern Europe from the end of the 1980s led to the breaking of old solidarities. Would-be leaders mobilised followers by appealing to sectional interests and identities. Some still draw on out-of-date biology. Not long ago a Russian politician of the old school maintained that 'Any nation, any people, is a manifestation of nature, which must be respected, with which we must come to terms in the same way as we do with the sun, with the water, with the air'[6]. For him, nationality was what race was to an earlier generation. Social science can now explain how it is that sentiments of nationality, like those of racial identity, are the product of society, not nature[7].

The break-up of the former Yugoslavia was wrongly attributed to the revival of ancient hatreds. Research has demonstrated that the maintenance of political structures like that of Yugoslavia depends upon bargaining between ethnic or national elites, and this is upset when one group destroys the equilibrium. It has shown how movements can be mobilised for confrontation, and how people can then believe things, and do things, of which they would not previously have been capable. Growing concern for personal security enforces ethnic alignment and can lead to atrocities such as those of 'ethnic cleansing'[8].

The dissolution of empires and of federations exposes minorities to new threats. This was sadly exemplified by the attacks on Roma in Kosovo, but it is a more general consequence of certain kinds of political change. The governments of the new states established as a result of the break-up of the USSR, like the governments of the plural societies just mentioned, have had to draw up constitutions, adopt national languages, declare national holidays, select national anthems and take other measures to cultivate national unity. An unintended consequence is to increase the isolation of the minorities within their borders, some of which then seek to secede. However, such considerations do not explain traditional discriminations like those against the Burakumin in Japan or the tribes and scheduled castes in India.

Social research has shown how most social policies have unintended consequences, many of which are not foreseen. This has been demonstrated many times in studies of the plight of indigenous peoples. Even as simple an example of development as the building of a road can have seriously detrimental consequences for an indigenous people living, or herding animals, in its vicinity. When new technology is introduced there are many unintended consequences. Women may not be in as good a position as men to avail themselves of the new opportunities and female members of a disadvantaged group can suffer discrimination on account of both their ethnic origin and their gender.

Research in many countries has cast light upon the circumstances of migrant workers and members of their families and upon the processes of immigrant adaptation to new surroundings. The questions of whether there can be a non-racist immigration policy and of the extent to which the economic needs of the 'host society' should determine the number of immigrants admitted are political issues, but social research can help establish the relevant facts, illuminate the issues, and measure the effect of restrictive policies upon the attitudes of the majority population towards those admitted. It can identify ways in which attitudes towards immigration and racism relate to views about family and gender relations, economic disadvantage and other class related factors, as well as to questions of culture, identity and the politics of belonging.

Much recent research shows that discrimination can be a product of institutional structures, notably those of recruitment to employment. It has given rise to the expression 'institutional racism' which has gained currency in the last thirty years. Since governments are often conscious that they will be soliciting votes at the next election, they would prefer to overlook discrimination in the job market. The initiative taken by the International Labour Organisation is therefore noteworthy. It has sponsored a series of experimental studies planned for eleven countries, mostly but not entirely in Europe. A good example is the investigation carried out in the Netherlands[9]. When this technique cannot be employed, the next best course is to survey members of victim groups and ascertain what their experience has been, as has been done in Sweden[10]. Anti-racist measures can be an element in more general policies for the promotion of equal opportunities in employment.

Discrimination in access to housing has been no less important. Research has shown that there was little racial segregation in the residential areas of the northern cities of the USA until after the First World War. Segregation was then promoted in order to maximise the profits which real estate agents and landlords could draw from a divided market. Residential segregation is now taken for granted by many Americans. It sustains inequalities of access to education and social services and it helps transmit these inequalities to the next generation[11]. It is no surprise, therefore, that a significant component of the research into the sources of racial inequality in industrial societies has focused on educational institutions[12]. It has attached particular importance to the ways members of racialised groupings are constructed in the media as well as in school textbooks and various forms of official discourse. A comparable field of specialist inquiry has been research into ethnic inequality in health. Persons from foreign countries may suffer more from certain diseases, have greater difficulty securing access to health care, and have a different life expectancy.

Research workers' findings are published in academic journals, but from time to time there are attempts to summarise them and expound their significance to a wider public, or they influence the findings of governmental or official reports, like those of the French *Haut Conseil à l'intégration*, the US Presidential initiative *One America in the 21st Century*, or the Runnymede Trust's *The Future of Multi-Ethnic Britain*. Whether the press and television amplify

the message of social research for a general public can depend upon what else is 'news' at the time[13]. Social research has shown how in the items of news they choose to feature, the words they use, and the pictures they reproduce, the media can further the dissemination of racism. The study of how groups come to be racialised is a major topic in the analysis of discourse.

The social research which has the most immediate impact is that which furnishes facts on developments that can scarcely be ignored, like studies of comparative birth and death rates showing that some ethnic groups are growing in size faster than others. Demographic research may point to politically uncomfortable conclusions, like the desirability of immigration if a country is to be able to pay pensions to an ageing population. In France it was for a long time uncertain whether the Institut National d'études démographiques would be allowed to conduct a survey which distinguished French citizens according to their parents' countries of birth. The research eventually went ahead and the findings now provide a factual basis for the anguished debate about whether persons of North African or West African ethnic origin resident in France can be recognised as ethnic minorities[14].

As will be apparent from the foregoing, one of the main contributions of sociologists has been the conduct of social surveys which have shown the effects of discrimination on minorities. More adventurous research has attempted to evaluate the effectiveness of different strategies for peace-making in situations of conflict and for the reconciliation of former enemies. Many governments now arrange for the monitoring of their training programmes and other race equality policies in order to discover what works best.

Most of the members of RC05 of the ISA are academic sociologists. Few of them have personal experience in the application of their more theoretical studies, but recent history suggests that their research will influence the ideas of the coming generation. If they are encouraged to do so, academic sociologists could make more practical contributions to the resolution of the sorts of issue which will be considered at the World Conference.

Notes

1. Wagley, Charles (ed.) *Race and Class in Rural Brazil*. Paris, UNESCO, 1952.
2. Myrdal, Gunnar *et al. An American Dilemma*, New York, Harper, 1944.
3. The Main Types and Causes of Discrimination, E/CN.4/Sub.2/40/Rev.1; Definition and Classification of Minorities, E/CN.4/Sub.2/85.
4. Adam, Heribert, Frederik Van Zyl Slabbert and Kogila Moodley. *Comrades in Business: Post Liberation Politics in South Africa*, Utrecht, International Books, 1998.
5. Kuper, Leo. *Race, Class and Power. Ideology and Revolutionary Change in Plural Societies*, London, Duckworth, 1974.

6. Codagnone, Cristiano and Vassily Filippov. 'Equity, exit and national identity in a multinational federation: the 'multicultural constitutional patriotism project in Russia', *Journal of Ethnic and Migration Studies*, 2000, 26, p. 265.
7. Tishkoff, Valery. *Ethnicity, Nationalism and Conflict in and after the Soviet Union. The Mind Aflame*. London, Sage, 1997.
8. Oberschall, Anthony, 'The manipulation of ethnicity: from ethnic co-operation to violence and war in Yugoslavia', *Ethnic and Racial Studies*, 2000, 23, pp. 982-1001.
9. Bovenkerk, F., M. J. I. Gras and D. Ramsoedh. *Discrimination Against Migrant Workers and Ethnic Minorities in Access to Employment in the Netherlands*. International Migration Papers N° 4, Geneva, International Labour Office, 1995.
10. Lange, Anders. *Invandrare om Diskriminering IV*. Stockholm, CEIFO skrift Serie 79, 1999.
11. Massey, Douglas S. and Nancy A. Denton. *American Apartheid: Segregation and the Making of the Underclass*, Cambridge, MA, Harvard University Press, 1993. For analyses of constraint and choice in British housing markets, see Rex, John and Robert Moore. *Race, Community and Conflict: A Study of Sparkbrook*, London, Oxford University Press, 1967, together with Dahya, Badr 'The nature of Pakistani Ethnicity in Industrial Cities in Britain', in Urban Ethnicity Cohen, Abner (ed.). London, Tavistock, 1974. pp 77-118.
12. See, for example, *The Future of Multi-Ethnic Britain*, pp 142-58. Report of the Commission chaired by Bhikhu Parekh. London, Profile Books, 2000.
13. In Britain the PEP report by W. W. Daniel, *Racial Discrimination in England*, Harmondsworth, Penguin, 1968, had the good fortune to appear on a day when there was little other news. Its results, showing that racial discrimination was more common than even its victims had believed, received massive coverage and front-page treatment in all the major newspapers. Its impact was such that the proposals of the Race Relations Board for the extension of the law against racial discrimination were rapidly accepted with little opposition. By contrast, the comparably important report on race and sentencing in the Crown Court (Roger Hood. *Race and Sentencing*, Oxford, Clarendon Press, 1992) was published on the day when the separation of the Prince and Princess of Wales was announced. That announcement swamped nearly all other news and the report's findings passed unnoticed in the mass media.
14. Tribalat, Michèle. *Faire France. Une grande enquête sur les immigrés et leurs enfants*, Paris, La Découverte, 1995.
    Tribalat, Michèle *et al. De l'immigration à l'assimilation: enquête sur les populations d'origine étrangère en France*, Paris, La Découverte, 1996.

The Condition of Persons of African Descent in the Americas: Marginalization on the Basis of Race and Poverty – Attitudes towards Cultural Identity

Edna Maria Santos Roland

Introduction

To open the discussion on the condition of the Afro-Americans in the Latin America and Caribbean Region, focusing on their marginalization on the basis of race and poverty, and on attitudes towards cultural identity, it would be useful to begin by reviewing some basic concepts in the general debate about racial discrimination.

As Michael Banton points out in his background paper "The causes of, and remedies for, racial discrimination"[1], the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) was issued at a moment when colonialism and its associated segregation and discrimination were at the centre of the world debate, and a speedy elimination of racial discrimination was expected as a result of United Nations Member States action. However, colonialism and doctrines of racial superiority were the only two causes of racial discrimination mentioned in the preamble paragraphs to the convention. Dramatic changes have occurred in the world since ICERD was issued, which have demonstrated the narrowness of such a framework to analyze racial discrimination. Even after the end of apartheid and colonialism, a number of bloody ethnic and racial conflicts have emerged, especially in Europe and Africa, attracting world media attention. And whilst the media concentrates on the most dramatic and gross current violations, we forget the chronic violations suffered by millions of people in the world, including the Afro-Americans.

In his background paper, Banton updates the list of different types and causes of discrimination, discussing with precision the changing circumstances related to the new communication and transport facilities that weakens the processes of assimilation of migrants in their new societies[2]. As regards economic, social and cultural rights, he discusses the changes in the labour market and immigration policies related to globalization; discrimination in the

workplace and its causes; provisions of remedies by the civil law as compared with criminal sanctions; segregation in housing that may arise as an unintended by-product of actions by private persons; and de facto segregation in the school system. He also analyzes the circumstances under which collection of ethnic data may be justified and the need for codes in advertising and for journalists regarding the representation of cultural diversity of the country and of other peoples[3].

Banton observes that the ICERD preamble presents racial discrimination as a social sickness, while Article 26 of the International Covenant on Civil and Political Rights (ICCPR) presents it as an unlawful behaviour for which one or more individuals are accountable. He considers these descriptions inadequate, affirming that, as demonstrated by the fact that all over the world native workers resent competition from immigrants, the disposition to discriminate is universal and does not represent a form of pathological behaviour[4]. A recent paper by the International Council on Human Rights Policy differentiates between the natural tendency of individuals to identify themselves with the group to which they belong and exclusionary behaviour. The latter has the following characteristics, which are often progressive: pride in the achievements of 'our' nation, or clan; perception of others as outsiders; belief that different groups and their members are less deserving, inferior, less human, or not truly human; pathological projection of one's sense of identity excluding others and denying their humanity[5].

To demonstrate that discrimination is not necessarily illegal, Banton refers to anti-discrimination laws that permit favourable treatment for the disadvantaged groups and he also affirms that discrimination is not necessarily immoral, giving as an example the reservation of the position of priest to male persons, which although discriminatory on grounds of sex, might be justified on religious grounds[6]. The term "discrimination" thus encompasses very different kinds of actions, which, without evaluation of their consequences, may be treated as similar. In one case, equality may be promoted whilst in the other, discrimination may result in inequality and impairment of enjoyment of a fundamental freedom in a social field of public life. In spite of the fact that the term "discrimination" has been used as "positive discrimination" or just "discrimination" to refer compensatory measures[7], to avoid semantic and political misunderstandings, it would appear preferable to restrict the use of the word "discrimination" to the meaning defined in Article 1, paragraph 1, of ICERD. As defined by Article 1, paragraph 4, the term "discrimination" should not be applied to the special measures taken to promote equality, with the restrictions imposed therein. The exclusions referred by Article 1, paragraphs 2 and 3, allows for legislation that has been enacted especially by European countries that as pointed by the Special Rapporteur of the United Nations Commission on Human Rights increasingly discriminates against immigrants and refugees from developing countries and Eastern Europe.

In his background paper[8], Theo van Boven considers that in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in 2001, the United Nations is facing a very

different situation as compared to previous conferences when apartheid evoked general condemnation and rejection. With "Pandora's Box" now open, it will be difficult to reconcile the diverse and opposing interests[9]: racial discrimination can no longer be treated as a matter of foreign policy or a South African problem, it is the problem of every Member State. The struggle against apartheid acted as a sort of "ice-breaker"[10] in fighting violations of human rights and was instrumental for the promotion of a global strategy.

At the global level, areas of major concern are the explosion of ethnic conflicts and related violence with the return of notions and practices of national or ethnic exclusivity, the phenomenon of xenophobia, and victims of double discrimination. The main agenda for continuing action are acceptance of international instruments and procedures, national institutions to combat racism and racial discrimination, law enforcement, effective recourse and redress for victims, teaching and education, and the use of communication media and internet[11].

In a recent working paper, Paulo Sergio Pinheiro states that in 1980 it became clear that racism and racial discrimination "often resulted from inequitable distribution of political and economic power within societies and that in consequence, the enjoyment of economic opportunities was an important target"[12].

Gloria Steinem gives a different view in the report *Beyond Racism – Embracing an Interdependent Future*, considering that racism grew up as a justification for the take-over of the land and the means of production[13]. According to this theory, the persistence and mutation of racism is related directly or indirectly to the fact that the groups that are discriminated against are denied access (or equal access) to essential means of life, such as land, jobs, housing, education, family planning and health services[14]. The poverty of discriminated groups results from racism, which is in turn related to the distribution of resources. Social exclusion is one of the facets of contemporary racism. Whether racism be a cause or a result of poverty, it is clear that to combat racism, we have to combat poverty and vice-versa, notwithstanding the importance of other actions to combat racist ideas and ideologies.

Considering the analysis and recommendations presented by Pinheiro, the following appear to be most relevant to Afro-Americans in the Latin American and Caribbean context: a) the denial of racism, understood both as denial of the facts or denial of the interpretation of the facts; b) the (un)rule of law and racism, focusing on the right to education, decent living conditions, fair salaries and other economic and social rights; c) representation in public administration and positions of power; d) specific protections and compensatory policies; e) legislation against racial bias in employment, discrimination in pay and incentives, discrimination in the workplace; f) legislation aiming to curb police violence; g) the reform of legal systems to avoid discrimination, especially in the criminal justice system; h) development programs with a human rights perspective to eliminate racial discrimination in employment, education, credit services and other entitlements; i) the redressing of the effects of past discrimination against persons of African descent, including the legal implications of the slave trade; j) tackling pervasive gender discrimination intertwined with other forms of

discrimination; k) a review of the racial effects of government policies, and especially the action of the military, the police, the law and the courts[15].

Beyond Racism – Embracing an Interdependent Future proposes eight strategies to create a "virtuous circle of change" as opposed to a "vicious circle": 1) securing a baseline of legal equality and effective remedies for discrimination; 2) promoting access to educational opportunities; 3) gaining access to economic, entrepreneurial, employment and training opportunities; 4) using political power and participation; 5) challenging the media to provide better and more in-depth coverage of issues, needs and contributions made by people of African descent or appearance; 6) appealing to moral authority; 7) using the arts to speak to our sensibilities as human beings; 8) engaging, supporting and promoting the use of human rights values and instruments[16]. The report targets Brazil, South Africa and the United States of America, however we may find below that these recommendations may also be applicable to the Latin America and Caribbean Region as a whole.

The report *The Persistence and Mutation of Racism* discusses a very important issue in the context of Latin America and the Caribbean: the issue of denial. It establishes a typology that goes from denial in good faith ("I didn't know") to outright lies, deliberate denial through falsehoods, misinformation or evasion. The States may deny the existence of racial minorities in their territories, or a fact may be admitted but its racist motives or meanings denied. The discriminatory racial effects of a policy are denied under the pretext of social and economic inequality. Euphemisms may be used to hide racism. Rational explanations may be used to deny moral responsibility or may keep the focus exclusively on juridical equality or equality of opportunity, without considering the real circumstances[17].

Overview on the situation of Afro-Latin Americans and Caribbeans[18]

Many Latin American states do not collect data on the race/ethnic background of their population. This fact appears to be associated to ideologies on the whitening and dilution of African physical and cultural heritage, as elaborated by many authors in the region[19].

The figures of the Latin American and Caribbean population of African descent have been drastically underestimated in the continent. However, according to existing information, the demographic weight of the Afro-American population varies significantly: in some countries the Afro-Americans may constitute a minority scattered in rural communities in regions of difficult access, in others they may be almost invisible and dispersed mainly in urban areas, they may constitute a large proportion of the population both in rural and urban areas, or they may be the great majority of the population, as in the Caribbean region.

During the colonial period, the imbalance of gender proportions of Europeans and Africans and the sexual subordination of both African and Indigenous women, encouraged race mixing in the continent, giving birth to the peculiar ideological construction of Mestizos, or Creoles[20], through which the "whitening" of the population would be reached. The small proportion of Europeans determined the manipulation of race classification in such a way that people would be perceived as "passing" to a lighter tone: a pigmentocracy was built so that one's hierarchical position would be determined in relation to the darkness of one's skin. It should be remembered that besides the mixing of Europeans with African and Indigenous women, there was mixing between Africans and Indigenous, resulting in a *sambo* (or *cafuzo*, in Brazil) population.

Ideas of "racial democracy", "cosmic race" and "hybridism"[21] were forged, disguising the violence, the roughness, the fierceness under which the so-called mixing of races occurred.

Pérez Sarduy and Jean Stubbs[22] consider that in Latin America we can distinguish three forms of political system: those where one dominant segment of the population claimed that its racial or ethnic identity was the only legitimate one in the nation (Puerto Rico, Dominican Republic, Mexico and Andean countries); those where new power élites sought legitimacy by promoting a synthetic national culture, discouraging racial or ethnic thinking (Brazil, Cuba, Colombia and Venezuela); and those where groups had a share in the political life of the nation in proportion to the size of their population (Belize).

Throughout the continent, the abolition of slavery was carried out with no consideration for the survival needs of the ex-slaves. Concentration of property of land in the hands of small élites is one of the most serious social problems in the continent, as the great majorities of indigenous, Mestizos and Blacks do not have access to or the legal property of the land. Poverty is not produced by spontaneous generation: poverty results from the expropriation of means of living and production: land, material goods, financial resources, knowledge and human capacities[23]. The economic and power relations existing in the continent make it the region with the highest level of inequality in the world. In order to guarantee the human rights of the Afro-Americans, it is essential to concentrate on some main areas of concern.

According to the Economic Commission for Latin America and the Caribbean (ECLAC), in 1998, Latin America and the Caribbean had an estimated population of 499,447,000 and the Black and mixed population in 18 of 35 countries listed was146,084,651. It should be clarified that the meaning of "mixed" population may not be the same, in terms of their ancestry, in the various countries of the region. In fourteen states, the census does not ask about racial (African) origin, making their population of African descent invisible[24]. However, eight of these states do collect information about their indigenous population, making it clear that invisibility is a process that is mainly related to the Afro-Latin Americans[25].

The following countries do not collect information about the racial African origin in the Census: Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay. While most of these countries collect information about their indigenous population, Argentina, Costa Rica, El Salvador and Uruguay do not collect any ethnic information at all in their censuses[26].

Although we did not find estimates for Argentina, Chile, El Salvador and Guatemala, we can classify the remaining countries in Latin America into two categories: 1) countries where the Afro-American population is a minority, within a range of 2% to 10%: Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay; 2) countries where the Afro-Americans are a large proportion or a majority of the population, ranging from 30% to 90%: Brazil, Colombia, Cuba, Honduras, Nicaragua, Panama, Puerto Rico, Dominican Republic, Venezuela and Guyana. The other Caribbean countries are well known as countries of populations of almost entirely African descent.

Interestingly enough, the absence of information has been instrumental in the production of a European and a Mestizo image of certain parts of Latin America: while Argentina, Uruguay, southern Chile and south Brazil are sometimes thought as the Euro-Latin America, Mexico, Guatemala, the Andes and the Amazon Basin are seen as the Mestizo America[27].

Although we were unable to find general data for the continent disaggregated by race, life expectancy for Latin America is 68.7, and varies considerably, ranging from 56.6 in Haiti and 59.3 in Bolivia to 76.3 in Costa Rica and 75.3 in Cuba. Infant mortality rate is low in some countries, 13.7 per thousand in Costa Rica, 11.8 in Cuba, and 14 in Chile, close to figures in the developed countries; it is average in Peru (55.5),Brazil (57.7), Nicaragua(52.3), Ecuador(49.7), and Guatemala (48.5), and very high in Haiti (86.2) and Bolivia (75.1). The rates are higher in the rural areas due to the lack of safe water, sanitation and adequate primary health services. 2,250,000 women deliver without medical assistance[28].

Education is critical; instead of being an instrument of promoting equality, very frequently the education system is an instrument to reproduce inequalities. Although there was a great increase in enrolment, there was 13% illiteracy in 1995. However, the main problems are repetition and evasion, which are associated with the socio-economic level and area of residence (rural/urban). One third of children in Central America show serious symptoms of malnutrition, resulting in reduced stature and problems in school[29].

Problems in Latin America are intensifying, and worse, social indicators are getting further behind other developing regions such as South East Asia as a result of adjustment policies. Disparities are so great, that Latin America is being called the anti-exemplary case[30]. According to Patrinos[31], ethnic concentration of poverty and inequalities are increasingly being recognized in development literature. A revision of studies from six Latin America countries that estimated the cost to an individual of being in an economic minority found that in most cases much of the income disadvantage of minority group workers

is due to what economists call “lower human capital” endowments. Although an increase in schooling levels would lead to a significant increase in earnings, it is recognized that the monetary benefits of schooling are lower for minority group populations. Five countries in this study refer to indigenous populations and one refers to three studies of racial discrimination in Brazil, regarding Afro-Brazilians. In spite of the lack of data in the majority of countries, the existing ones demonstrate the acute internal disparities and the disproportionate burden of being an Afro-American [32].

In spite of having a National Institute to Combat Discrimination, Xenophobia and Racism as well as important Acts offering reparation of moral and material damages occasioned by discriminatory acts or omissions, the detailed 15th report presented by Argentina concentrates on indigenous groups and intolerance related to Jews, and has only one single reference to a case of a Black Brazilian who made a complaint on the hotline set up by the National Institute against Discrimination, Xenophobia and Racism (INADI) [33]. Besides the descendants of the Africans in the colonial period (estimated at least 8,000 in Buenos Aires), Argentina has migrant communities originally of Cape Verde, Uruguay, Brazil, Peru, Dominican Republic and migrant Africans from Mali, Nigeria, Angola, Liberia, Senegal, Sierra Leone and Guinea. The estimated total, given by the communities themselves, is 66,300 people [34]. Education, health, housing and basic services such as electricity, heating, telephone training and employment for the youth are priorities. Some women from the Dominican Republic are obliged to survive through prostitution. Education and adequate training are key issues for all women.

Bolivia makes no reference to Afro-Bolivians in its 13th report to the Committee on the Elimination of Racial Discrimination (CERD) [35]. Racial discrimination is presented as a legacy of the past towards the Guaraní people, who survive in inhuman conditions of semi-slavery. According to Alison Spedding [36], Afro-Bolivians were a considerable minority throughout the colonial period and intermarried with both Creoles (native born ‘White’ people) and native Andean. Today there are only a few regions in the provinces of Northern and Southern Yungas in the Department of La Paz where a visible minority can be found. Over the past ten years a Black consciousness movement has surfaced and requests have been made that the Afro-Bolivians be counted in the census. There are considerable class differences between urban and rural Afro-Bolivians. For the latter, environmental deterioration, low prices for agricultural produce, and US-sponsored demands for the eradication of coca cultivation are problems shared with the other peasant inhabitants of the region. Attempts to organize protection of their interests separately from non-blacks created ethnic conflict and were abandoned[37].

Brazil has the largest Afro-population in the continent (75 million in 1998), of which 10 million are illiterate, constituting 67% of the total illiterate population in Brazil. While 8% of the White population are illiterate, 21% of the Afro-Brazilian are in this condition. Brazil ranks 70 in the Human Development Index (HDI), calculated by UNDP for 174 countries. The same

methodology has been used by the project Atlas Afro-Brasileiro[38] to determine the HDI[39] for the White and the Black populations in Brazil: the White HDI is 49 and the Black 108. Life expectancy for the period 1990-1995 was 70 for the White population and 64 for Blacks[40]. Income indicators are respectively 0.74 for the White population and 0.60 for the Black population[41].

Recent research made by INSPIR and DIEESE[42] based on data collected by the Surveys of Employment and Unemployment found consistent income disparities between Black and non-Black workers for all six metropolitan areas investigated. In addition, the Black population has a higher rate of participation in the labour market, starts working at an earlier age and remains in the workforce for a longer period, whilst unemployment rates are much higher.

There are consistent and dramatic disparities in health between the Black and White populations, as regards infant mortality (62 and 37, respectively, for Afro and White Brazilians), maternal mortality, mortality by external causes and access to the health system. In spite of having approved a program for sickle cell anaemia, a genetic and serious disease of high incidence in the Brazilian Black population, the Brazilian Ministry of Health left it on paper. Aids, hypertension, high prevalence of female sterilization and septic/illegal abortions are important health problems.

Pursuant to the promulgation of the 1988 Constitution that declared racism an unbailable and unprescritible crime, and established that the State will protect the manifestations of the popular, indigenous and Afro-Brazilian cultures, there has been a significant production of legislation at the national, state (province) and municipal levels. Also, as a result of the continuous denunciations by the Brazilian Black Movement, a growing amount of research is starting to unveil the unlawful and immoral racial inequalities in the Brazilian society. Despite the fact that 511 quilombos[43] communities have been mapped[44], today, twelve years after the Constitution recognized the right to property of these communities – who have remained on their land for centuries – only a few have indeed obtained their titles. Due to lack of regulation, conflicts between different governmental branches, pressure from companies and individuals interested in "ancestral" lands, and lack of political will, the majority of the communities have not yet gained their rights.

In 1996, the Federal Government approved the National Program of Human Rights that has a section regarding the Black Population. Although a number of initiatives have been taken at national, state and municipal levels, the key issues remain to be confronted: access to land, education at all levels and especially at university level, access to higher grade jobs, access to capital, equity in the justice system, adequate housing.

In spite of the barriers encountered by Afro-Brazilians when attempting to access the judicial system, this population is increasingly looking for justice in cases of racial discrimination. However, according to the Preliminary Version of the 14th Report to be presented to CERD, jurisprudence has been wavering, revealing in many cases the absence of the basic values proposed by ICERD

and the Brazilian Constitution[45]. Through its decisions, the judiciary power in Brazil reveals the discriminatory views of many of its members, views that are deeply embedded in the hegemonic Brazilian culture. Violence against the Black population, usually perpetrated by state agents, targeting especially those in more vulnerable conditions – slum dwellers, street children, institutionalized youth – is well known internationally. On top of this, Blacks now face the growth of "hate speech" on the Internet as well as threats and bombings targeted at human rights militants and organizations.

According to the 14th periodic report of Chile[46], racial discrimination refers to indigenous groups. Africans are only mentioned once under the euphemistic label of "African immigrants" (referring to the colonial period) who have been absorbed in the general miscegenation. We were unable to obtain any other information on this State Party.

While the 8th and 9th Reports presented by the Colombian Government[47] inform that the Afro-Colombians comprise about 6 million inhabitants, accounting for 16% of the total population, the Departamento Nacional de Planeación has estimated (1998) that the Afro-Colombian population amounts to 9,715,940, comprising 56% of the total population[48]. Some Afro-Colombian communities speak their own dialects such as Palenquero and Creole and the Constitution recognizes the languages and dialects of ethnic groups and stipulates bilingual education. Ethnic information was collected in the 1993 census, however the question concerning ethnicity was presented in such a way that people did not always identify themselves – especially those in the cities – and the figures obtained were very low[49]. In spite of the lack of precise data for the Afro-Colombian population, the National Development Plan for the Afro-Colombian Population has information on differences between regions with high and low concentrations of Afro-Colombians. While 77.5% of births are assisted by doctors in the regions of low concentration, only 66% are assisted in the "high" regions. Although the average life expectancy for the "low" and "high" regions are similar (71.0 and 69.9 respectively), the disparity between departments with the lowest and highest concentration is enormous: Bogotá: 69.7 and Chocó 53.7. While 80% of domiciles have access to running water in Columbia, in Chocó only 25% have access.

Regarding the 10th to 12th reports, the Committee has manifested its appreciation of Cuba's policy of promoting blacks to managerial positions at all levels and has requested that in its next report it provide fuller information on the demographic composition of the population. The Committee also requested the Government of Cuba to provide, in its next report, information on the number of complaints of racial discrimination, the outcome of the prosecution cases and the redress provided to persons affected.

In its 4th to 8th reports, the Dominican Republic presents quite a defensive position: instead of giving data to back up its claims of the non-existence of racial discrimination, especially against Haitians, the report limits itself to rhetoric denial, preferring to accuse NGOs of needing a pretext to exist. As "proof" of non-discrimination, it is affirmed that the thousands of Haitians expelled for

being undocumented, return the next day. Emphasizing the non-existence of ethnic minorities, the report informs that the last 1992 census did not mention colour, following United Nations recommendations [sic]. The report goes on to affirm that racial discrimination between Dominicans, if it ever existed, has disappeared as a form of social pathology[50]. Of course, this statement does not address xenophobia and social exclusion, contemporary forms of racism.

The Concluding Observations of CERD on Guatemala's 7th report (1997) refer to the end of the civil war and to the practice of racial discrimination especially against indigenous populations, but makes no reference to the Black population. We should note here, nevertheless, the existence of a Garifuna women's organization[51].

Africans represent 231,330 of the total population of Guyana of 758,619, and are thereby the second largest group in the country. Political and social life is marked by ethnic tensions between Guyanese of African and East Indian descent[52].

The core document presented by Honduras to CERD acknowledges eight cultural groups – among which the Garifuna and the Misquitos – totalling 463,700 persons. According to this document, the Garifuna represent over half of this figure[53]. other estimates give figures as high as 300,000[54]. The Misquitos are approximately 35,000. These groups are made up of people of African descent although this fact is not mentioned in the Honduras government document. This document recognizes that these groups live in severely disadvantaged areas, characterized by limited access to social services, a shortage of road networks and a subsistence economy. As these groups retain their languages, bilingual education is an important issue. Unemployment and under-employment are high, and migration to the U.S.A. has increased. With a high proportion (70%) of the population below the poverty line, the Garifuna are one of the most disadvantaged groups. Garifuna communal lands have been illegally expropriated and there have been conflicts over fishing areas. Land conflicts have also taken place, involving military officers, peasants searching for land titles and those protecting private capital interests. The Honduras definition of the social function of land and proof of occupation is in opposition with the traditional ecological practices of the community. Malnutrition, early pregnancy, sewage, and water contamination present big problems. Malaria, dengue, diarrhea and parasites are endemic and hypertension is also widespread. The Agrarian Reform Law is affecting the future of Garifuna communities, as they remain without title to their lands[55].

Jamaica has not submitted a report since 1985 because it has not yet adopted the legislation required to implement article 4, but the country representative informed that in the past light-skinned people had been preferred for certain jobs, but this was no longer the case[56].

Nicaragua's 5th to 9th reports refer to Article 5 of the 1987 Constitution that enshrined the principle of political, social and ethnic pluralism, recognizing for the first time the existence of indigenous populations[57]. Among the ethnic groups mentioned are the Mestizos and Creoles, who are both of African descent,

however this is not specified. The concept of autonomy is fundamental for the ethnic groups in Nicaragua and bilingual education is an important issue.

The 10th to 14th reports presented by Panama recognize the fact that members of Black and Asian minorities do not fully benefit from the rights protected by ICERD. However, the report of Comunidades de Ancestria Africana estimates that Afro-Panamanians make up to 77% of the population![58] The distinction between Antillanos (Chombos, West Indians) and Negros Nativos is important for the ethnic dynamics of the country, as it is related to difference of language, culture, skin colour and nationalism. The pan-African leader Marcus Garvey played an important role in the lives of Panamanian workers. The Afro-Panamanians were particularly hard-hit during the US invasion in 1989-90 during which many lost their homes, others "disappeared" and many were killed. The invasion exacerbated problems regarding public services such as health and education. The importation of workers during the construction of the Canal was a strongly gendered process with a majority of men, although the authorities allowed the migration either of family members or of single women especially from the French Caribbean to reach a better gender ratio. West Indian women have a strong heritage of participation in all aspects of social life[59].

Paraguay has not ratified ICERD. There is scarce information about Afro-Paraguayans. A micro-study published by the Minority Rights Group International focuses on the Community of Cambacuá, made up of 300 families, roughly 2,000 individuals, who, thirty years ago, was dispossessed of over 90% of its land by the State. The Paraguayan Constitution recognizes the indigenous peoples and their right to land and to practice their culture but it does not recognize the existence of the Afro-Paraguayans. There should be constitutional recognition of their existence, investigation of the violent removal of the community from its land and restitution or compensation for their loss of the land[60].

Peru carried out in 1993 the first census of indigenous Communities in Peruvian Amazonia, as part of the National Population and Housing Censuses. In spite of recognizing the multiethnic and multicultural nature of the Peruvian nation, Peru has no official information on the racial make-up of the country's population. The 13th report to CERD focuses mainly on legal measures with little attention to real conditions, and addresses exclusively issues concerning the indigenous peoples[61]. The report Comunidades de Ancestria Africana[62] estimates that the Afro-Peruvian population represents between 5% and 13.5% of the total. Education, health, basic services such as access to electricity, safe drinkable water and sewerage are priorities. Drug addiction is emerging as an important issue affecting youth in the poor communities of Lima, and small-scale drug dealing offers a source of revenue in the absence of other income. The Agrarian Reform Laws of 1970 that gave access to 2-6 hectare lots, benefited Afro-Peruvians. However, the centralization of financial resources for infrastructure carried out by FONCODES[63], "Embracing an Interdependent Future" has had a negative impact on the Afro communities, as they have better

access to local governments. Programs of poverty alleviation have tended to focus on the indigenous groups.

According to the report Comunidades de Ancestria Africana, INE, the National Institute of Statistics of Uruguay, included for the first time a question about racial origin in the Domicile Survey and counted a Black population of 6% in Uruguay, making up 189,000 persons. The majority of Afro-Uruguayans are non-qualified workers in the construction industry, domestic services and cleaning and porter services. There are a lot of Afro-Uruguayans in the informal sector and many are self-employed as plumbers, carpenters, electricians, mechanics and musicians. Unemployment is high among youth. Whilst the majority complete primary school, only a few go to university. Respiratory diseases, asthma, hypertension and diabetes are the most prevalent health problems. Tobacco consumption is high and dental health is an important problem. Teenage pregnancy and alcoholism have affected many families and there are cases of AIDS. Many families are headed by single mothers. The quality of housing is a problem for both those who live in the capital, where the houses are deteriorated, and those who live in other areas, where conditions are poor and there is no access to safe water and sewerage[64]. The concluding observations of CERD to the 12th to 15th reports consider that the information about ethnic groups has been insufficient, and express particular concern for the situation of Afro-Uruguayan women, who are victims of double discrimination. They also recommend the State Party adopt special measures of protection for members of the indigenous and Afro-Uruguayans communities. The Committee recommends approval of legislation prohibiting racial discrimination, measures to facilitate access to the judiciary system and programs in the fields of education, culture and information[65].

Recommendations

The recommendations proposed herewith are based 1) on the ideas of Bernardo Kliksberg, who considers that equity is good for the economy as it influences the national rates of savings, increases the investment in the formation of the human capital, has positive effects in technological development, strengthens the social capital (shared values, mutual confidence, social norms and institutions, etc.) and improves the governance; 2) on the concept that the Afro-Americans constitute a significant portion of the population of Latin America and Caribbean and that they have been destitute of basic living conditions since the time their ancestors were brought as slaves to the new world. In order to include this population as an important asset to the development of the region, public policies should stop promoting the privileges of the small racial élites of the continent and start focusing on the needs of the Afro-Americans, developing clearly defined policies. Adequate compensation should be provided to counteract the vicious circles of inequalities that are reproduced and reinforced by various social mechanisms, maintaining this population in inhuman and unacceptable standards of living. The recognition of

the dignity and the inalienable human rights of the Afro-Americans implicate the recognition and fulfilment of their economic, social and cultural rights through the implementation of policies and programs at the national, regional and global level.

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

The following countries in the Latin America and Caribbean region have not yet ratified ICERD: Belize, Dominica, Granada, Guadeloupe, Honduras (in process), Paraguay, and St. Kits and Nevis. The preparations for a World Conference against Racism should be a strong incentive for all remaining States in the region to ratify the Convention.

Only the following State Parties have made a declaration regarding Article 14, recognizing thus the competence of the Committee to receive and consider communications from individuals and groups, claiming to be victims of a violation of the rights set forth in ICERD: Chile, Costa Rica, Ecuador, Peru and Uruguay. The region should set itself the goal of arriving in South Africa with the largest possible number of States recognizing this competence of the Committee.

Data production

It is essential that all countries in the region acknowledge the existence of their population of African descent, collecting and analyzing relevant information to determine their living conditions and the amount of expropriation to which they are subject. Race/ethnic information should be properly collected in the National Censuses and National Domicile Surveys, addressing issues like employment, education, health, housing, sanitation, access to land, credit, etc. Advice from Afro-American organizations should be sought in order to shape appropriate questions concerning ethnic origin. The information collected should be duly analyzed and disseminated to a large audience, including the UN system, multi-lateral institutions, cooperation agencies and representative Afro-American organizations. It is also recommended that indicators of living conditions, such as the HDI, be calculated, in order to compare the human development of the Afro-Americans to the non-Afro population. In countries like Brazil, that, as a result of great pressure from the Black organizations, already have significant databases about their Afro population, governments need to go beyond rhetoric and use the information to implement policies of equality.

Governmental bodies to undertake and promote research, conduct training programs, maintain databases, compile statistics and develop qualitative and

quantitative indicators to measure progress in the struggle against discrimination should be established[66].

Access to land and titles of property

In many countries, Afro-Americans remain concentrated in rural areas, and have survived by developing their traditional practices and establishing balanced relations with the environment. In many cases, demographic change, and pressure from capital entrepreneurs, mining companies and tourism businesses, represent considerable threats to the livelihoods of these communities. There have been important initiatives in the continent in this regard, such as the 70 Law of the Black Communities in Colombia, and Article 68 of the Transitory Dispositions of the Brazilian Constitution. Guarantee of access to adequate sized plots of land, titles of property of the possessed land to protect the livelihoods of the communities are of utmost priority. The human rights of the majority of Latin Americans, both Black and indigenous, are not guaranteed until their land rights are ensured. For those who have been dispossessed, either land should be restituted or they should be awarded compensation for the loss of land. The issue of land should be emphasized as a compensatory measure for slavery.

Health

As stated by Bernardo Kliksberg, assessor for the UN, ILO, OAS, UNICEF and UNESCO, health is an aim in itself and comes into the category of the most basic human rights. Besides that, investment in health offers one of the highest possible returns, as it strengths the so-called “human capital”, basis of productivity, technological progress and competitiveness[67]. Without a firm basis in health, the objectives of education can not be attained. Health is a privileged field for the rapid reduction of inequalities, as it is possible to make progress in coverage, access, information, etc. Besides that, health is an intensive labour sector and involves the creation of jobs with various levels of complexity, making it possible to employ staff with either primary or secondary level education. Investment in health means investment in people, reducing avoidable deaths of children, women, workers and the elderly, and the acknowledgement of this priority has an impact on people’s self esteem. By health we do not mean exclusively the health system, but also measures which might influence the health status of the population, such as nutrition, sanitation, electricity, water safety and control of environmental hazards. For five centuries, people of African descent have been dying disproportionately in this region. Affirmative policies of differential investments should be implemented, focusing on communities where the Black population is a majority.

Education

It is imperative for the State Parties of the region to invest heavily in education in order to break the vicious circles of inequality reproduced by the educational system and suffered by Afro-Americans. State schools need to be strengthened and the quality of education improved in the poor areas where the Black population live. This may be achieved by dignifying the work of teachers, offering worthy salaries above the level of other professions, providing training and working materials and an adequate infrastructure. Any discriminatory school texts and daily practices or norms should be revised. To increase the length of time students stay in school would both result in a better level of education and reduce the risks of violence to which Afro-American youth are subject in the majority of the Latin American countries. To start computer training at the primary school level would offer greater opportunities in the labour market and include the present population in the era of information.

Employment

The region should prioritize growth strategies from the bottom upwards, strengthening small and medium companies, including rural companies, to create jobs in the areas with a high concentration of Afro-Americans. Black empowerment should be encouraged as a means to develop a sector of Black businessmen/women. Affirmative action should be taken both in the public and private sectors: the public sector should analyze, in particular, the factors that impede the progress of Afro-Americans to higher positions, and take adequate measures to remove barriers; the private sector should analyze its personnel policies, as regards recruiting, salaries, promotions, etc., to promote workforce diversity at all hierarchical levels. Deregulations have deeply affected the rights of workers, especially the ones in most vulnerable social conditions, as is the case of Afro-Americans. These policies are extremely harmful in the region and Governments should take measures to reverse this tendency and encourage contracted work in order to protect the social rights of workers. Legal protection for domestic workers is essential to guarantee the enjoyment of the most essential human rights of a great majority of Afro-American women. Special training programs for Afro-American youth, targeting modern sectors of the market, should be developed, offering them real opportunities for inclusion. Alternative employment related to the traditional art and crafts and culture should also be supported, with a view to empowerment and strengthening the autonomy and networking capacity of communities.

Access to justice and law enforcement

Afro-Americans must be assured just and adequate reparation for material and moral damage suffered as a result of racial discrimination. Reparations, be they monetary or non-monetary should have sufficient coercive or persuasive power to discourage the occurrence of the offence. Appropriate laws, access to court, and adequate training of the judiciary power on the national and international instruments of protection related to racial discrimination, xenophobia, ethnic violence and related intolerance are key issues to combat racism and to assure the economic, social and cultural rights of Afro-Americans.

The Regional Conference should seriously consider the suggestion presented in resolution 1999/6, adopted by the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-first session, that the current realities in the aftermath of slavery and colonialism, including the legal implications of the slave trade and the conditions of persons of African descent in the Americas be focused upon.

Law enforcement officials, especially members of the security forces, should be intensively trained on human rights, to assure their respect to all persons, without distinction as to race, colour, descent or ethnic origin[68].

Punishment of officials, especially of the security forces, who commit violations of human rights, should be enforced in order to combat the culture of violence that has Afro-Americans, especially young males, as preferential targets.

Media

As stated by the report Beyond Racism, the media can help to undercut stereotypes, present more accurate pictures of groups and gain public support for the need to overcome discrimination and poverty. Governments should encourage journalists to develop codes of practice concerning the representation of Afro-Americans in the media[69]. Media companies should promote balanced coverage and inclusion in staffing and readership[70]. Codes for regulating advertising should recommend balanced representation of the cultural diversity of the country[71].

Multiple discrimination

Special attention should be paid to the burden of multiple discrimination imposed on Afro-Americans on the basis of gender, sexual orientation, physical disabilities, and health status. The combination of gender and racial discrimination results in increased vulnerability for Afro-American women, many of whom are subject to sexual exploitation and traffic. Homosexual males and females are subject to harassment that frequently results in injuries and homicides and HIV/Aids incidence is high for both male and female Afro-Americans of many countries in the region. Special attention should be given to confront the additional difficulties resulting from multiple discrimination. Sexual and reproductive rights are an integral part of human rights.

Special attention also needs to be paid to the new structure of the global sex industry and how it operates, combining legal and illegal mechanisms of trafficking of women and children.

From the point of view of implementation of policies, it does not matter whether we think that poverty produces racism or vice-versa. What is essential is the understanding that these evils are inextricably connected and that there is no way of eliminating one without combating the other simultaneously: a person can submit another human being to the most cruel forms of exploitation only in the belief that he or she is less than human, and essentially different. To promote equality requires at the same time to change our mindsets that view poverty as normal, and to change the real conditions that imprison millions of human beings in vicious circles of inequality.

Notes

1. Commission on Human Rights, 55th session, Sessional Open-Ended Working Group to review and formulate proposals for the Word Conference against Racism. Background paper prepared by Michael Banton, member of the Committee on the Elimination of Racial Discrimination (CERD).
2. *Op. cit.*, para. 10 and 11.
3. *Ibid*, pp. 4-9.
4. *Ibid*, para. 7.
5. *The Persistence and Mutation of Racism*, Report of a meeting on 3-4 December 1999, p. 8.
6. *Op. cit.*, para. 8.
7. See Silva Jr., 2000, *Hedio, Direito de Igualdade Racial: Aspectos Constitucionais, Civis e Penais*, São Paulo, (ed.) Juarez de Oliveira.
8. Commission on Human Rights, 55th session, Sessional Open-Ended Working Group to review and formulate proposals for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. "United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives": background paper prepared by Theo van Boven, former member of the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 51 of Commission resolution 1998/26, E/CN.4/1999/WG.1/BP.7, 26 February 1999, p. 9, para. 5 (b).

9. *Ibid.*, p. 4, para. 3 (d).
10. *Ibid.*, p. 6, para. 4.
11. *Ibid.*, pp. 8-13.
12. Preparatory Committee, 1st session, "Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, Contribution of the Sub-Commission on the Promotion and Protection of Human Rights". Addendum, working paper submitted by Mr. Paulo Sérgio Pinheiro, member of the Sub-Commission, in accordance with Sub-Commission resolutions 1998/6 and 1999/6.
13. Member of the International Working and Advisory Group of the Comparative Human Relations Initiative, Beyond Racism – Embracing an Interdependent Future, Overview Report, p. 23.
14. *Op. cit.*, p. 8.
15. *Ibid.*, pp. 5-9.
16. *Op. cit.*, pp. 43-44.
17. *Op. cit.*, pp. 10-12.
18. Due to time constraints, it was not possible to analyze information on all countries of the region, neither to give a more balanced view. The amount of information presented does not necessarily reflect the amount of existing data.
19. Alan Phillips, Preface and Acknowledgements, *No Longer Invisible: Afro-Latin Americans Today*, Edited by Minority Rights Group, London, 1995, p. vii.
20. Safa, Helen I., Introduction, *Latin America Perspectives*, Issue 100, Special Issue on Race and National Identity in the Americas, Volume 25, Number 3, May 1998, p. 3.
21. Martínez-Echazábal, Lourdes, "Hibridismo e Diasporização em Black Atlantic: o caso de Chombo", Estudos Afro-Asiáticos, 35, CEAA, Universidade Cândido Mendes, Rio de Janeiro, July 1999.
22. Pérez Sarduy, Pedro and Stubs, Jean, Introduction, *No Longer Invisible: Afro-Latin Americans Today*, p. 6.
23. *Social Exclusion in Latin America*, International Labour Organization (ILO), International Institute for Labour Studies (IILS), Regional Forum, 1995, p. 14.
24. ECLAC, Information Services, Press Release, PR-34, Table 3: Latin America and the Caribbean: Estimates of the Black and Mixed Race Population by Country, 19 July 2000, based on U.S. Bureau of the Census, International.
25. Idem, Table 1: Latin America: Indigenous Population (Census and Estimates) by Country, during the 1990s, Source: adapted from Peyser, Alexia and Chackiel, Juan (1999), "La identificación de poblaciones indígenas en los censos de *América Latina", in América Latina: aspectos conceptuales de los Censos del 2000*, ECLAC/CELADE, Santiago, Chile, p. 361.
26. Idem.
27. Pérez Sarduy, Pedro and Stubs, Jean, Introduction, *No Longer Invisible: Afro-Latin Americans Today*, p. 3.
28. Kliksberg, Bernardo, *Desigualdade na América Latina: o debate adiado*, São Paulo: Cortez; Brasília; UNESCO, 2000, pp. 71-73.
29. *Ibid.*, p. 54.
30. *Ibid.*, p. 33.
31. Patrinos, Harry Anthony, *The Costs of Discrimination in Latin America*: http://www.worldbank.org/html/extdr/hnp/hddflash/hcwp/hrwp040.html, p. 1.
32. *Ibid.*, page 2.
33. 15th periodic reports of States Parties due in 1998: Argentina, CERD/C/338/Add., 11 November 1999, page 26.
34. *Op. cit.*, pp. 113-114.
35. 13th periodic report of States Parties due in 1995: Bolivia, 12 July 1995, CERD/C/281/Add.1.
36. Spedding, Alison, "Bolivia and Uruguay", in *No Longer Invisible: Afro-Latin Americans Today*, p. 319.

37. *Ibid.*, 329.
38. http://atlas.rits.org.br.
39. Human Development Index.
40. If we disaggregate by gender, White men have a life expectancy of 69 years, White women 71, Black men 62 and Black women 66 years.
41. Disaggregating by gender we find 0,808 for White men, 0,657 for White women, 0,660 for Black men and 0,515 for Black women.
42. Instituto Sindical Interamericano pela Igualdade Racial and Departmento Intersindical de Estatistica e Estudos Sócio-Econômicos respectively.
43. The equivalent to cimarrones or palenques.
44. Anthropologists, the leadership and the catholic church believe the number surpasses 1,000.
45. Versão Preliminar do décimo Quarto Relatório Periódico relativo à Convenção Internacional sobre a Eliminação de todas as Formas de Discriminação Racial prepared by Núcleo de Estudos da Violência.
46. 14th periodic report of States Parties due in 1998: Chile, 28/10/98. CERD/C/337/Add.2.
47. 9th periodic report of States parties due in 1998: Colombia. 17/11/98. CERD/C/332/Add.1.
48. Departamiento Nacional de Planeación, Comisión para Formulación de Desarrollo Nacional de Población Afrocolombiana, Estimativa de Población por Municípios, kindly sent by Dr. Gustavo Makanaki, together with various health indicators in the areas of high and low concentration of the Afro-Colombian population.
49. People were asked if they belonged to a Black/Afro-Colombian community. According to information received of Khittle, the concept of community was unclear and especially the urban population did not see themselves as members of such.
50. 8th periodic report of States Parties due in 1998: Dominican Republic. 11/02/99. CERD/C/331/Add.1.
51 Asociación de Mujeres Garifunas de Guatemala – ASOMUGAGUE that integrates the Board of Directors of Organización Negra Centroamericana – ONECA according to document Acuerdos de la VI Asamblea General de la ONECA (MIMEO).
52. According to the summary record of the first part of the 1242nd meeting: Burkina Faso, Burundi, Guyana, Norway, Papua New Guinea, Surinam. 10/12/97. CERD/C.1242.
53. Core document forming part of the reports of States Parties: Honduras. 15/09/98. HRI/CORE/1/Add.96.
54. Comunidades de Ancestria Africana, p. 81.
55. Idem, p. 87.
56. Concluding observations of the Committee on the Elimination of Racial Discrimination: Jamaica. 15/09/93. A/48/18, para. 152-161.
57. Concluding Observations of the Committee on the Elimination of all Forms of Racial Discrimination: Nicaragua. 22/09/95. A/50/18, para. 499-541.
58. *Op. cit.* p. 20. The report consider that the official figure of 14% refers only to Antillanos, who came originally from West Indies to build the canal.
59. Afro-Central Americans: Rediscovering the African Heritage, Minority Rights Group, London, 1996, p. 22.
60. The Afro-Paraguayan Community of Cambacuá, Minority Rights Group International, London, July 2000.
61. 13th periodic reports of States Parties due in 1996: Peru, 20/07/98. CERD/C/298/Add.5.
62. Comunidades de Ancestria Africana en Costa Rica, Honduras, Nicaragua, Argentina, Colombia, Ecuador, Perú, Uruguay y Venezuela, preparado por Cowater International Inc. para Banco Interamericano de Desarrollo, 1996, p.169.
63. Fondo Nacional de Compensación y Desarrollo Social.
64. *Op. cit.*, pp. 189-191.

65. Recommendations 12, 13, 14 and 15, CERD/C/SR.1350 and 1351.
66. Based on proposal presented by Mr. Paulo Sérgio Pinheiro, op. cit. para. 48.
67. *Op. cit.*, p. 63.
68. Borrowed from Paulo Sérgio Pinheiro, op. cit. para. 56, which is taken from joint working paper on article 7 of the International Convention on the Elimination of all Forms of Racial Discrimination, prepared by José Bengoa, Ivan Garvalov, Mustafa Mehedi and Shanti Sadiq Ali (E/CN.4/Sub.2/1998/4), Preliminary conclusions and recommendations (chap. VI).
69. Based on Michael Banton, *op. cit.* para. 45.
70. Proposal presented in the report Beyond Racism, p. 43.
71. Proposal presented by. Michael Banton, *op. cit.*, para. 45.

The Use of the Internet for Purposes of Incitement to Racial Hatred, Racist Propaganda and Xenophobia, and on Ways of Promoting International Co-operation

Morris Lipson

Introduction

Recent years have seen an accelerating appearance of racist content on the Internet – content that is meant to incite racial hatred, to attract new members to racist groups, and to create or solidify ties between already-avowed racists around the world. This article describes this problem, and details responses to it by a variety of agents, including governments, international organizations, and private organizations.

Initially, the article describes the degree of Internet use world-wide, and the ease with which persons can communicate with others across nations via this medium. It then describes how individuals and groups with racist beliefs and agendas have availed themselves of this rich communication resource to establish and strengthen ties amongst themselves, and to make their racist materials, in increasing volume and with increasing sophistication, available online to Internet users.

The remainder of the article is devoted to giving details of efforts to combat this form of racism. Some of these efforts target the creators or authors of racist content, or the entities that store and facilitate access to or host it. The aim, in the one case, is to get the creator to remove the content, and in the other, to get the host to remove or otherwise block access to it. Other efforts focus on end-users, the ultimate recipients of the content. These efforts aim to empower end-users, for example by enabling them to know in advance about, and to avoid, sites with content they find objectionable or harmful. This article details efforts of both sorts.

A number of national court systems, for instance, have targeted the creators of racist content and those hosting it. A French court held a United States Internet company liable for allowing access by French residents to illegal materials. A German court permitted prosecution of an Australian resident for posting illegal content outside Germany that was accessible by Internet users

within Germany. An Australian Commission directed that the same Australian resident remove his illegal material from a hosting provider within Australia, and a Canadian court is currently determining the applicability of a civil provision targeting hate speech to a web-site hosted in the United States.

Some countries monitor Internet content that arrives on hosts located within their jurisdictions, and condition the issuance of licences for such providers on their prohibiting access to illegal or harmful material. Some of these countries also criminalize or create civil liability for visits by end-users to prohibited sites.

Some efforts by private and quasi-private organizations also target content creators or hosting providers. One such effort involves the operation of hotlines, to which persons can make complaints about Internet content that they believe is illegal or harmful. The hotlines examine the complaints, and if they agree that the material is improper, direct or request the offending hosting provider to prevent access to the material or to remove it. Another effort, by many organizations of Internet providers, and by some individual providers, involves the adoption of codes of conduct or rules that commit them to refusing to host illegal or harmful content, including racist content, and to removing such content once it appears on their sites.

Approaches focusing on protecting and empowering end-users, by a number of private companies and groups, include the development of filtering software, and of content labelling. Filtering software products enable end-users to block access from their home or office computers to problematic content. Content-rating systems provide for electronic rating and labelling of Internet sites for content, enabling end-users to have a sense of what is at a site without having to access it, and therefore to avoid visiting sites they find objectionable.

Various international efforts against racist content, formal or informal, have implications both for the regulation of content creators and hosts, and for the empowerment of end-users. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), for example, directly addresses the "dissemination of ideas based on racial superiority or hatred," and thus implicates Internet-based racist content. The European Union has adopted an "Action Plan on Promoting Safer Use of the Internet", and numerous seminars and conferences, hosted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) the Organization for Economic Co-operation and Development (OECD) and others, have met to discuss and to encourage international cooperation, *inter alia*, in the fight against Internet-based racism.

Finally, organizations around the world have developed education and outreach strategies, available on the Internet, devoted in some or in large measure to Internet-based racism. These sites are often interactive, informative, and entertaining; they attempt to combat racist content by exploding racist myths, providing information about anti-racist organizations, and encouraging visitors to join in the fight against racism.

Internet use and racist speech on the Net

The Internet is a world-wide network to which individuals can connect via their own personal computers or other electronic devices. There has been a great increase over the past few years, both in the number of computers hosting Internet content, and in the number of end-users. As of 2000, there were approximately 104 million Internet host computers.[1] This represents an enormous expansion from the Internet's modest beginnings: for example, in 1991, approximately one decade after the creation of the Internet Protocol (IP), the number of host computers was about 0.7 million; by 1996, this figure had increased to approximately 22 million.[2] Moreover, the number of persons estimated to employ the Internet currently in some capacity or other is over 390 million.[3] Of these, roughly 70% are from Europe, the United States, or Canada; an additional 15% are from Australia, China, or Japan. It is expected that there will be as many as 774 million users world-wide by 2003.[4]

All that is needed for typical home users to connect to the Internet is a computer, a telephone line and a means of dialling out through it; moreover, in the vast majority of cases, such connections can be made for the mere cost of a local telephone call.[5] Once connected, users can connect to virtually any web page available on the world wide web. Additionally, they can communicate privately via email with persons located anywhere in the world; and they can communicate more publicly, by participating in "chat rooms" or by joining email groups. Finally, they can, at minimal cost, post content of their own creation on their own web pages, accessible by others from anywhere else on the Internet. They are not even restricted to posting their web pages on service providers (ISPs[6]) located in their local jurisdictions; they can, rather, find ISPs in virtually any location they wish, and post their web pages there.

These very characteristics, that make the Internet an extraordinary communication resource, make it an important resource for individuals and groups seeking to spread messages of racism and hate. Often socially marginalized, geographically remote from each other, and not affluent enough to be able to communicate freely with each other or to publish their hate messages in sophisticated media such as newspapers or broadcast media, such individuals and groups find the Internet a welcome ally.

For example, the Internet makes it relatively simple for like-minded racists and bigots, scattered around the world, to find each other. They can employ USENET, a network of thousands of public discussion groups: once there, they can initiate, or participate in, racist exchanges. Perfectly visible exchanges with overt racist content do in fact occur daily on USENET, at sites with names such as *alt.politics.white-power and alt.revisionism.*[7] Similarly, these persons can employ electronic mailing lists to send email messages of racist hatred to each of the addresses on such lists. And once such connections between like-minded racists have been made, they can be maintained and reinforced through private email. In all these ways, racists are able to get the sense that

their opinions are shared by others all over the world, thus reinforcing their commitments to their bigotry, and fuelling their feelings of empowerment.

In addition to communicating amongst themselves, the Internet provides these individuals and groups with the power to make their opinions available to the entire Internet public. Like anyone else, they may create their own web pages and post them on ISPs where any person connected to the Internet may have access to them. These sites may, and many in fact do, contain hundreds or thousands of pages of racist material. Many sites will have sophisticated accompanying graphics and music. They can be entertaining to visit, beguiling in their subtlety, and effective in communicating their message.

There is no doubt that racists around the world have "gotten the message" that the Internet may be an attractive and effective medium for them. Just 6 years ago, only a single racist hate site, named *Stormfront*, existed on the Internet. Within four years, according to one estimate,[8] there may have been as many as 2,000 such sites on the Net. Other estimates are somewhat lower; in any event, it is generally agreed that the number of racist sites available online is, at the very least, well into the hundreds. The Southern Poverty Law Center, for example, has recently estimated that the number of racist hate sites operated in the United States alone exceeds 350.[9]

Racists of all beliefs can find materials to their liking on the Internet. *Stormfront*, for example, greets the visitor with the logo "White Pride World Wide," and advertises that it is "a resource for those courageous men and women fighting to preserve their White Western culture ... [and is] a forum for planning strategies and forming political and social groups to ensure victory." Moreover, in addition to providing content of its own, *Stormfront* hosts other racist sites. One such site, *Jew Watch*, contains articles and other writings on anti-Semitic themes, with titles like "World War Two Slave Labor Issues and Greedy Jewish Lawyers" and "The Rothschild Internationalist-Zionist-Banking-One World Order Family." One can also find Arabs generally, and Palestinians in particular, vilified at certain web-sites, for example, like the one operated by Kahane.org.

Other sites champion Nazism, or specialize in Holocaust denial. *Our Legacy in Truth* (another site hosted by *Stormfront*) contains writings from "the National Socialist cause," including "White Power," and "The National Socialist Platform." And at the *Zundelsite*, one can find it denied that there was an order at the highest levels for the genocidal killings of Jews and others; and asserted that the number of persons who died in concentration camps was far less than has been claimed by responsible historians. In addition, various sites offer for sale or trade racist and other extreme right wing material, including *Mein Kampf*, and books denying the Holocaust.

Internet racist sites are tailored not only for "like-minded" adults, but for the not-yet-persuaded as well, including children. A site operated by the World Church of the Creator for example, contains a so-called "kid's page" with explicit racist content in story form. *Stormfront* too contains a "kid's page."

In sum, there is a substantial and flourishing network of Internet sites devoted to spreading racist propaganda throughout the "connected" world. Such sites attract the attention, not only of racists themselves, but of innocent third parties, adults and children, who may only come across them accidentally, but who may well be susceptible to the hatred and lies to be found there. This very significant problem has attracted, increasingly, the attention of governments, private groups, and concerned individuals everywhere. And the last few years have seen vigorous responses to this growing phenomenon. These responses are detailed below.

Cases in National Courts

France

In November 2000, a French court granted a petition requiring Yahoo!, Inc. (Yahoo), a United States-based Internet company, to prevent French citizens from accessing certain content hosted on Yahoo's sites – even though these sites had a physical presence outside of France.

The basic facts of the case are as follows. Among the many Internet services that it provides, Yahoo operates an automated online auction site from the United States, accessible to any person connected to the Internet. Available for sale at the site are items displaying the swastika and other Nazi symbols. Persons accessing the Internet from within France were able to access this site, either directly, or indirectly, e.g., by connecting to Yahoo's local French subsidiary, Yahoo.fr, which contained a link to the U.S. site.

The complainants in the case, the League Against Racism and Anti-Semitism, and the French Union of Jewish Students, had petitioned the court to order Yahoo to "institute the necessary measures to prevent the display and sale on its site ... of Nazi objects throughout the territory of France".[10] Yahoo had argued that the petition should be denied on a number of different grounds, including (1) that the French court did not have territorial competence to hear the case due to the fact that the acts alleged – the operation of the auction site – took place in the United States and not in France, and (2) in any event, that it was technically impossible to identify, and to block access to the site by, Internet users who were resident in France.

In its initial order, the French court concluded, first, that the sale of such Nazi symbols violated French law prohibiting the sale of racially inciting material. Second, it concluded that, by permitting that material to be viewed in France, Yahoo in the United States was committing a wrong in the territory of France. Third, the court concluded, provisionally, that Yahoo had the technical competence to prevent French Internet users from accessing the auction site. On the one hand, the court believed that Yahoo could identify the geographical origin of most visitors to the auction site from the visitor's IP address, and

that it could block access to the auction by any person identified as being connected from French territory. On the other hand, Yahoo could deny access to any person who had reached the auction site via sites providing anonymity, by denying access to any visitor failing to reveal his geographical origin. Accordingly, the court granted the petition, ordering Yahoo to "take all necessary measures to dissuade and render impossible any access via [*toute consultation sur*] Yahoo.com" to the auction site by persons located in France.[11]

Germany

Germany has taken a number of steps, both judicially and legislatively, in the area of Internet-based hate speech. In the mid 1990s, the Munich Public Prosecutor inquired into the possibility of applying certain provisions of the Criminal Code, both to ISPs that provide access to and host illegal speech, and to the creators of such speech. Potentially applicable Criminal Code provisions included the prohibition of defamation and denigration of the character of deceased persons, incitement to violence and hatred, and Holocaust denial. Specifically, the Prosecutor investigated CompuServe (a subsidiary of CompuServe in the United States) for its hosting of pornographic sites. In response to this investigation, and before any judicial proceedings, CompuServe pulled the offending material from the Internet.[12] The following year, a German Internet firm, T-Online, elected to block all access to Web Communications, an ISP that hosted the *Zundelsite*, upon learning that German prosecutors were looking into the site.[13] In addition, the Public Prosecutor in Mannheim charged the creator of the site, Ernst Zundel, with violating the German prohibition on the depiction of violence. The Prosecutor noted that the ISPs that provided access to Zundel's web-site located outside Germany might be liable as well.[14]

In 1997, Germany passed into law the Act on the Utilization of Teleservices, commonly known as the Multimedia Act. The Act provides for criminal liability for ISPs that knowingly make illegal content available, if it is technically possible and reasonable for the ISP to refrain from doing so. The following year, Felix Somm, a managing director of CompuServe, was convicted of violating the Act for having provided access for German Internet users to illegal pornographic material.[15] This conviction was overturned by a Bavarian court in 1999; the basis for that court's decision was its finding that Somm could not reasonably have done more to block access to the site than he did. There was no suggestion, however, that the Act could not be applied to an ISP in a proper case.[16]

Recently, in December 2000, Germany's highest court on civil affairs, the *Bundesgerichtshof*, expressly ruled that German law can be applied to foreigners who post illegal content located in other countries, as long as the content can be, and is, accessed by persons within Germany.[17] The court reversed a lower court ruling in the prosecution of Australian Holocaust denier Frederick Toben. Toben had been arrested in 1999 when, on a visit to Germany, he had distributed leaflets denying the Holocaust. The lower court had convicted Toben

on the charge of offending the memory of the dead, but held that Toben could not be convicted under the law against inciting racial hatred because the inciting material existed on a foreign web-site. However, the *Bundesgerichtshof* concluded that German laws banning the Nazi party and any glorification of it could be applied to Internet content originating outside German borders but accessed from within Germany, and in particular to the content on Toben's web-site.

Australia

Like Sweden and the United States (see *infra*), Australia has recently enacted a law that specifically targets problematic Internet content. Specifically, an amendment to the Broadcasting Services Act came into force on 1 January 2000. The amended Act prohibits Internet content that would be classified as Refused Classification (RC) or X by the Australia Classification Board, and it implements a system by which Australian citizens can lodge complaints with the Australian Broadcasting Authority (ABA) about actual or suspected RC or X classifiable content.[18] In the event that the ABA determines, after having received a complaint, that the content complained of is RC or X, it is directed to issue a "final take-down notice" to the hosting ISP (or an interim take-down notice, should the ABA determine that the content has not yet been classified, but that it would be classifiable as RC or X). The Act requires an ISP to comply with the take-down order; and if the ISP does not comply, it is subject to prosecution. Finally, the Act is not restricted to ISPs that are physically located within Australia: with respect to RC- or X-rated content hosted outside Australia, the Act directs the ISP to "take all reasonable steps to prevent end users from accessing the content".[19]

RC-classified content can include certain racist content. As recently explained by Australia's Attorney-General, material on the Internet "which promotes, incites, or instructs crime or violence against a particular ethnic group [...] will be refused classification [that is, would be classified RC] by the Australian Broadcasting Authority (ABA)" and would be banned.[20] Such material, if brought to the attention of the ABA, would be ordered to be removed from the hosting ISP.

In addition to operating the system just described, Australia has seen the application of an existing law, the Federal Racial Discrimination Act, to attempt to shut down an Australian racist site. The Act is administered by the Human Rights and Equal Opportunity Commission, whose decisions are not binding.

The Commission recently heard a case involving the same Australian web-site that had resulted in Frederick Toben's conviction in Germany. The site, containing material denying the Holocaust, was found by the Commission to contain "vilificatory, bullying, insulting and offensive" material, in breach of the Act. The Commission ordered the material to be removed from the site.[21]

Initially, Toben refused to comply with the Commission's order. However, a committee of management of the Executive Council of Australian Jewry has

asked the Australian Federal Court to enforce the order.[22] A decision has not been reached at the time of writing.

Sweden

In 1998, Sweden adopted the Act on Responsibility for Electronic Bulletin Boards. The definition of "bulletin board" in the Act is sufficiently broad to encompass material hosted by ISPs. The Act requires ISPs to monitor content under some circumstances, and to remove or make otherwise inaccessible content that is "obviously such as is referred to in the penal code," including the provision prohibiting "racial agitation." ISPs violating the Act are subject to civil penalties.[23]

Canada

Canadian law has a number of anti-hate and racist speech provisions. In particular, in addition to Criminal Code provisions, Section 13 of the Canadian Human Rights Act, a civil measure, targets the telephonic communication of messages that are "likely to expose [persons to] hatred or contempt" based, among other things, on their race. The Act creates a Human Rights Tribunal, which hears cases alleging violations of the Act.

In 1997, a Tribunal convened to hear a complaint brought against Ernst Zundel, a Canadian, based on the accessibility from within Canada of the *Zundelsite*, which is located on a server in the United States. Principal among the issues that the Tribunal was called upon to decide were (1) whether the Internet is a "telephonic device," (2) whether Zundel could be said to control the site, given that it existed physically outside Canada, and (3) whether the site, in denying the Holocaust, among other things, promotes hatred.

The case has been ongoing for 3 years. At this juncture, the applicability of Section 13, as well as the jurisdiction of the Tribunal, have been upheld by a Canadian Federal Court. Final arguments on appeal have just been heard, and a decision is awaited.[24]

United States

The United States Congress, in 1996, attempted specifically to address some of the problems posed by problematic Internet speech, by enacting the Telecommunications Act of 1996. One of the provisions of the Act targeted the conveying of certain content by an "interactive computer service". Specifically, the Act prohibited the sending of information depicting sexual activities to any person under 18 years of age in terms that were "patently offensive as measured by contemporary community standards ...". The aim of this part of the Act, then, was to prohibit the display, by an ISP to a minor, of pornographic and indecent materials.

The United States Supreme Court determined that this provision of the Act violated the free speech guarantees of the First Amendment of the United States Constitution, and on this basis struck the provision down.[25] As will be seen immediately below, this decision by the Court has direct consequences for the legality of regulating racist Internet content in the United States.

In its decision, the Court acknowledged that the transmission of obscenity and child pornography to minors was illegal under an already-existing federal law. But the provision of the Act before it, the Court explained, went beyond prohibiting obscenity and pornography to minors. It also prohibited "patently offensive" material which could "cover large amounts of non-pornographic material with serious educational or other value".[26] Moreover, the provision could apply to communications between groups consisting mainly of adults, for example in a chat room, if even one minor were present electronically in the room. Because the communication of at least some "patently offensive material" between adults was a form of speech protected by the First Amendment, and because such speech could easily be curtailed by the provision, the Court concluded that it could not let the provision stand, writing that "... as a matter of constitutional tradition, [...] we presume that governmental regulation of the content of speech [on the Internet] is more likely to interfere with the free exchange of ideas than to encourage it".[27]

This case has immediate consequences for the prospects of regulation by the United States government of Internet-based racist speech occurring on sites hosted in the United States. The United States Supreme Court has made it clear that, like much speech that is "patently offensive", racist speech is protected by the First Amendment.[28] If, as that Court has said, the transmission over the Internet of patently indecent sexual materials is protected by the First Amendment, then so is the transmission of racist materials. Thus, it is not to be expected that the United States will enact legislation regulating such Internet content.

Governmental regulative efforts

Many countries require ISPs serving local computer users to operate under state licenses, and have conditioned the granting of such licenses on the regulation of objectionable content.

For example, in March 1996, the Singapore Broadcasting Authority (SBA), the government agency that regulates broadcasting in Singapore, put in place a comprehensive scheme of Internet legislation designed to protect local values.[29] These regulations apply, *inter alia*, to ISPs that provide content for economic, political, or religious purposes on the Internet, and thus have potential application to racist speech. The regulations require any entity that wishes to operate as an Internet provider in Singapore to obtain a license. Any Internet sites that the SBA determines to contain improper content must be "blacklisted" by any licensee. In addition, ISPs are required to use their best efforts to assure that their services are not used for any purpose that is "against the public interest, public order, or national harmony".

The regulations are enforced in part by the use of servers operated by the government – in technical terms, "proxy servers".[30] ISPs are required to route their customers through the government's servers which, in turn, deny access to blacklisted sites. Any ISP that fails to follow the regulations is subject to license suspension or fines. Moreover, any user who visits prohibited sites is subject to penalties, including jail terms. However, it is to be noted that in the typical situation, users without the appropriate proxy settings cannot access the Internet, and those with such settings will have their access to prohibited sites blocked.

China has adopted a very similar strategy, monitoring web-sites for objectionable content, and requiring ISPs to route their users through government proxy servers. In addition, in October 2000, the Chinese government implemented formal regulations imposing monitoring responsibilities on ISPs themselves.[31] The regulations prohibit the release or dissemination of information containing, among other things, information instigating ethnic hatred or discrimination. ISPs are required to maintain logs of the information posted on their sites, and must turn them over to authorities upon demand. Violators face fines of as much as US$120,000, and closure.[32]

Some other countries have implemented, or are planning to implement, the same kind of system. The government of Vietnam promulgated regulations in May 1996 according to which all ISPs must register with, and are subject to inspection by, the government. The government has said it is committed to shutting down ISPs that permit access to content harmful to national interests.[33] And the Bulgarian Committee of Posts and Telecommunications recently stated its intention to make local ISPs subject to general licensing, and added that Internet content should be scrutinized for, among other things, racist content.[34]

International responses

A number of coordinated governmental responses to Internet-based racism have emerged. Some of these are formal, some are informal. The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly in 1965 and entered into force in 1969, constitutes a legal basis for such formal responses. Its Article 4(a), provides that State Parties " ... shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred [and] incitement to racial discrimination", and Article 4(b) provides that States Parties " ... shall declare illegal and prohibit ... organized and all other propaganda activities, which promote and incite racial discrimination ...". In 1985, the United Nations Committee for the Elimination of Racial Discrimination (CERD) noted in its General Recommendation VII that Article 4 is of a mandatory nature.

Eighteen State Parties have made reservations to or declarations concerning Article 4. A number of these States have emphasized the requirement in Article 4 that, when adopting legislation pursuant to Article 4(a), (b),

or (c), States must have "due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5" of ICERD. Two countries, Japan and the United States, have asserted, in reservations, that they accept obligations under Article 4 only to the extent that such obligations are compatible with their respective constitutions.

Another formal effort is represented by the European Union's Action Plan on Promoting Safer Use of the Internet, adopted by decision in 1999.[35] This Plan, covering a four year period from January 1999 to December 2002, is meant to deal with "harmful and illegal content carried over the Internet." Specifically, it contains the following goals:

- Establishing a European network of hotlines. The Decision recognizes that the responsibility for prosecuting the creators of illegal content would remain with national law-enforcement authorities; the principal function of the hotlines would be to reveal the existence and location of illegal material. The Decision takes note of the existence of hotlines in some European states,[36] but notes that, in addition to the need to establish more of them, there is the need to establish mechanisms for the exchange of information between these organizations.
- Encouraging self-regulation and codes of conduct. To this end, the Decision foresees the development of guidelines at the European level for codes of conduct, including "a system of visible 'quality-Site Labels' for Internet Service Providers".
- The development of filtering and ratings systems, with an aim to making content easier to identify. The Decision acknowledges the existence of a number of such systems, but notes that, at present, their sophistication level, and their uptake by European content providers, is low. The Decision contemplates that the rating systems to be developed should be internationally compatible, pursuant to international agreement, and expects a concerted effort to encourage use of such systems by content providers.[37]
- Implementation of a "European campaign and an information and awareness action programme" to protect minors from being confronted with harmful content. The Decision contemplates awareness initiatives building on "dissemination of information from access providers to customers" in addition to the development of educational materials.[38]

In addition to these formal international efforts, an increasing number of international meetings and conferences have witnessed the participation of governments, NGOs and industry groups, in efforts directed towards regulation of Internet content, including racist content. Examples include seminars conducted by OHCHR in 1997 (Seminar on the Role of Internet with Regard to the Provisions of the International Convention on the Elimination of all Forms of Racial Discrimination[39]) and 2000 (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[40]); the

Forum on Internet Content Self-Regulation, co-hosted by the OECD and the Business-Industry Advisory Committee in 1998;[41] the Internet Content Summit, hosted by the Bertelsmann Foundation and INCORE in Munich in September 1999;[42] the Stockholm International Forum Combating Intolerance in Stockholm in January 2001;[43] the conference entitled "The Internet and the Changing Face of Hate: An International Dialogue", organized by the German Federal Justice Ministry, the Friedrich Ebert Foundation, and the Simon Wiesenthal Centre, in Berlin in June 2000; and the annual INET conferences operated by the Internet Society.[44]

Hotline approaches by industry and other private organizations

Organizations in various countries have adopted, sometimes in concert with their national governments, a hotline approach to combating illegal and harmful Internet speech, including (in many instances) racist speech.

The Netherlands

In 1997, the Complaints Bureau for Discrimination on the Internet in the Netherlands (MDI) was founded. Initially it was a volunteer organization; now, however, it is state-funded. Internet users in the Netherlands who believe they have found content on the Internet that violates Dutch law[45] can notify MDI about the site where such content can be found. Upon receiving a complaint, MDI examines the allegedly offensive content. If MDI determines that the content violates law, it directs the hosting ISP to remove it. Usually, the ISP complies. For example, in 1999, 158 out of 178 "illegal expressions" were removed from the Internet.

MDI works closely with the National Expertise Centre on Discrimination, part of the Attorney's Office. In the event that an offending ISP does not remove offending content after being so directed, MDI may prevail upon the Centre to prosecute the person or persons responsible for posting the content. Moreover, there is a likelihood that an amendment to the Dutch law on Computer Criminality will shortly come into force. Under this amendment, Dutch ISPs that host illegal content and that refuse to remove it after being so directed by MDI may be subject to criminal liability under certain circumstances.[46]

United Kingdom

A similar arrangement exists in the United Kingdom. In 1996, the Internet Watch Foundation (IWF), a body funded by local ISPs, was created, pursuant to an agreement between industry, government, and law enforcement agencies. Like MDI, IWF fields complaints about illegal Internet content. Also like MDI, when IWF determines that certain content violates British law, it asks the hosting

ISP to remove it. Although the ISP is not required to remove the content, if it complies with IWF's request, it is shielded from prosecution. While IWF was initially created in an effort to combat Internet-based child pornography, the Home Office last year requested IWF to expand its mandate to include racist content that would violate the law.[47]

Other European hotlines – INHOPE

A number of other European hotlines have been established in the past few years. Among those whose focus includes racist speech are the FSM in Germany, which targets "racist or fascist material" as well as pornography, and Austria's ISPA, which deals with, among other things, "right wing radicalism."

Most hotline organizations within Europe belong to a hotline association, called INHOPE. Its principal focus is on child pornography web-sites. However, it has taken explicit note of the growth of racist content on the Internet, and its mission, "to protect young people from harmful and illegal uses of the Internet," appears to contemplate efforts against racism as well. In pursuit of this mission, INHOPE is committed to "facilitat[ing] cooperation between European Internet Hotline providers", to establishing and resourcing current and new hotlines, and to fostering Internet safety awareness and education in Europe.[48]

Codes of conduct and other voluntary restraints

Numerous associations of ISPs have voluntarily adopted codes of conduct for their Internet operations. These codes cover a wide range of matters, from principles of "netiquette," to confidentiality measures, to conditions to be specified in agreements with users, to principles of content regulation. In many such codes, the latter principles include commitments to prohibit the hosting of racist sites.

One such association is EuroISPA, which describes itself as "the pan-European association of the Internet services providers associations of the countries of the European Union".[49] Its members include ISP organizations in Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, and the United Kingdom.

EuroISPA's general aims include promoting the interests of Europe within the global Internet and delivering the benefits of the Internet to its users while at the same time meeting the legitimate concerns of parents and others about the potentially harmful content that may reside on certain web-sites. The codes of conduct of its various members reflect these general goals. Some carry commitments to the specific goal of combating harmful content, including racist content. For example, the code adopted by the French *Association des fournisseurs d'accès et de services internet* (*AFA*) provides that its members (that is, ISPs in France) should be on guard for "manifestly illegal" content, by being aware of

the criticisms of users, monitoring particularly popular web-pages, and "automatically detecting" suspicious words.[50]

An association of ISPs in Japan, the Telecom Services Association (Telesa) operates under a Guideline for Codes of Practice for Internet Service Providers.[51] Article 7 of this Code provides that ISPs should specify in their user agreements that users should not dispatch illegal or harmful communication, including (according to the accompanying explanation) "information which [...] slanders, and discriminates others". This article also directs members that have knowledge that a sender has dispatched harmful or illegal information to the public, to request the sender to refrain from dispatching the information, to attempt to prevent users from receiving the information and, if necessary, to terminate the sender's ISP services. In addition, members are directed to monitor and collect relevant information about contents that have been the subject of complaint.

The Internet Industry Association (IIA) in Australia, in conjunction with the ABA, and in observance of the Broadcast Services Act, has detailed the steps that member ISPs should take with respect to content regulation, pursuant to the IIA's goal of "facilitat[ing] end-user empowerment [for taking] greater control for content accessible via the Net". These steps include taking reasonable measures to encourage commercial content providers to use appropriate labelling systems and to provide appropriate filters. Since, as noted above, racist content is likely to receive an RC rating from the ABA, such content will be targeted by the labelling and filtering systems to which the IIA is committed.[52]

Finally, the Code of the Canadian Association of Internet Providers provides that members should "make a reasonable effort to investigate legitimate complaints about alleged illegal content." In addition, the Code commits members to public education about Internet-related and technology issues.[53]

While there is as yet no American association of ISPs that has developed regulations regarding racist speech, a few important United States-based ISPs have developed individual policies on their own in this area. Among free web-based hosting services that have adopted such policies is Angelfire, whose rules provide that "pages cannot contain, or contain links to, any of the following: nudity, sex, pornography, foul language, hate propaganda …". In fact, Angelfire had, previous to the promulgation of these rules in 1998, hosted some sites with racist material: these sites were removed once the new rules became effective.[54]

Some important fee-based hosting providers in the U.S. have adopted similar policies. Like Angelfire, America Online changed its formerly permissive policy in 1997. It now prohibits "hateful language" and attacks based on "a person's race, national origin, ethnicity, or religion." As a result of this change, AOL removed some web-sites from its servers. Another provider, Prodigy Internet, bans "blatant expressions of bigotry, racism and/or hate".[55]

Finally, it should be noted that numerous private organizations devoted to the eradication of racism have exerted and continue to exert pressure on ISPs

to ban racist content. To take just a single example, the Simon Wiesenthal Center recently successfully pressured Yahoo to remove several web-sites with racist materials; and it is currently working with Amazon.com and Barnesandnoble.com to stop them from selling literature by the founder of the American Nazi Party.

Filtering Software

Various software products have been developed to enable end-users to combat the problem of racist and other problematic Internet speech. Some such products block access to (or "blacklist") sites that the user or manufacturer identify as undesirable. Others only permit access to (or "whitelist") sites that the user or manufacturer deem desirable. Most of these products provide an initial list of sites containing problematic material. End-users are sometimes able to add or delete sites to the list as they see fit. When a user who does not possess the password to disable the software enters the Universal Resource Locator (URL) or IP address of a site on the list, the software prevents the computer from accessing the site.

Other filtering products work on the basis of "keyword" searches. Certain words are predetermined to be strong signs of racist or other problematic content; again, end-users can usually add or delete words from the list. A typical such product is *Net Nanny*, which works by automatically blocking a host computer in the event that any of the words in its built-in glossary is encountered during an Internet search. This automatic block-out can only be overridden by someone who possesses the applicable password.

Many of these filtering products, including *SurfWatch, Cyber Patrol, Net Nanny, CyberSitter*, and *HateFilter*, have application specifically for hate speech, and are generally inexpensive.

Rating Systems

Rating systems are intended for use in conjunction with browser-based and stand-alone filtering technologies. In the typical situation, a content creator rates or categorizes the content on his or her site. (Alternatively, and as noted below, parties other than the content creators may rate content at sites of interest to them.) The rating is, in one or way or another, available to the end-user's filtering system, which determines, based on the rating and its filtering criteria, whether it will provide access to that particular site.

A number of different rating systems were developed in the mid 1990's, but they were somewhat inconsistent with each other, and they were not particularly popular with end-users. Beginning with the inception of the Internet Content Rating Association (ICRA) in 1999, however, the rating system effort has taken on momentum. ICRA is an independent non-profit organization based

in Europe and North America. Its members include some of the largest Internet companies and research entities, including AOL, Inc., British Wireless, UUNet, Microsoft, IBM, Novell, Bell Canada, T-Online International AG, Cable & Wireless, and the Bertelsmann Foundation. Other member organizations include IWF, EuroISPA, and the Parents Advisory Group for the Internet.[56]

ICRA has been involved in an effort to develop and implement an objective and culture-neutral rating system that may be embraced by content providers and employed widely by end-users. The system was unveiled on December 13, 2000.[57]

The system uses PICS (Platform for Internet Content Selection) from the World-wide Web Consortium,[58] which enables the association of labels with content. The typical situation involves a content creator visiting the ICRA web-site, and there filling in a questionnaire. Questions in the questionnaire bearing on possible racist content include whether the content might be perceived as setting a bad example for young children, and whether it promotes harm against people. ICRA suggests that the questionnaire, as a general matter, can be adapted to varying individual and cultural needs.

Once the content creator submits the questionnaire to ICRA, the system generates a short code representing a Content Label, that the content creator adds to his site. The computer of any visitor to the site will register the content label, and the end-user will thereby be informed as to the nature of the content there.[59]

Once sites are labelled for content, lists of sites to be avoided (or to be visited) can be constructed based on a site's label. In principle, anyone, including users themselves, can construct lists of disapproved (or approved) sites.[60]

Finally, to complete the system, ICRA this year will launch a filter. This will allow end users to set their own controls, for example to assure that access to sites on their own selected blacklists is blocked.[61]

Criticisms of the above approaches

Each of the responses to Internet-based racist speech documented above has been subject to criticism. For present purposes, it is convenient to divide these responses into the two main categories described at the outset. In the first category are attempts to combat racist sites by either eliminating the content or preventing access to the site at the ISP level. Prosecutions of content creators and hosting providers, as well as the use of proxy-servers and the use of hotlines, fall into this category. The second category of responses focuses on the end-user: these include the development and use of filtering software, and the development of content rating systems (as noted, often in conjunction with such filtering software).

Challenging the content creator and the host provider

As noted, in various countries it is possible to prosecute or fine the creators of racist web-sites. However, the most substantial problem here is that the creator of content must actually be within the law enforcement reach of the prosecuting jurisdiction. For example, Toben, an Australian citizen and resident, was only arrested by German authorities when he was actually visiting in Germany. A country that prohibits certain racist speech will obviously not be able to bring within its jurisdiction for the purposes of prosecution, a national and resident of another country who creates and posts on ISPs in his country racist content not prohibited there. Of course, the possibility of extradition remains, but only where the countries involved share similar laws prohibiting racist content.[62]

The use of proxy servers is also problematic. One quite basic difficulty, one shared with end-user filtering methods as well, arises from the fact that proxy servers typically work by possessing lists of URLs of web-sites to which they will not grant access because the content at the sites is harmful or illegal: the difficulty is that it is very easy for content providers simply to shift their web-sites to different addresses. Moreover, new sites appear on the Internet at an estimated rate of 40,000 per day.[63] Thus, the "blacklists" that the proxy servers employ to "screen out" racist and other harmful content are virtually guaranteed to be under-inclusive.

Finally, the hotline approach, targeting the offending web-site and its hosting ISP, is also quite limited, for reasons already described. First, the creator of racist content who lives outside the jurisdiction, and the hosting ISP, should it be located outside the jurisdiction, are outside the reach of the hotline. Second, in the event that the hosting ISP is within the jurisdiction, a hotline's success in inducing it to block access to the problematic site may not solve the problem of users accessing the content: as before, the content creator may simply move his site to another ISP, with the result that his content is available within the hotline's jurisdiction once again. No doubt hotlines will meet with some success in their efforts; it cannot be expected, however, that they will eliminate the accessibility of racist content from their jurisdictions.

End-user approaches

Some countries attempt to induce end-users to refrain from accessing racist and other materials by criminalizing such access. However, the end-user has at his disposal a number of devices to shield his Internet activities. By use of such web-sites as Anonymizer, he can request access to a web page while maintaining his anonymity. Such a user will be able to gain access to prohibited sites, but his identity will be concealed from those monitoring his activities.[64] In addition, the end-user may request web pages as email attachments (a number of different online services provide for this); in this way, the end-user never

actually visits the site, and will again evade those monitoring for improper site visits.

End-user filtering techniques are subject to difficulties of their own. Those that function by blocking selected files containing URL names pre-selected by the user or manufacturer will tend to be under-inclusive because they simply cannot keep up with the rapidly expanding number of new web-sites coming into existence daily. And, as already explained, web-site creators are able to switch their site addresses once the sites have been blacklisted.

Those filtering systems that function by means of keyword searches also can be under-inclusive. But, it should be pointed out that they can be over-inclusive as well. On the one hand, web creators can fairly easily avoid the use of keywords employed by the filters, by using synonyms, strategic misspellings, innuendo, and so on. On the other hand, many keywords are as likely to show up in innocent contexts as they are likely to show in problematic ones. In one well-known example, the word "breast" was employed as a keyword in a filtering program designed to block access to sites containing pornographic material. In addition to blocking access to some such sites, however, the program blocked access to sites dealing with breast cancer, and even sites containing recipes for chicken breasts.

Perhaps more fundamentally, many filtering products can simply be disabled. Peacefire, for example, makes available at its web-site a free programme that disables filtering products like *CyberPatrol*, *Net Nanny*, and *CyberSitter*, with the flick of a button. Moreover, while this programme does not work with ISP-level blocking devices such as AOL Parental Controls, Peacefire provides information about how to "get around" such filtering efforts by these ISPs.

One last problem with filtering programmes that deserves mention is that they tend to be exclusively text-based. As such, they will not identify the problematic material they are designed to find, when the material is, as it increasingly tends to be, in audio or visual form.

Finally, content-labelling systems, like that proposed by ICRA, also have their flaws. In the first place, they depend to some degree on the voluntary rating of content by the content creator. It is to be expected that many creators of racist material will simply refuse to rate their material; others will agree to rate it, but will not do so honestly.[65] In addition, despite the attempts by ICRA and others to produce a truly "objective" rating system, it has been suggested by many commentators that there is an inescapable subjective, and cultural component, to the rating of any content, and thus that any such rating system is subject to inconsistency.[66]

Free speech concerns

Each one of the responses to Internet-based racism described in this article has been criticized by a wide variety of NGOs and other private organizations on the basis that they interfere with free speech protections contained in national laws and constitutions, as well as in international instruments. Some groups, like the American Civil Liberties Union and the Center for Democracy and Technology, have argued that racist speech itself should be protected, as long as it does not incite to violence, and thus that efforts to eliminate such speech from the Internet are misguided. Even if, however, it is believed that such content may be eliminated without violating free speech principles, many have criticized the particular methods employed to eliminate such speech. Filtering programs, as noted, may be over-inclusive, and may thus block access to content that falls within free speech protections. Hotline operations are subject to the individual judgements of the hotline operators, judgements that may not necessarily be informed by free speech concerns in the first instance. And content labelling systems, especially those developed by industry or other private entities, may not have the degree of democratic input that would strike the appropriate balance between free speech interests and the interests of minimizing harm.[67]

Combating Internet-based racist speech through education and outreach

In view of the shortcomings detailed above, many commentators have concluded that education about racist content on the Internet, about how it is wrong, and about how to foster tolerance, is the single most effective way of combating Internet-based racism. A great many organizations are involved in such educational efforts.

International efforts

Many different international organizations maintain extensive information online about racism and efforts to combat it.

Some prominent examples include OHCHR, which has published on its web-site, among other things, information about the seminars mentioned above, dealing specifically with problems posed by Internet-based racist speech.[68] UNESCO's web-site contains reports and discussions on the general question of content regulation on the Internet, including the problematic occurrence of racist content.[69] The web-site of the European Commission Against Racism and Intolerance (ECRI) contains various documents concerning Internet racist content, including reports made to the European Conference Against Racism (2000), relevant international legal instruments concerning racism, and country-by-country breakdowns of anti-racist legislation and initiatives.[70] In addition,

the International Labour Organisation (ILO) web-site contains reports on many aspects of racism and discrimination in work settings.[71]

Efforts by other organizations

Some interesting efforts by private organizations in this area include the following.

The Southern Poverty Law Center in the United States is about to launch its "tolerance" web-site.[72] The site contains news about racist episodes and about efforts by individuals and groups to combat racism and intolerance. There are sites for children, with stories, and a site where children can submit their own artwork and stories about tolerance for display. There are also sites for guiding parents and teachers in ways to help their children to navigate the children's site. Elsewhere on the site, the Center has provided thumbnail sketches of some American-based hate sites. When visitors click on certain highlighted areas in the sketches, "truth balloons" appear which debunk the myths and misrepresentations that occur at the hate sites. In addition, the main site contains links to pages containing interactive maps of hate groups in the United States, and of human rights groups (with links to the home pages of such groups).

Chichester University in the United Kingdom has created and operates a web-site for children and youth.[73] The visitor to the site is invited to provide information about him- or herself, including age, race, and religion. The site introduces the visitor to other children of about the same age, who describe their own lives and cultures, including problems they have faced involving racism. In addition to the games, the site contains statistics and other information relevant to the occurrence of and fight against racism, and contains links to other public service and information sites.

The Media Awareness Network (Mnet) is a Canadian not-for-profit organization that, among other things, operates an educational web-site called the Web Awareness Canada site.[74] This site provides information and interactive activities for parents, teachers, librarians, and students (from ages 9-18) designed to help young persons learn how to use the Internet wisely and safely. The information on the site focuses on online marketing efforts directed at children, safety issues, and how to deal with offensive, including racist, content. One animated computer game that students can access at the site, for example, is specifically designed to help young persons to "detect bias and harmful stereotyping in online content".

The MRAP (Movement Against Racism and for Friendship Amongst Peoples) operates a web-site that contains information-testing games for adults and children on important persons and events in the fight against racism.[75] It also contains articles and information about legislation, reform efforts, and significant legal cases involving racist issues.[76]

Conclusion

This article has summarized various approaches for combating the use of the Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, including the principal initiatives taken to date to promote international cooperation. The approaches described include measures taken at the international and national level, as well as initiatives undertaken by industry, private organizations, and individuals. Some of these measures are of a legal character, while many are of a non-legal nature.

Most initiatives of a legal character have taken place at the national level, either through court cases, the adoption of new legislation, or the amendment of existing legislation. However, there have been only a small number of court cases to date; most have been decided only in the past two or three years, and some are still subject to appeal. Similarly, national legislation specifically drafted to address Internet content is also in an initial stage of application. Questions of jurisdiction, the technical feasibility of regulation, and differing legal standards from one State to another, will continue to influence strongly the effectiveness of legal approaches to Internet-based racism.

Although industry, private organizations and individuals have taken various steps to address racist content on the Internet, this article has indicated that there are questions concerning the methodology of some of these approaches as well as limitations with respect to their effectiveness. At the international level, it is encouraging to note that a significant number of initiatives have taken place to date and that international meetings on this subject are occurring with a certain degree of regularity. However, these efforts also appear to be in an initial phase and it is difficult at this time to draw conclusions about the effectiveness of the few concrete measures that have been adopted.

In conclusion, approaches to combating Internet-based racism are in a state of flux. As States, industry, private organizations, and individuals gain experience and perspective in dealing with this issue, it is likely there will be a considerable evolution in their approaches in the coming years. As these approaches develop, however, it is worth bearing in mind what many commentators have noted, that the Internet itself has enormous potential for educational purposes. This potential has already been tapped to address racism – as this article has indicated, there exist at present a number of web-sites aimed at combating racism, racial discrimination, xenophobia and related intolerance. It is likely that there will be further development of such educational sites in the future.

Notes

1. See “ITU Telecommunication Indicators Update,” available at: www.itu.int.
2. *Ibid.*
3. See Global Internet Statistics, available at: www.glreach.com/globstats/index.php3.
4. *Ibid.*

5. The typical end user initially dials into a computer, called an access provider, that serves as a gateway into the rest of the Internet system.
6. An Internet service provider, or ISP, provides access to the Internet for its customers. In addition to providing such access, it may also provide space for the posting of (i.e., it may "host") content, often in the form of web-pages. Generally, but not always, access providers, such as America Online, both serve as gateways for their customers to access the Internet, and also serve as hosts for content provided by their customers.
7. See "Poisoning the Web: Hatred Online", Report of the Anti-Defamation League (1999), available at: www.adl.org.
8. See www.wiesenthal.org.
9. The majority of racist sites do physically reside on United States soil. For example, Otto Schily, Germany's interior minister, recently estimated that about 90% of neo-Nazi materials posted on the Internet by German citizens exist on ISPs in the United States. See "Neo-Nazi Web-sites Moving to U.S.," at: www.steptoe.com.
10. Interim Court Order, 22 May, 2000 ("Interim Order") p. 2 (French language version and English translation available at: www.juriscom.net).
11. As mentioned, the court's order was provisional. The court actually continued the proceedings for two months to enable Yahoo to present the measures it intended to take to prevent access to the site by persons located in France.
    An expert's report submitted to the court in the interim concluded that approximately 30% of the IP addresses "assigned to French surfers can[not] be matched with certainty to a service provider located in France ..." Interim Order of 20 November, 2000, No. RG: 00/05308 p. 8 (available at www.legalis.net; English translation available at www.cdt.org). The panel (less one dissenter) explained that these persons could not be identified by Yahoo as being located in France at the time they would visit the auction site. However, the report concluded that Yahoo could institute a policy of requiring any such "anonymous" visitor to make a sworn declaration of nationality as a condition of entering the site. In this way, Yahoo could be apprised of every person attempting to connect to the auction site from France. Finally, the experts concluded that Yahoo could institute filtering methods that would assure that, generally, French visitors would not be able to view, or purchase, the offending Nazi material from the auction site.
    The court accepted these findings, and concluded that Yahoo was in fact able to comply with the 22 May, 2000 order. It therefore ordered Yahoo to block access by Internet users located in France to the auction site; and instituted a fine of 100,000 Francs per day until Yahoo complied with the Order.
    This dispute is ongoing. Yahoo has filed suit in California, requesting a United States federal court to declare that the order of the French court is neither recognizable nor enforceable in the United States, in part because the French court's order violates Yahoo's free speech rights under the United States Constitution, and in part because the expert report was mistaken in concluding that compliance with the French court's order was technically possible. See "Complaint for Declaratory Relief" in *Yahoo! Inc. v. La Ligue Contre le Racism et L'antisemitisme, et al.*, Case Number C00-21275PVTADR, filed in the Northern District of California, San Jose Division, on 21 December 2000.
12. See Amy Knoll, "Any Which Way But Loose: Nations Regulate the Internet," 4 *Tulane Journal of International and Comparative Law* 275, 287-88 (1996).
13. See *ibid.* at p. 288.
14. See "Combating Extremism in Cyberspace", Report by the Anti-Defamation League (2000) (ADL Report), available at: www.adl.org.
15. See ADL Report at pp. 21-22.
16. See Court Judgment, English translation available at: www.cyber-rights.org.
17. See "German Hate Law: No Denying It", available at: www.wired.com.

18. See ABA Annual Report 1999-2000, available at: www.aba.gov.au/about/information/an99-00/chapter_3.htm.
19. Bills Digest 179 1998-99, available at: www.aph.gov.au/library/pubs/bd/1998-99/99bd179.htm.
    The approach just described is similar to the hotline approach described below. A significant difference between the two approaches, however, is that the latter is a voluntary system, sometimes involving governmental cooperation, and sometimes not. Recommendations by such hotlines typically are not binding on the ISPs involved; orders by the ABA in Australia, by contrast, are binding.
20. B'nai B'rith Anti-Defamation Commission Breakfast Keynote Address, available at: www.law.gov.au/ministers/attorney-general/articles/censorship.html.
21. See "Australian Publisher Ordered to Remove 'Racist' Material," available at: www.newsbytes.com.
22. See "Legal test on Holocaust Internet site" at: www.theage.com.au/news/20001110/A38273-2000Nov9.html.
23. See English translation of Act, available at: www.dsv.su.se/jpalme/society/swedish-bbs-act.html.
24. See "Hate on the Internet," by Karen R. Mock, in *Human Rights and the Internet* (2000).
25. See *Reno v. American Civil Liberties Union*, 521 U.S. p. 844 (1997).
26. *Ibid.* at p. 877.
27. *Ibid.* at p. 885. In the course of its decision, the Court acknowledged that it has permitted relatively more government regulation in the context of broadcast media like radio and television than it has in the case of other media, such as print media, because of the relatively "invasive" nature of the former. However, the Court characterized the Internet as "not as 'invasive' as radio or television," (for example, unlike in the case of radio or television, an Internet user is not likely merely to "happen" upon objectionable content by accident), and it thus declined to employ its broadcast media precedents to control its analysis. Ibid. at 867.
    The Court left intact Section 230 of the Act, which states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This Section protects ISPs that carry, but do not create or host, illegal content, from liability.
28. See R.A.V. v. City of St. Paul, 505 U.S. p. 377 (1992). There are exceptions: racist speech intended to provoke, and with a high probability of provoking, violence, for example, is not protected.
29. See Singapore Broadcasting Authority (Class License) Notification 1996 (in Chapter 297 of the Singapore Broadcasting Authority Act), available at: www.sba.gov.sg.
30. See Ari Staiman, "Shielding Internet Users from Undesirable Content: The Advantages of a PICS Based Rating System," 20 *Fordham International Law Journal* 866 (1977) ("Shielding Users").
31. See A. Lin Neumann, "The Great Firewall" (translating these regulations at n.2), available at www.cpj.org/Briefings/2001/China_jan01/China_jan01.html.
32. *Ibid.*
33. Shielding Users at 901.
34. See "Bulgarian government tries to control Internet Access," at: www.fitug.de/debate/9910/msg00003.html.
35. See Decision No. 276/1999/EC of the European Parliament and of the Council of 25 January 1999, available at: http://158.169.50.95:10080/iap/decision.
36. Some of these hotlines are described below.
37. INCORE (Internet Content Rating for Europe), a group of European organizations, was recently funded by the European Commission, under the auspices of the Action Plan, to develop such a generic rating and filtering system for European users. INCORE issued its Final Report on this work in June 2000. The Report is available at: www.incore.org.

38. See also *General Conclusions of the European Conference Against Racism* (2000), available at: www.ecri.coe.int.
39. See E/CN.4/1998/77/Add.2, 6 January 1998.
40. See A/CONF.189/PC.1/8, 26 April 2000.
41. Agenda, summary record and proceedings available at: www.oecd.org.
42. Some details available at: www.stiftung.bertelsmann.de.
43. Details available at: www.stockholmforum.gov.se.
44. See www.isoc.org.
45. Dutch laws potentially applicable to Internet-based racism include the Dutch Constitution, Article 1, prohibiting "discrimination on the ground of ... race," and various criminal statutes.
46. See "Fighting on-line racism, anti-Semitism and revisionism – The Complaints Bureau for Discrimination on the Internet in the Netherlands," by Ronald Eissens, Director of MDI, in *The Stockholm International Forum Combating Intolerance* (29-30 January, 2001), Plenary & Seminar speaker's abstracts.
47. See "British ISPs Crack Down on Hate," available at: www.wired.com.
48. See www.inhope.org.
    Finally, note should be taken of the CyberTipline, a United States-based hotline, launched by the National Center for Missing & Exploited Children in 1998.
    The mission of this hotline is to assist in the location of missing children and to field complaints about possible child exploitation. The hotline takes "tips," analyzes them, and passes them on to law enforcement officials when appropriate. While it does not handle complaints about racist content, its existence is significant for the fight against Internet-based racism simply because it represents the advent of the hotline strategy in the United States, which is the home of the greatest number of end-users and also the home of many of the racist web-sites on the Internet. Groups in the United States may well expand the CyberTipline strategy in the future to problematic racist content.
49. See www.euroispa.org.
50. See 1998 Standards and Practices, available at: www.afa-france.com/html/accueil/mend2.htm.
51. See www.telesa.or.jp/e_guide/e_guid01.html.
52. See Code, available at: www.iia.net.au.
53. See Code of Conduct, available at: www.caip.ca.
54. See ADL Report.
55. *Ibid.*
56. See www.icra.org.
57. See "ICRA Launches New System to Make the Internet Safer for Children," available at: http://biz.yahoo.com/bw/001213/internet_c.html.
58. See www.w3c.org.
59. While the ICRA system itself contemplates self-rating by content creators, other parties that may be interested in the content at sites – from religious groups to groups fighting child pornography to anti-racist organizations – may employ PICS to rate sites based on the ICRA categories. By employing lists prepared by parties with interests in common with their own, end-users will not be completely dependent on self-labelling by content creators for determining which sites are desirable for them and which are not.
60. Lists are being prepared by various groups. To take just one example, a whitelist of "family friendly" sites ("CyberMoms-Approved sites") is available at www.getnetwise.org. One criterion employed to determine if a site should be on this list is whether there is any evidence of bigotry or racism on it.
61. The ICRA system gained momentum when it was presented at the Internet Content Summit, hosted and funded by the Bertelsmann Foundation, in cooperation with INCORE, in Munich in September of 1999. At that Summit, the Foundation released a Memorandum, drafted by an expert panel including law school professors and international law enforcement and government officials, which recommended the

establishment of “an improved architecture for the rating and filtering of Internet content” on a global basis, along the lines of the ICRA system. See “AOL, others plan global Net content rating system,” available at: http://news.cnet.com. Other recommendations of the Memorandum include the further development of voluntary codes of conduct by ISP organizations, the further establishment of hotlines, and the removal of illegal content by ISPs upon notification.

62. Some ISPs, particularly in the United States, have refused to prohibit racist content on their servers. For example, EarthLink, a United States ISP, has taken the position that it “supports the free flow of information and ideas over the Internet” and does not “actively monitor [or] exercise control over [...] the content of any web-site [...] created or accessible over or through EarthLink services.” GTE.NET has a similar policy. See ADL Report. Both of these ISPs host web-sites with racist material, or contain links to such sites. In view of the legality of most such content in the United States, persons wishing to create and post such content may do so in relative safety while within the United States.
63. See *Regulation of the Internet: A Technological Perspective* at 34, available at: www.strategis.ic.gc.ca.
64. An anonymizer-type strategy, however, is not necessarily effective for end-users who, for example, have to identify themselves in order to get on to the Internet in the first place.
65. ICRA’s terms and conditions provide that ICRA “may” monitor labelling performed by content creators for accuracy, and may revoke the license to use a label in the event that ICRA concludes that the label misrepresents the content at a site. However, there is no guarantee, and there cannot be (in light of the sheer number of web-sites) that ICRA will check every labelled site for label accuracy.
66. This problem is mitigated to some degree by the fact that the end-user himself has ultimate control over the lists he employs to block access to sites; presumably, he will construct or accept lists containing sites he personally finds objectionable. Nevertheless, the typical end-user simply cannot independently visit each of the sites on these lists to determine if the content there is accurately reflected, in his judgement, by the content label generated by the labelling system. Thus, the end-user is still, to some degree, subject to the content rating of content creators and of third parties – sources that may be making quite subjective, and potentially inconsistent (from the end-user’s point of view) rating judgements.
67. See OHCHR Report on its 1997 seminar referred to *infra*, for discussion of many of the criticisms outlined in this section.
68. See www.unhchr.ch.
69. See www.unesco.org.
70. See www.ecri.coe.int.
71. See www.ilo.org.
72. The site, [now launched (ed.)], is located at www.tolerance.org.
73. See www.britkid.org.
74. See www.media-awareness.ca.
75. See www.mrap.asso.fr.
76. Other prominent sites include the one operated by the Simon Wiesenthal Center at: www.wiesenthal.org and the one operated by the Anti-Defamation League (“ADL”) at: www.adl.org. The Wiesenthal Center, in addition to lobbying ISPs not to host or to provide access to racist sites, also monitors racist web-sites, and publishes a list of such sites on its web-site. This web-site also contains an interactive multimedia center, virtual exhibits in its Museum of Tolerance, and teacher’s resources, all focusing on Holocaust themes. The ADL’s web-site contains, among many other things, reports on aspects of Internet-based racism (including the two ADL reports cited *infra*), as well as a hate symbols database and materials on the Holocaust.

Part II UNIVERSAL INSTRUMENTS AGAINST RACIAL DISCRIMINATION

A

Universal instruments

UNITED NATIONS (UN)

1) International Bill of Human Rights

The texts of these instruments
have been downloaded
from the relevant
United Nations web-site.

Universal Declaration of Human Rights

Adopted and proclaimed by
the United Nations General Assembly resolution 217 A (III)
of 10 December 1948.

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,
The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international,

to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2

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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 3

Everyone has the right to life, liberty and security of person.

ARTICLE 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7

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.

ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ARTICLE 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

ARTICLE 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

ARTICLE 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ARTICLE 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

ARTICLE 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entered into force on 3 January 1976.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

ARTICLE 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

ARTICLE 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

ARTICLE 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

ARTICLE 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

ARTICLE 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized

herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

ARTICLE 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

ARTICLE 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:
  – (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  – (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

ARTICLE 8

1. The States Parties to the present Covenant undertake to ensure:
   (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those

prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ARTICLE 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

ARTICLE 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

ARTICLE 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
   (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
   (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

ARTICLE 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ARTICLE 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
   (a) Primary education shall be compulsory and available free to all;
   (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
   (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
   (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
   (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
   (a) To take part in cultural life;
   (b) To enjoy the benefits of scientific progress and its applications;
   (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

ARTICLE 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
   (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

ARTICLE 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

ARTICLE 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the

provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

ARTICLE 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

ARTICLE 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

ARTICLE 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

ARTICLE 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

ARTICLE 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

ARTICLE 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

ARTICLE 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

ARTICLE 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

ARTICLE 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

ARTICLE 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

ARTICLE 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;
(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

ARTICLE 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
3. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

International Covenant on Civil and Political Rights

Adopted by
the General Assembly resolution 2200A (XXI)
of 16 December 1966.
Entered into force 23 March 1976.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

ARTICLE 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

ARTICLE 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ARTICLE 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the

present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

ARTICLE 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

ARTICLE 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

ARTICLE 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ARTICLE 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
      – (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
      – (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
      – (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
      – (iv) Any work or service which forms part of normal civil obligations.

ARTICLE 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any

other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ARTICLE 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

ARTICLE 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

ARTICLE 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

ARTICLE 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (c) To be tried without undue delay;
   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

ARTICLE 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

ARTICLE 16

Everyone shall have the right to recognition everywhere as a person before the law.

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order *(ordre public)*, or of public health or morals.

ARTICLE 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

ARTICLE 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

ARTICLE 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

ARTICLE 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

ARTICLE 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

ARTICLE 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

ARTICLE 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

ARTICLE 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

ARTICLE 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

ARTICLE 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

ARTICLE 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

ARTICLE 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

ARTICLE 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

ARTICLE 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

ARTICLE 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

ARTICLE 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

ARTICLE 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

ARTICLE 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
   (a) Twelve members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.

ARTICLE 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
   (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

ARTICLE 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
   (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
   (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
   (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
   (d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
– (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
– (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.
In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

ARTICLE 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has

been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
   (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
   (b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
   (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
   (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

ARTICLE 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

ARTICLE 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

ARTICLE 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

ARTICLE 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

ARTICLE 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

ARTICLE 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

ARTICLE 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

ARTICLE 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

ARTICLE 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;
(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

ARTICLE 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

A

Universal instruments

UNITED NATIONS (UN)

2) Other instruments

United Nations Declaration on the Elimination of all Forms of Racial Discrimination

Proclaimed by
General Assembly resolution 1904 (XVIII)
of 20 November 1963

The General Assembly,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, 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,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

Considering that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

Considering that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

Taking into account the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

Taking into account the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues none the less to give cause for serious concern,

Alarmed by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, inter alia, of apartheid, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

Convinced that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

Convinced also that racial discrimination harms not only those who are its objects but also those who practise it.

Convinced further that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. *Solemnly affirms* the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;
2. *Solemnly affirms* the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;
3. *Proclaims* this Declaration:

Article 1

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

Article 2

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.

2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.
3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

ARTICLE 3

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.
2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

ARTICLE 4

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

ARTICLE 5

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of apartheid, as well as all forms of racial discrimination and separation resulting from such policies.

ARTICLE 6

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

ARTICLE 7

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

ARTICLE 8

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

ARTICLE 9

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.
2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.
3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

ARTICLE 10

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

ARTICLE 11

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

International Convention on the Elimination of all Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.
Entered into force 4 January 1969.

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of Al l Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

ARTICLE 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

ARTICLE 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
   (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
   (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
   (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
   (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
   (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

ARTICLE 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

ARTICLE 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

ARTICLE 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

– (i) The right to freedom of movement and residence within the border of the State;

– (ii) The right to leave any country, including one's own, and to return to one's country;
– (iii) The right to nationality;
– (iv) The right to marriage and choice of spouse;
– (v) The right to own property alone as well as in association with others;
– (vi) The right to inherit;
– (vii) The right to freedom of thought, conscience and religion;
– (viii) The right to freedom of opinion and expression;
– (ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:
– (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
– (ii) The right to form and join trade unions;
– (iii) The right to housing;
– (iv) The right to public health, medical care, social security and social services;
– (v) The right to education and training;
– (vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

ARTICLE 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

ARTICLE 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

ARTICLE 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
   (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

ARTICLE 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
   (a) within one year after the entry into force of the Convention for the State concerned; and

(b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

ARTICLE 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

ARTICLE 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

ARTICLE 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The

members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

ARTICLE 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

ARTICLE 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;
   (b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;
   (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.
9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

ARTICLE 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.
2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;
   (b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.
3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

ARTICLE 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to

other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

ARTICLE 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

ARTICLE 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

ARTICLE 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

ARTICLE 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(a) Signatures, ratifications and accessions under articles 17 and 18;
(b) The date of entry into force of this Convention under article 19;
(c) Communications and declarations received under articles 14, 20 and 23;
(d) Denunciations under article 21.

ARTICLE 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

International Convention on the Suppression and Punishment of the Crime of Apartheid

Adopted by
General Assembly resolution 3068 (XXVIII)
of 30 November 1973.
Entered into force 18 July 1976.

The States Parties to the present Convention,

Recalling the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

Considering the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly stated that the process of liberation is irresistible and irreversible and that, in the interests of human dignity, progress and justice, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction,

Observing that, in the Convention on the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of apartheid constitute a crime under international law,

Observing that, in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, "inhuman acts resulting from the policy of apartheid" are qualified as crimes against humanity,

Observing that the General Assembly of the United Nations has adopted a number of resolutions in which the policies and practices of apartheid are condemned as a crime against humanity,

Observing that the Security Council has emphasized that apartheid and its continued intensification and expansion seriously disturb and threaten international peace and security,

Convinced that an International Convention on the Suppression and Punishment of the Crime of Apartheid would make it possible to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of apartheid,

Have agreed as follows:

ARTICLE I

1. The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.
2. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid.

ARTICLE II

For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
   – (i) By murder of members of a racial group or groups;
   – (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
   – (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave

and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

ARTICLE III

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;

(b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

ARTICLE IV

The States Parties to the present Convention undertake:

(a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime;

(b) To adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

ARTICLE V

Persons charged with the acts enumerated in article II of the present Convention may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

ARTICLE VI

The States Parties to the present Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.

ARTICLE VII

1. The States Parties to the present Convention undertake to submit periodic reports to the group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.
2. Copies of the reports shall be transmitted through the Secretary-General of the United Nations to the Special Committee on Apartheid.

ARTICLE VIII

Any State Party to the present Convention may call upon any competent organ of the United Nations to take such action under the Charter of the United Nations as it considers appropriate for the prevention and suppression of the crime of apartheid.

ARTICLE IX

1. The Chairman of the Commission on Human Rights shall appoint a group consisting of three members of the Commission on Human Rights, who are also representatives of States Parties to the present Convention, to consider reports submitted by States Parties in accordance with article VII.
2. If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article, until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.
3. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII.

ARTICLE X

1. The States Parties to the present Convention empower the Commission on Human Rights:
   (a) To request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints

concerning acts which are enumerated in article II of the present Convention;

(b) To prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States Parties to the present Convention, a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by States Parties to the Convention;

(c) To request information from the competent United Nations organs concerning measures taken by the authorities responsible for the administration of Trust and Non-Self-Governing Territories, and all other Territories to which General Assembly resolution 1514 (XV) of 14 December 1960 applies, with regard to such individuals alleged to be responsible for crimes under article II of the Convention who are believed to be under their territorial and administrative jurisdiction.

2. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), the provisions of the present Convention shall in no way limit the right of petition granted to those peoples by other international instruments or by the United Nations and its specialized agencies.

ARTICLE XI

1. Acts enumerated in article II of the present Convention shall not be considered political crimes for the purpose of extradition.
2. The States Parties to the present Convention undertake in such cases to grant extradition in accordance with their legislation and with the treaties in force.

ARTICLE XII

Disputes between States Parties arising out of the interpretation, application or implementation of the present Convention which have not been settled by negotiation shall, at the request of the States parties to the dispute, be brought before the International Court of Justice, save where the parties to the dispute have agreed on some other form of settlement.

ARTICLE XIII

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

ARTICLE XIV

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE XV

1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

ARTICLE XVI

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

ARTICLE XVII

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVIII

The Secretary-General of the United Nations shall inform all States of the following particulars:

(a) Signatures, ratifications and accessions under articles XIII and XIV;
(b) The date of entry into force of the present Convention under article XV;
(c) Denunciations under article XVI;
(d) Notifications under article XVII.

ARTICLE XIX

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

Convention on the Elimination of all Forms of Discrimination against Women

Adopted on 18 December 1979.
Entered into force on 3 September 1981.

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

ARTICLE 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

ARTICLE 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

ARTICLE 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

ARTICLE 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

ARTICLE 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

ARTICLE 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ARTICLE 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

ARTICLE 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

ARTICLE 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

ARTICLE 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

   (a) The right to work as an inalienable right of all human beings;

   (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

   (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

ARTICLE 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

ARTICLE 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:
(a) The right to family benefits;
(b) The right to bank loans, mortgages and other forms of financial credit;
(c) The right to participate in recreational activities, sports and all aspects of cultural life.

ARTICLE 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
   (a) To participate in the elaboration and implementation of development planning at all levels;
   (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
   (c) To benefit directly from social security programmes;
   (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
   (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
   (f) To participate in all community activities;
   (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
   (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

ARTICLE 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

ARTICLE 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

ARTICLE 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

ARTICLE 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;
(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

ARTICLE 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

ARTICLE 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

ARTICLE 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

ARTICLE 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

ARTICLE 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

ARTICLE 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

ARTICLE 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

ARTICLE 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Proclaimed by
General Assembly resolution 36/55
of 25 November 1981

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of nondiscrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

ARTICLE 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

ARTICLE 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression «intolerance and discrimination based on religion or belief» means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

ARTICLE 3

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

ARTICLE 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
(b) To establish and maintain appropriate charitable or humanitarian institutions;
(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
(d) To write, issue and disseminate relevant publications in these areas;
(e) To teach a religion or belief in places suitable for these purposes;
(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

ARTICLE 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

ARTICLE 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

International Convention against *Apartheid* in Sports

Adopted by
General Assembly resolution 40/64
of 10 December 1985.
Entered into force 3 April 1988.

The States Parties to the present Convention,

Recalling the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, particularly in regard to race, colour or national origin,

Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties to that Convention particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in all fields,

Observing that the General Assembly of the United Nations has adopted a number of resolutions condemning the practice of apartheid in sports and has affirmed its unqualified support for the Olympic principle that no discrimination be allowed on the grounds of race, religion or political affiliation and that merit should be the sole criterion for participation in sports activities,

Considering that the International Declaration against Apartheid in Sports, which was adopted by the General Assembly on 14 December 1977, solemnly affirms the necessity for the speedy elimination of apartheid in sports,

Recalling the provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid and recognizing, in particular, that participation in sports exchanges with teams selected on the basis of apartheid directly abets and encourages the commission of the crime of apartheid, as defined in that Convention,

Resolved to adopt all necessary measures to eradicate the practice of apartheid in sports and to promote international sports contacts based on the Olympic principle,

Recognizing that sports contact with any country practising apartheid in sports condones and strengthens apartheid in violation of the Olympic principle and thereby becomes the legitimate concern of all Governments,

Desiring to implement the principles embodied in the International Declaration against Apartheid in Sports and to secure the earliest adoption of practical measures to that end,

Convinced that the adoption of an International Convention against Apartheid in Sports would result in more effective measures at the international and national levels, with a view to eliminating apartheid in sports,

Have agreed as follows:

ARTICLE 1

For the purposes of the present Convention:

(a) The expression "apartheid" shall mean a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them, such as that pursued by South Africa, and "apartheid in sports" shall mean the application of the policies and practices of such a system in sports activities, whether organized on a professional or an amateur basis;

(b) The expression "national sports facilities" shall mean any sports facility operated within the framework of a sports programme conducted under the auspices of a national government;

(c) The expression "Olympic principle" shall mean the principle that no discrimination be allowed on the grounds of race, religion or political affiliation;

(d) The expression "sports contracts" shall mean any contract concluded for the organization, promotion, performance or derivative rights, including servicing, of any sports activity;

(e) The expression "sports bodies" shall mean any organization constituted to organize sports activities at the national level, including national Olympic committees, national sports federations or national governing sports committees;

(f) The expression "team" shall mean a group of sportsmen organized for the purpose of participating in sports activities in competition with other such organized groups;

(g) The expression "sportsmen" shall mean men and women who participate in sports activities on an individual or team basis, as well as managers, coaches, trainers and other officials whose functions are essential for the operation of a team.

ARTICLE 2

States Parties strongly condemn apartheid and undertake to pursue immediately by all appropriate means the policy of eliminating the practice of apartheid in all its forms from sports.

ARTICLE 3

States Parties shall not permit sports contact with a country practising apartheid and shall take appropriate action to ensure that their sports bodies, teams, and individual sportsmen do not have such contact.

ARTICLE 4

States Parties shall take all possible measures to prevent sports contact with a country practising apartheid and shall ensure that effective means exist for bringing about compliance with such measures.

ARTICLE 5

States Parties shall refuse to provide financial or other assistance to enable their sports bodies, teams and individual sportsmen to participate in sports activities in a country practising apartheid or with teams or individual sportsmen selected on the basis of apartheid.

ARTICLE 6

Each State Party shall take appropriate action against its sports bodies, teams and individual sportsmen that participate in sports activities in a country practising apartheid or with teams representing a country practising apartheid, which in particular shall include:

(a) Refusal to provide financial or other assistance for any purpose to such sports bodies, teams and individual sportsmen;
(b) Restriction of access to national sports facilities by such sports bodies, teams and individual sportsmen;
(c) Non-enforceability of all sports contracts which involve sports activities in a country practising apartheid or with teams or individual sportsmen selected on the basis of apartheid;
(d) Denial and withdrawal of national honours or awards in sports to such teams and individual sportsmen;
(e) Denial of official receptions in honour of such teams or sportsmen.

ARTICLE 7

States Parties shall deny visas and/or entry to representatives of sports bodies, teams and individual sportsmen representing a country practising apartheid.

ARTICLE 8

States Parties shall take all appropriate action to secure the expulsion of a country practising apartheid from international and regional sports bodies.

ARTICLE 9

States Parties shall take all appropriate measures to prevent international sports bodies from imposing financial or other penalties on affiliated bodies which, in accordance with United Nations resolutions, the provisions of the present Convention and the spirit of the Olympic principle, refuse to participate in sports with a country practising apartheid.

ARTICLE 10

1. States Parties shall use their best endeavours to ensure universal compliance with the Olympic principles of non-discrimination and the provisions of the present Convention.
2. Towards this end, States Parties shall prohibit entry into their countries of members of teams and individual sportsmen participating or who have participated in sports competitions in South Africa and shall prohibit entry into their countries of representatives of sports bodies, members of teams and individual sportsmen who invite on their own initiative sports bodies, teams and sportsmen officially representing a country practising apartheid and participating under its flag. States Parties may also prohibit entry of representatives of sports bodies, members of teams or individual sportsmen who maintain sports contacts with sports bodies, teams or sportsmen representing a country practising apartheid and participating under its flag. Prohibition of entry should not violate the regulations of the relevant sports federations which support the elimination of apartheid in sports and shall apply only to participation in sports activities.
3. States Parties shall advise their national representatives to international sports federations to take all possible and practical steps to prevent the participation of the sports bodies, teams and sportsmen referred to in paragraph 2 above in international sports competitions and shall, through their representatives in international sports organizations, take every possible measure:
   (a) To ensure the expulsion of South Africa from all federations in which it still holds membership as well as to deny South Africa reinstatement to membership in any federation from which it has been expelled;
   (b) In case of national federations condoning sports exchanges with a country practising apartheid, to impose sanctions against such national federations including, if necessary, expulsion from the relevant international sports organization and exclusion of their representatives from participation in international sports competitions.
4. In cases of flagrant violations of the provisions of the present Convention, States Parties shall take appropriate action as they deem fit, including, where necessary, steps aimed at the exclusion of the responsible national sports governing bodies, national sports federations or sportsmen of the countries concerned from international sports competition.
5. The provisions of the present article relating specifically to South Africa shall cease to apply when the system of apartheid is abolished in that country.

ARTICLE 11

1. There shall be established a Commission against Apartheid in Sports (hereinafter referred to as "the Commission") consisting of fifteen members of high moral character and committed to the struggle against apartheid, particular attention being paid to participation of persons having experience in sports administration, elected by the States Parties from among their nationals, having regard to the most equitable geographical distribution and the representation of the principal legal systems.
2. The members of the Commission shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Commission shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the Commission.
6. For the filling of casual vacancies, the State Party whose national has ceased to function as a member of the Commission shall appoint another person from among its nationals, subject to the approval of the Commission.
7. States Parties shall be responsible for the expenses of the members of the Commission while they are in performance of Commission duties.

ARTICLE 12

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Commission, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention within one year of its entry into force and thereafter every two years. The Commission may request further information from the States Parties.
2. The Commission shall report annually through the Secretary General to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the

reports and information received from the States Parties. Such suggestions and recommendations shall be reported to the General Assembly together with comments, if any, from States Parties concerned.

3. The Commission shall examine, in particular, the implementation of the provisions of article 10 of the present Convention and make recommendations on action to be undertaken.
4. A meeting of States Parties shall be convened by the Secretary-General at the request of a majority of the States Parties to consider further action with respect to the implementation of the provisions of article 10 of the present Convention. In cases of flagrant violation of the provisions of the present Convention, a meeting of States Parties shall be convened by the Secretary-General at the request of the Commission.

ARTICLE 13

1. Any State Party may at any time declare that it recognizes the competence of the Commission to receive and examine complaints concerning breaches of the provisions of the present Convention submitted by States Parties which have also made such a declaration. The Commission may decide on the appropriate measures to be taken in respect of breaches.
2. States Parties against which a complaint has been made, in accordance with paragraph 1 of the present article, shall be entitled to be represented and take part in the proceedings of the Commission.

ARTICLE 14

1. The Commission shall meet at least once a year.
2. The Commission shall adopt its own rules of procedure.
3. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Commission shall normally be held at United Nations Headquarters.
5. The Secretary-General shall convene the initial meeting of the Commission.

ARTICLE 15

The Secretary-General of the United Nations shall be the depositary of the present Convention.

ARTICLE 16

1. The present Convention shall be open for signature at United Nations Headquarters by all States until its entry into force.
2. The present Convention shall be subject to ratification, acceptance or approval by the signatory States.

ARTICLE 17

The present Convention shall be open for accession by all States.

ARTICLE 18

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the present Convention after its entry into force, the Convention shall enter into force on the thirtieth day after the date of deposit of the relevant instrument.

ARTICLE 19

Any dispute between States Parties arising out of the interpretation, application or implementation of the present Convention which is not settled by negotiation shall be brought before the International Court of Justice at the request and with the mutual consent of the States Parties to the dispute, save where the Parties to the dispute have agreed on some other form of settlement.

ARTICLE 20

1. Any State Party may propose an amendment or revision to the present Convention and file it with the depositary. The Secretary-General of the United Nations shall thereupon communicate the proposed amendment or revision to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment or revision adopted by the majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments or revisions shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties, in accordance with their respective constitutional processes.
3. When amendments or revisions come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment or revision which they have accepted.

ARTICLE 21

A State Party may withdraw from the present Convention by written notification to the depositary. Such withdrawal shall take effect one year after the date of receipt of the notification by the depositary.

ARTICLE 22

The present Convention has been concluded in Arabic, Chinese, English, French, Russian and Spanish, all texts being equally authentic.

Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live

Adopted by
General Assembly resolution 40/144
of 13 December 1985

The General Assembly,

Considering that the Charter of the United Nations encourages universal respect for and observance of the human rights and fundamental freedoms of all human beings, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in that 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,

Considering that the Universal Declaration of Human Rights proclaims further that everyone has the right to recognition everywhere as a person before the law, that all are equal before the law and entitled without any discrimination to equal protection of the law, and that all are entitled to equal protection against any discrimination in violation of that Declaration and against any incitement to such discrimination,

Being aware that the States Parties to the International Covenants on Human Rights undertake to guarantee that the rights enunciated in these Covenants will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Conscious that, with improving communications and the development of peaceful and friendly relations among countries, individuals increasingly live in countries of which they are not nationals,

Reaffirming the purposes and principles of the Charter of the United Nations,

Recognizing that the protection of human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live,

Proclaims this Declaration:

ARTICLE 1

For the purposes of this Declaration, the term "alien" shall apply, with due regard to qualifications made in subsequent articles, to any individual who is not a national of the State in which he or she is present.

ARTICLE 2

1. Nothing in this Declaration shall be interpreted as legitimizing the illegal entry into and presence in a State of any alien, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.
2. This Declaration shall not prejudice the enjoyment of the rights accorded by domestic law and of the rights which under international law a State is obliged to accord to aliens, even where this Declaration does not recognize such rights or recognizes them to a lesser extent.

ARTICLE 3

Every State shall make public its national legislation or regulations affecting aliens.

ARTICLE 4

Aliens shall observe the laws of the State in which they reside or are present and regard with respect the customs and traditions of the people of that State.

ARTICLE 5

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:
   (a) The right to life and security of person; no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law;
   (b) The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence;
   (c) The right to be equal before the courts, tribunals and all other organs and authorities administering justice and, when necessary, to free assistance of an interpreter in criminal proceedings and , when prescribed by law, other proceedings;
   (d) The right to choose a spouse, to marry, to found a family;

(e) The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others;
(f) The right to retain their own language, culture and tradition;
(g) The right to transfer abroad earnings, savings or other personal monetary assets, subject to domestic currency regulations.

2. Subject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens shall enjoy the following rights:
(a) The right to leave the country;
(b) The right to freedom of expression;
(c) The right to peaceful assembly;
(d) The right to own property alone as well as in association with others, subject to domestic law.
3. Subject to the provisions referred to in paragraph 2, aliens lawfully in the territory of a State shall enjoy the right to liberty of movement and freedom to choose their residence within the borders of the State.
4. Subject to national legislation and due authorization, the spouse and minor or dependent children of an alien lawfully residing in the territory of a State shall be admitted to accompany, join and stay with the alien.

Article 6

No alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular, no alien shall be subjected without his or her free consent to medical or scientific experimentation.

Article 7

An alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority. Individual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited.

Article 8

1. Aliens lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the following rights, subject to their obligations under article 4:

(a) The right to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(b) The right to join trade unions and other organizations or associations of their choice and to participate in their activities. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary, in a democratic society, in the interests of national security or public order or for the protection of the rights and freedoms of others;

(c) The right to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.

2. With a view to protecting the rights of aliens carrying on lawful paid activities in the country in which they are present, such rights may be specified by the Governments concerned in multilateral or bilateral conventions.

ARTICLE 9

No alien shall be arbitrarily deprived of his or her lawfully acquired assets.

ARTICLE 10

Any alien shall be free at any time to communicate with the consulate or diplomatic mission of the State of which he or she is a national or, in the absence thereof, with the consulate or diplomatic mission of any other State entrusted with the protection of the interests of the State of which he or she is a national in the State where he or she resides.

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

Adopted by
General Assembly resolution 45/158
of 18 December 1990.
Not yet entered into force.

Preamble

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (N° 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (N° 143), the Recommendation concerning Migration for Employment (N° 86), the Recommendation concerning Migrant Workers (N° 151), the Convention concerning Forced or Compulsory Labour (N° 29) and the Convention concerning Abolition of Forced Labour (N° 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that

granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

PART I:
Scope and Definitions

ARTICLE 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

ARTICLE 2

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
2. (a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;
   (b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
   (c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
   (d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
   (e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term ”project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
(g) The term “specified-employment worker” refers to a migrant worker:
  – (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
  – (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
  – (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;
(h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

ARTICLE 3

The present Convention shall not apply to:
(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
(c) Persons taking up residence in a State different from their State of origin as investors;
(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;
(e) Students and trainees;
(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

ARTICLE 4

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

ARTICLE 5

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

ARTICLE 6

For the purposes of the present Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit", means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

PART II: Non-discrimination with respect to rights

ARTICLE 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III:
Human rights of all Migrant Workers and Members of their Families

ARTICLE 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

ARTICLE 9

The right to life of migrant workers and members of their families shall be protected by law.

ARTICLE 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term "forced or compulsory labour" shall not include:
   (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
   (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
   (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

ARTICLE 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either

individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ARTICLE 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputation of others;
   (b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;
   (c) For the purpose of preventing any propaganda for war;
   (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

ARTICLE 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

ARTICLE 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant

worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

ARTICLE 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived o their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
   (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
   (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
   (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

ARTICLE 17

1 Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
2 Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3 Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
4 During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5 During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
6 Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7 Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
8 If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

ARTICLE 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
   (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
   (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
   (c) To be tried without undue delay;
   (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
   (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
   (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
   (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.
7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

ARTICLE 19

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.
2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

ARTICLE 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.
2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

ARTICLE 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

ARTICLE 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should

not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

ARTICLE 23

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

ARTICLE 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

ARTICLE 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
   (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
   (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

ARTICLE 26

1. States Parties recognize the right of migrant workers and members of their families:
   (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
   (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
   (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

ARTICLE 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

ARTICLE 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

ARTICLE 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

ARTICLE 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

ARTICLE 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.
2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

ARTICLE 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

ARTICLE 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
   (a) Their rights arising out of the present Convention;
   (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.
3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

ARTICLE 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State

of employment or the obligation to respect the cultural identity of the inhabitants of such States.

ARTICLE 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in Part VI of the present Convention.

PART IV:
Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation

ARTICLE 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in Part III.

ARTICLE 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

ARTICLE 38

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

ARTICLE 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

ARTICLE 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

ARTICLE 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

ARTICLE 42

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

ARTICLE 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
   (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
   (b) Access to vocational guidance and placement services;
   (c) Access to vocational training and retraining facilities and institutions;
   (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
(f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.
3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

ARTICLE 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.
2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.
3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

ARTICLE 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:
(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;
(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;
(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;
(d) Access to and participation in cultural life.
2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.
4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

ARTICLE 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;
(b) Upon initial admission to the State of employment;
(c) Upon final departure from the State of employment;
(d) Upon final return to the State of origin or State of habitual residence.

ARTICLE 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.
2. States concerned shall take appropriate measures to facilitate such transfers.

ARTICLE 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:
   (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
   (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.
2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

ARTICLE 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to

migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

ARTICLE 50

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.
2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.
3. The provisions of paragraphs I and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

ARTICLE 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

ARTICLE 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.
2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;
(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:
(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;
(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

ARTICLE 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.
2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

ARTICLE 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
(a) Protection against dismissal;
(b) Unemployment benefits;
(c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

ARTICLE 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

ARTICLE 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in Part III.
2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.
3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

PART V:
Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families

ARTICLE 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in Part III and, except as modified below, the rights set forth in Part IV.

ARTICLE 58

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

ARTICLE 59

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in Part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.
2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

ARTICLE 60

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

ARTICLE 61

1. Project-tied workers, as defined in article 2, paragraph 2 (of the present Convention, and members of their families shall be entitled to the rights provided for in Part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph I (b), and articles 52 to 55.
2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.
3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.
4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned

shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

ARTICLE 62

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).
2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in Part IV of the present Convention, except the provisions of article 53.

ARTICLE 63

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the pre sent Convent ion , shall be entitled to the rights provided for in Part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.
2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

PART VI
Promotion of Sound, Equitable, Humane and Lawful Conditions Connection with International Migration of Workers and Members of their Families

ARTICLE 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.
2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

ARTICLE 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

(a) The formulation and implementation of policies regarding such migration;
(b) An exchange of information. consultation and co-operation with the competent authorities of other States Parties involved in such migration;
(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

ARTICLE 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:
(a) Public services or bodies of the State in which such operations take place;
(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
(c) A body established by virtue of a bilateral or multilateral agreement.
2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

ARTICLE 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

ARTICLE 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and

employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

ARTICLE 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

ARTICLE 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

ARTICLE 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.
2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

PART VII:
Application of the Convention

ARTICLE 72

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");
   (b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.
2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals;
   (b) Members shall be elected and shall serve in their personal capacity.
3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.
4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.
5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;
   (b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected

on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.
7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.
8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.
9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

ARTICLE 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:
   (a) Within one year after the entry into force of the Convention for the State Party concerned;
   (b) Thereafter every five years and whenever the Committee so requests.
2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.
3. The Committee shall decide any further guidelines applicable to the content of the reports.
4. States Parties shall make their reports widely available to the public in their own countries.

ARTICLE 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.
3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

ARTICLE 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

ARTICLE 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
   (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
   (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
   (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;
   (d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;
   (e) The Committee shall hold closed meetings when examining communications under the present article;
   (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
   (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
– (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
– (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph I of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

ARTICLE 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.
2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.
3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:
(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
6. The Committee shall hold closed meetings when examining communications under the present article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

ARTICLE 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

PART VIII:
General Provisions

ARTICLE 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

ARTICLE 80

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

ARTICLE 81

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:
   (a) The law or practice of a State Party; or
   (b) Any bilateral or multilateral treaty in force for the State Party concerned.
2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

ARTICLE 82

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

ARTICLE 83

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or

legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

ARTICLE 84

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

PART IX
Final Provisions

ARTICLE 85

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

ARTICLE 86

1. The present Convention shall be open for signature by all States. It is subject to ratification.
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 87

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

ARTICLE 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

ARTICLE 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether the favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

ARTICLE 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

ARTICLE 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

ARTICLE 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Adopted by
General Assembly resolution 47/135
of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

ARTICLE 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

ARTICLE 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

ARTICLE 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

ARTICLE 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

ARTICLE 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

ARTICLE 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

ARTICLE 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

ARTICLE 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

ARTICLE 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

B

Universal instruments

INTERNATIONAL LABOUR ORGANIZATION (ILO)

The texts of these instruments
have been downloaded
from the relevant
International Labour Organization
(ILO) web-site.

Convention (N° 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

Adopted on 29 June 1951.
Entered into force on 23 May 1953.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts the twenty-ninth day of June of the year one thousand nine hundred and fifty-one, the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1

For the purpose of this Convention:

(a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of:
   (a) national laws or regulations;
   (b) legally established or recognised machinery for wage determination;
   (c) collective agreements between employers and workers; or
   (d) a combination of these various means.

ARTICLE 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the partíes thereto.
3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

ARTICLE 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

ARTICLE 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

ARTICLE 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

ARTICLE 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate:
   (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
   (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
   (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
   (d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

ARTICLE 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.
2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
3. The Member, Members or international authority concerned may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

ARTICLE 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

ARTICLE 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

ARTICLE 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

ARTICLE 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

ARTICLE 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

ARTICLE 14

The English and French versions of the text of this Convention are equally authoritative.

Convention (N° 111) Concerning Discrimination in Respect of Employment and Occupation

Adopted on 26 June 1958.
Entered into force on 15 June 1960.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

Adopts the twenty-fifth day of June of the year one thousand nine hundred and fifty-eight, the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term *discrimination* includes:
   (a) any distinction, exclusion or preference made on the basis of race, colour sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
   (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms *employment* and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

ARTICLE 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

ARTICLE 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
(d) to pursue the policy in respect of employment under the direct control of a national authority;
(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

ARTICLE 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

ARTICLE 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special

measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

ARTICLE 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

ARTICLE 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

ARTICLE 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

ARTICLE 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

ARTICLE 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

ARTICLE 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

ARTICLE 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

ARTICLE 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

ARTICLE 14

The English and French versions of the text of this Convention are equally authoritative.

Convention (N° 169) Concerning Indigenous and Tribal Peoples in Independent Countries

Adopted on 27 June 1989.
Entered into force on 5 September 1991.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (N° 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

Adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

PART I:
General Policy

ARTICLE 1

1. This Convention applies to:
   (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
   (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

ARTICLE 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
   (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
   (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

ARTICLE 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

ARTICLE 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

ARTICLE 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
(b) the integrity of the values, practices and institutions of these peoples shall be respected;
(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

ARTICLE 6

1. In applying the provisions of this Convention, governments shall:
   (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
   (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

ARTICLE 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

ARTICLE 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

ARTICLE 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

ARTICLE 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.
2. Preference shall be given to methods of punishment other than confinement in prison.

ARTICLE 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

ARTICLE 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II: Land

ARTICLE 13

1. In applying the provisions of this part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term *lands* in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

ARTICLE 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the

peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

ARTICLE 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

ARTICLE 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

ARTICLE 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

ARTICLE 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

ARTICLE 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
(b) the provision of the means required to promote the development of the lands which these peoples already possess.

PART III: Recruitment and Conditions of Employment

ARTICLE 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
   (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
   (b) equal remuneration for work of equal value;
   (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:
   (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
   (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
   (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
   (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.
4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV
Vocational Training, Handicrafts and Rural Industries

ARTICLE 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

ARTICLE 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.
2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.
3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the

organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

ARTICLE 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.
2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V
Social Security and Health

ARTICLE 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

ARTICLE 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.
3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI
Education and Means of Communication

ARTICLE 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

ARTICLE 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

ARTICLE 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

ARTICLE 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

ARTICLE 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

ARTICLE 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII
Contacts and Co-operation across Borders

ARTICLE 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII
Administration

ARTICLE 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
2. These programmes shall include:
   (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
   (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX
General Provisions

ARTICLE 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

ARTICLE 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X
Provisions

ARTICLE 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

ARTICLE 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

ARTICLE 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

ARTICLE 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter,

may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

ARTICLE 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

ARTICLE 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

ARTICLE 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

ARTICLE 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-
   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

ARTICLE 44

The English and French versions of the text of this Convention are equally authoritative.

C

Universal instruments

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

The texts of these instruments
have been downloaded
from the relevant
United Nations web-site.

Convention against Discrimination in Education

Adopted by
the General Conference of UNESCO
on 14 December 1960.
Entered into force on 22 May 1962.

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session,

Recalling that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education,

Considering that discrimination in education is a violation of rights enunciated in that Declaration,

Considering that, under the terms of its Constitution, the United Nations Educational, Scientific and Cultural Organization has the purpose of instituting collaboration among the nations with a view to furthering for all universal respect for human rights and equality of educational opportunity,

Recognizing that, consequently, the United Nations Educational, Scientific and Cultural Organization, while respecting the diversity of national educational systems, has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education,

Having before it proposals concerning the different aspects of discrimination in education, constituting item 17.1.4 of the agenda of the session,

Having decided at its tenth session that this question should be made the subject of an international convention as well as of recommendations to Member States,

Adopts this Convention on the fourteenth day of December 1960.

ARTICLE 1

1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;
(b) Of limiting any person or group of persons to education of an inferior standard;
(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

ARTICLE 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

ARTICLE 3

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

ARTICLE 4

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:
(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;
(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
(d) To provide training for the teaching profession without discrimination.

ARTICLE 5

1. The States Parties to this Convention agree that:
(a) Education shall be directed to the full development of the human personality an d to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;
(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons

should be compelled to receive religious instruction inconsistent with his or their conviction;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

– (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its – activities, or which prejudices national sovereignty;

– (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

– (iii) That attendance at such schools is optional.

2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

ARTICLE 6

In the application of this Convention, the States Parties to it undertake to pay the greatest attention to any recommendations hereafter adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and treatment in education.

ARTICLE 7

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and the development of the national policy defined in article 4 as well as the results achieved and the obstacles encountered in the application of that policy.

ARTICLE 8

Any dispute which may arise between any two or more States Parties to this Convention concerning the interpretation or application of this Convention which is not settled by negotiations shall at the request of the parties to the dispute be referred, failing other means of settling the dispute, to the International Court of Justice for decision.

ARTICLE 9

Reservations to this Convention shall not be permitted.

ARTICLE 10

This Convention shall not have the effect of diminishing the rights which individuals or groups may enjoy by virtue of agreements concluded between two or more States, where such rights are not contrary to the letter or spirit of this Convention.

ARTICLE 11

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

ARTICLE 12

1. This Convention shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 13

1. This Convention shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are invited to do so by the Executive Board of the Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 14

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

ARTICLE 15

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territory but also to all non-self-governing, trust, colonial and other territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it

is accordingly applied, the notification to take effect three months after the date of its receipt.

ARTICLE 16

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

ARTICLE 17

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States Members of the Organization, the States not members of the Organization which are referred to in article 13, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 12 and 13, and of notifications and denunciations provided for in articles 15 and 16 respectively.

ARTICLE 18

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.
2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession as from the date on which the new revising convention enters into force.

ARTICLE 19

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

DONE in Paris, this fifteenth day of December 1960, in two authentic copies bearing the signatures of the President of the eleventh session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in articles 12 and 13 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its eleventh session, which was held in Paris and declared closed the fifteenth day of December 1960.

IN FAITH WHEREOF we have appended our signatures this fifteenth day of December 1960.

Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking a Settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education

Adopted by
the General Conference of UNESCO
on 10 December 1962.
Entered into force on 24 October 1968

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 9 November to 12 December 1962, at its twelfth session,

Having adopted, at its eleventh session, the Convention against Discrimination in Education,

Desirous of facilitating the implementation of that Convention, and

Considering that it is important, for this purpose, to institute a Conciliation and Good Offices Commission to be responsible for seeking the amicable settlement of any disputes which may arise between States Parties to the Convention, concerning its application or interpretation,

Adopts this Protocol on the tenth day of December 1962.

Article 1

There shall be established under the auspices of the United Nations Educational, Scientific and Cultural Organization a Conciliation and Good Offices Commission, hereinafter referred to as the Commission, to be responsible for seeking the amicable settlement of disputes between States Parties to the Convention against Discrimination in Education, hereinafter referred to as the Convention, concerning the application or interpretation of the Convention.

Article 2

1. The Commission shall consist of eleven members who shall be persons of high moral standing and acknowledged impartiality and shall be elected by

the General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the General Conference.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 3

1. The members of the Commission shall be elected from a list of persons nominated for the purpose by the States Parties to this Protocol. Each State shall, after consulting its National Commission for UNESCO, nominate not more than four persons. These persons must be nationals of States Parties to this Protocol.
2. At least four months before the date of each election to the Commission, the Director-General of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Director-General, shall invite the States Parties to the present Protocol to send within two months, their nominations of the persons referred to in paragraph I of this article. He shall prepare a list in alphabetical order of the persons thus nominated and shall submit it, at least one month before the election, to the Executive Board of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Executive Board, and to the States Parties to the Convention. The Executive Board shall transmit the aforementioned list, with such suggestions as it may consider useful, to the General Conference, which shall carry out the election of members of the Commission in conformity with the procedure it normally follows in elections of two or more persons.

ARTICLE 4

1. The Commission may not include more than one national of the same State.
2. In the election of members of the Commission, the General Conference shall endeavour to include persons of recognized competence in the field of education and persons having judicial experience or legal experience particularly of an international character. It shall also give consideration to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

ARTICLE 5

The members of the Commission shall be elected for a term of six years. They shall be eligible for re-election if renominated. The terms of four of the members elected at the first election shall, however, expire at the end of two years, and the terms of three other members at the end of four years. Immediately after the first election, the names of these members shall be chosen by lot by the President of the General Conference.

ARTICLE 6

1. In the event of the death or resignation of a member of the Commission, the Chairman shall immediately notify the Director-General, who shall

declare the seat vacant from the date of death or the date on which the resignation takes effect.

2. If, in the unanimous opinion of the other members, a member of the Commission has ceased to carry out his functions for any cause other than absence of a temporary character or is unable to continue the discharge of his duties, the Chairman of the Commission shall notify the Director-General and shall thereupon declare the seat of such member to be vacant.
3. The Director-General shall inform the Member States of the United Nations Educational, Scientific and Cultural Organization, and any States not members of the Organization which have become Parties to this Protocol under the provisions of article 23, of any vacancies which have occurred in accordance with paragraphs I and 2 of this article.
4. In each of the cases provided for by paragraphs I and 2 of this article, the General Conference shall arrange for the replacement of the member whose seat has fallen vacant for the unexpired portion of his term of office.

ARTICLE 7

Subject to the provisions of article 6, a member of the Commission shall remain in office until his successor takes up his duties.

ARTICLE 8

1. If the Commission does not include a member of the nationality of a State which is party to a dispute referred to it under the provisions of article 12 or article 13, that State, or if there is more than one, each of those States, may choose a person to sit on the Commission as a member ad hoc.
2. The States thus choosing a member ad hoc shall have regard to the qualities required of members of the Commission by virtue of article 2, paragraph 1, and article 4, paragraphs I and 2. Any member ad hoc thus chosen shall be of the nationality of the State which chooses him or of a State Party to the Protocol, and shall serve in a personal capacity.
3. Should there be several States Parties to the dispute having the same interest they shall, for the purpose of choosing members ad hoc, be reckoned as one party only. The manner in which this provision shall be applied shall be determined by the Rules of Procedure of the Commission referred to in article 11.

ARTICLE 9

Members of the Commission and members ad hoc chosen under the provisions of article 8 shall receive travel and per diem allowances in respect of the periods during which they are engaged on the work of the Commission from the resources of the United Nations Educational, Scientific and Cultural Organization on terms laid down by the Executive Board.

ARTICLE 10

The secretariat of the Commission shall be provided by the Director-General.

ARTICLE 11

1. The Commission shall elect its Chairman and Vice-Chairman for a period of two years. They may be re-elected.
2. The Commission shall establish its own Rules of Procedure, but these rules shall provide, inter alia, that:
   (a) Two thirds of the members, including the members ad hoc, if any, shall constitute a quorum;
   (b) Decisions of the Commission shall be made by a majority vote of the members and members ad hoc present; if the votes are equally divided, the Chairman shall have a casting vote;
   (c) If a State refers a matter to the Commission under article 12 or article 13:
      – (i) Such State, the State complained against, and any State Party to this Protocol whose national is concerned in such matter may make submissions in writing to the Commission;
      – (ii) Such State and the State complained against shall have the right to be represented at the hearings of the matter and to make submissions orally.
3. The Commission, on the occasion when it first proposes to establish its Rules of Procedure, shall send them in draft form to the States then Parties to the Protocol who may communicate any observation and suggestion they may wish to make within three months. The Commission shall re-examine its Rules of Procedure if at any time so requested by any State Party to the Protocol.

ARTICLE 12

1. If a State Party to this Protocol considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to procedures and remedies taken, or pending, or available in the matter.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Commission, by notice given to the Director-General and to the other State.
3. The provisions of the preceding paragraphs shall not affect the rights of States Parties to have recourse, in accordance with general or special international agreements in force between them, to other procedures for settling disputes including that of referring disputes by mutual consent to the Permanent Court of Arbitration at The Hague.

ARTICLE 13

From the beginning of the sixth year after the entry into force of this Protocol, the Commission may also be made responsible for seeking the settlement of an dispute concerning the application or interpretation of the Convention arising between States which are Parties to the Convention but are not, or are not all, Parties to this Protocol, if the said States agree to submit such dispute to the Commission. The conditions to be fulfilled by the said States in reaching agreement shall be laid down by the Commission's Rules of Procedure.

ARTICLE 14

The Commission shall deal with a matter referred to it under article 12 or article 13 of this Protocol only after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law.

ARTICLE 15

Except in cases where new elements have been submitted to it, the Commission shall not consider matters it has already dealt with.

ARTICLE 16

In any matter referred to it, the Commission may call upon the States concerned to supply any relevant information.

ARTICLE 17

1. Subject to the provisions of article 14, the Commission, after obtaining all the information it thinks necessary, shall ascertain the facts, and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention.
2. The Commission shall in every case, and in no event later than eighteen months after the date of receipt by the Director-General of the notice under article 12, paragraph 2, draw up a report in accordance with the provisions of paragraph 3 below which will be sent to the States concerned and then communicated to the Director-General for publication. When an advisory opinion is requested of the International Court of Justice, in accordance with article 18, the time-limit shall be extended appropriately.
3. If a solution within the terms of paragraph I of this article is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Commission shall draw up a report on the facts and indicate the recommendations which it made with a view to conciliation. If the report does not represent in whole or in part the unanimous opinion of the members of the Commission, any member of the Commission shall be entitled to attach to it a separate opinion. The written and oral submissions made by the parties to the case in accordance with article 11, paragraph 2 (c), shall be attached to the report.

ARTICLE 18

The Commission may recommend to the Executive Board, or to the General Conference if the recommendation is made within two months before the opening of one of its sessions, that the International Court of Justice be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission.

ARTICLE 19

The Commission shall submit to the General Conference at each of its regular sessions a report on its activities, which shall be transmitted to the General Conference by the Executive Board.

ARTICLE 20

1. The Director-General shall convene the first meeting of the Commission at the Headquarters of the United Nations Educational, Scientific and Cultural Organization within three months after its nomination by the General Conference.
2. Subsequent meetings of the Commission shall be convened when necessary by the Chairman of the Commission to whom, as well as to all other members of the Commission, the Director-General shall transmit all matters referred to the Commission in accordance with the provisions of this Protocol.
3. Notwithstanding paragraph 2 of this article, when at least one third of the members of the Commission consider that the Commission should examine a matter in accordance with the provisions of this Protocol, the Chairman shall on their so requiring convene a meeting of the Commission for that purpose.

ARTICLE 21

The present Protocol is drawn up in English, French, Russian and Spanish, all four texts being equally authentic.

ARTICLE 22

1. This Protocol shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. The instruments of ratification or acceptance shall be deposited with the Director-General.

ARTICLE 23

1. This Protocol shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

ARTICLE 24

This Protocol shall enter into force three months after the date of the deposit of the fifteenth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance and accession.

ARTICLE 25

Any State may, at the time of ratification, acceptance or accession or at any subsequent date, declare, by notification to the Director-General, that it agrees, with respect to any other State assuming the same obligation, to refer to the International Court of Justice, after the drafting of the report provided for in article 17, paragraph 3, any dispute covered by this Protocol on which no amicable solution has been reached in accordance with article 17, paragraph 1.

ARTICLE 26

1. Each State Party to this Protocol may denounce it.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.
3. Denunciation of the Convention shall automatically entail denunciation of this Protocol.
4. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. The State denouncing the Protocol shall, however, remain bound by its provisions in respect of any cases concerning it which have been referred to the Commission before the end of the time-limit stipulated in this paragraph.

ARTICLE 27

The Director-General shall inform the States Members of the United Nations Educational, Scientific and Cultural Organization, the States not Members of the organization which are referred to in article 23, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 22 and 23, and of the notifications and denunciations provided for in articles 25 and 26 respectively.

ARTICLE 28

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

DONE in Paris, this eighteenth day of December 1962, in two authentic copies bearing the signatures of the President of the twelfth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural

Organization, and certified true copies of which shall be delivered to all the States referred to in articles 12 and 13 of the Convention against Discrimination in Education as well as to the United Nations.

The foregoing is the authentic text of the Protocol duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its twelfth session, which was held in Paris and declared closed the twelfth day of December 1962.

IN FAITH WHEREOF we have appended our signatures this eighteenth day of December 1962.

Declaration on Race and Racial Prejudice

Adopted and proclaimed
by the General Conference of UNESCO
on 27 November 1978.

Preamble

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting at Paris at its twentieth session, from 24 October to 28 November 1978,

Whereas it is stated in the Preamble to the Constitution of UNESCO, adopted on 16 November 1945, that "the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races", and whereas, according to Article I of the said Constitution, the purpose of UNESCO "is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations",

Recognizing that, more than three decades after the founding of UNESCO, these principles are just as significant as they were when they were embodied in its Constitution,

Mindful of the process of decolonization and other historical changes which have led most of the peoples formerly under foreign rule to recover their sovereignty, making the international community a universal and diversified whole and creating new opportunities of eradicating the scourge of racism and of putting an end to its odious manifestations in all aspects of social and political life, both nationally and internationally,

Convinced that the essential unity of the human race and consequently the fundamental equality of all human beings and all peoples, recognized in the loftiest expressions of philosophy, morality and religion, reflect an ideal towards which ethics and science are converging today,

Convinced that all peoples and all human groups, whatever their composition or ethnic origin, contribute according to their own genius to the progress

of the civilizations and cultures which, in their plurality and as a result of their interpenetration, constitute the common heritage of mankind,

Confirming its attachment to the principles proclaimed in the United Nations Charter and the Universal Declaration of Human Rights and its determination to promote the implementation of the International Covenants on Human Rights as well as the Declaration on the Establishment of a New International Economic Order,

Determined also to promote the implementation of the United Nations Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination,

Noting the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

Recalling also the international instruments already adopted by UNESCO, including in particular the Convention and Recommendation against Discrimination in Education, the Recommendation concerning the Status of Teachers, the Declaration of the Principles of International Cultural Co-operation, the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, the Recommendations on the Status of Scientific Researchers, and the Recommendation on participation by the people at large in cultural life and their contribution to it,

Bearing in mind the four statements on the race question adopted by experts convened by UNESCO,

Reaffirming its desire to play a vigorous and constructive part in the implementation of the programme of the Decade for Action to Combat Racism and Racial Discrimination, as defined by the General Assembly of the United Nations at its twenty-eighth session,

Noting with the gravest concern that racism, racial discrimination, colonialism and apartheid continue to afflict the world in ever-changing forms, as a result both of the continuation of legislative provisions and government and administrative practices contrary to the principles of human rights and also of the continued existence of political and social structures, and of relationships and attitudes, characterized by injustice and contempt for human beings and leading to the exclusion, humiliation and exploitation, or to the forced assimilation, of the members of disadvantaged groups,

Expressing its indignation at these offences against human dignity, deploring the obstacles they place in the way of mutual understanding between peoples and alarmed at the danger of their seriously disturbing international peace and security,

Adopts and solemnly proclaims this Declaration on Race and Racial Prejudice:

Article 1

1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.
2. All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.
3. Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural identity.
4. All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.
5. The differences between the achievements of the different peoples are entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of nations or peoples.

Article 2

1. Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.
2. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practise it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.
3. Racial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification.

ARTICLE 3

Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfilment in a climate of respect for the values of civilizations and cultures, both national and world-wide.

ARTICLE 4

1. Any restriction on the complete self-fulfilment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted.
2. One of the most serious violations of this principle is represented by apartheid, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security.
3. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

ARTICLE 5

1. Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international contexts, it being understood that it rests with each group to decide in complete freedom on the maintenance, and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity.
2. States, in accordance with their constitutional principles and procedures, as well as all other competent authorities and the entire teaching profession, have a responsibility to see that the educational resources of all countries are used to combat racism, more especially by ensuring that curricula and textbooks include scientific and ethical considerations concerning human unity and diversity and that no invidious distinctions are made with regard to any people; by training teachers to achieve these ends; by making the resources of the educational system available to all groups of the population without racial restriction or discrimination; and by taking appropriate steps to remedy the handicaps from which certain racial or ethnic groups suffer with regard to their level of education and standard of living and in particular to prevent such handicaps from being passed on to children.

3. The mass media and those who control or serve them, as well as all organized groups within national communities, are urged-with due regard to the principles embodied in the Universal Declaration of Human Rights, particularly the principle of freedom of expression-to promote understanding, tolerance and friendship among individuals and groups and to contribute to the eradication of racism, racial discrimination and racial prejudice, in particular by refraining from presenting a stereotyped, partial, unilateral or tendentious picture of individuals and of various human groups. Communication between racial and ethnic groups must be a reciprocal process, enabling them to express themselves and to be fully heard without let or hindrance. The mass media should therefore be freely receptive to ideas of individuals and groups which facilitate such communication.

ARTICLE 6

1. The State has prime responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals and all groups.
2. So far as its competence extends and in accordance with its constitutional principles and procedures, the State should take all appropriate steps, *inter alia* by legislation, particularly in the spheres of education, culture and communication, to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid and to encourage the dissemination of knowledge and the findings of appropriate research in natural and social sciences on the causes and prevention of racial prejudice and racist attitudes with due regard to the principles embodied in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.
3. Since laws proscribing racial discrimination are not in themselves sufficient, it is also incumbent on States to supplement them by administrative machinery for the systematic investigation of instances of racial discrimination, by a comprehensive framework of legal remedies against acts of racial discrimination, by broadly based education and research programmes designed to combat racial prejudice and racial discrimination and by programmes of positive political, social, educational and cultural measures calculated to promote genuine mutual. respect among groups. Where circumstances warrant, special programmes should be undertaken to promote the advancement of disadvantaged groups and, in the case of nationals, to ensure their effective participation in the decision-making processes of the community.

ARTICLE 7

In addition to political, economic and social measures, law is one of the principal means of ensuring equality in dignity and rights among individuals, and of curbing any propaganda, any. form of organization or any practice which is based on ideas or theories referring to the alleged superiority of racial or ethnic groups or which seeks to justify or encourage racial hatred and discrimination in any form. States should adopt such legislation as is appropriate to this end

and see that it is given effect and applied by all their services, with due regard to the principles embodied in the Universal Declaration of Human Rights. Such legislation should form part of a political, economic and social framework conducive to its implementation. Individuals and other legal entities, both public and private, must conform with such legislation and use all appropriate means to help the population as a whole to understand and apply it.

ARTICLE 8

1. Individuals, being entitled to an economic, social, cultural and legal order, on the national and international planes, such as to allow them to exercise all their capabilities on a basis of entire equality of rights and opportunities, have corresponding duties towards their fellows, towards the society in which they live and towards the international community. They are accordingly under an obligation to promote harmony among the peoples, to combat racism and racial prejudice and to assist by every means available to them in eradicating racial discrimination in all its forms.
2. In the field of racial prejudice and racist attitudes and practices, specialists in natural and social sciences and cultural studies, as well as scientific organizations and associations, are called upon to undertake objective research on a wide interdisciplinary basis; all States should encourage them to this end.
3. It is, in particular, incumbent upon such specialists to ensure, by all means available to them, that their research findings are not misinterpreted, and also that they assist the public in understanding such findings.

ARTICLE 9

1. The principle of the equality in dignity and rights of all human beings and all peoples, irrespective of race, colour and origin, is a generally accepted and recognized principle of international law. Consequently any form of racial discrimination practised by a State constitutes a violation of international law giving rise to its international responsibility.
2. Special measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary, while ensuring that they are not such as to appear racially discriminatory. In this respect, particular attention should be paid to racial or ethnic groups which are socially or economically disadvantaged, so as to afford them, on a completely equal footing and without discrimination or restriction, the protection of the laws and regulations and the advantages of the social measures in force, in particular in regard to housing, employment and health; to respect the authenticity of their culture and values; and to facilitate their social and occupational advancement, especially through education.
3. Population groups of foreign origin, particularly migrant workers and their families who contribute to the development of the host country, should benefit from appropriate measures designed to afford them security and respect for their dignity and cultural values and to facilitate their adaptation to the host environment and their professional advancement with a

view to their subsequent reintegration in their country of origin and their contribution to its development; steps should be taken to make it possible for their children to be taught their mother tongue.

4. Existing disequilibria in international economic relations contribute to the exacerbation of racism and racial prejudice; all States should consequently endeavour to contribute to the restructuring of the international economy on a more equitable basis.

ARTICLE 10

International organizations, whether universal or regional, governmental or non-governmental, are called upon to co-operate and assist, so far as their respective fields of competence and means allow, in the full and complete implementation of the principles set out in this Declaration, thus contributing to the legitimate struggle of all men, born equal in dignity and rights, against the tyranny and oppression of racism, racial segregation, apartheid and genocide, so that all the peoples of the world may be forever delivered from these scourges.

Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Roghts and to Countering Racialism, *Apartheid* and Incitement to War

Proclaimed by
the General Conference of UNESCO
on 28 November 1978

Preamble

The General Conference,

Recalling that by virtue of its Constitution the purpose of UNESCO is to "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms" (Art. I, 1), and that to realize this purpose the Organization will strive "to promote the free flow of ideas by word and image" (Art. I, 2),

Further recalling that under the Constitution the Member States of UNESCO, "believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives" (sixth preambular paragraph),

Recalling the purposes and principles of the United Nations, as specified in its Charter,

Recalling the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and particularly article 19 thereof, which provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any

media and regardless of frontiers"; and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966, article 19 of which proclaims the same principles and article 20 of which condemns incitement to war, the advocacy of national, racial or religious hatred and any form of discrimination, hostility or violence,

Recalling article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in 1965, and the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly of the United Nations in 1973, whereby the States acceding to these Conventions undertook to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination, and agreed to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations,

Recalling the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, adopted by the General Assembly of the United Nations in 1965,

Recalling the declarations and resolutions adopted by the various organs of the United Nations concerning the establishment of a new international economic order and the role UNESCO is called upon to play in this respect,

Recalling the Declaration of the Principles of International Cultural Cooperation, adopted by the General Conference of UNESCO in 1966,

Recalling resolution 59(I) of the General Assembly of the United Nations, adopted in 1946 and declaring:

- Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated;
- [...]
- Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent;
- […]

Recalling resolution 110 (II) of the General Assembly of the United Nations, adopted in 1947, condemning all forms of propaganda which are designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

Recalling resolution 127 (II), also adopted by the General Assembly in 1947, which invites Member States to take measures, within the limits of constitutional procedures, to combat the diffusion of false or distorted reports likely to injure friendly relations between States, as well as the other resolutions of the General Assembly concerning the mass media and their contribution to strengthening peace, trust and friendly relations among States,

Recalling resolution 9.12 adopted by the General Conference of UNESCO in 1968, reiterating UNESCO's objective to help to eradicate colonialism and racialism, and resolution 12.1 adopted by the General Conference in 1976,

which proclaims that colonialism, neocolonialism and racialism in all its forms and manifestations are incompatible with the fundamental aims of UNESCO,

Recalling resolution 4.301 adopted in 1970 by the General Conference of UNESCO on the contribution of the information media to furthering international understanding and co-operation in the interests of peace and human welfare, and to countering propaganda on behalf of war, racialism, apartheid and hatred among nations, and aware of the fundamental contribution that mass media can make to the realizations of these objectives,

Recalling the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO at its twentieth session,

Conscious of the complexity of the problems of information in modern society, of the diversity of solutions which have been offered to them, as evidenced in particular by the consideration given to them within UNESCO, and of the legitimate desire of all parties concerned that their aspirations, points of view and cultural identity be taken into due consideration,

Conscious of the aspirations of the developing countries for the establishment of a new, more just and more effective world information and communication order,

Proclaims on this twenty-eighth day of November 1978 this Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War.

Article I

The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading contribution to make. This contribution will be the more effective to the extent that the information reflects the different aspects of the subject dealt with.

Article II

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.
2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.

3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neocolonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.
4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

ARTICLE III

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war.
2. In countering aggressive war, racialism, apartheid and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by disseminating information on the aims, aspirations, cultures and needs of all peoples, contribute to eliminate ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

ARTICLE IV

The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings and all nations, and economic and social progress. Equally, they have an important role to play in making known the views and aspirations of the younger generation.

ARTICLE V

In order to respect freedom of opinion, expression and information and in order that information may reflect all points of view, it is important that the points of view presented by those who consider that the information published or disseminated about them has seriously prejudiced their effort to strengthen peace and international understanding, to promote human rights or to counter racialism, apartheid and incitement to war be disseminated.

Article VI

For the establishment of a new equilibrium and greater reciprocity in the flow of information, which will be conducive to the institution of a just and lasting peace and to the economic and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries, and between those countries. To this end, it is essential that their mass media should have conditions and resources enabling them to gain strength and expand, and to co-operate both among themselves and with the mass media in developed countries.

Article VII

By disseminating more widely all of the information concerning the universally accepted objectives and principles which are the bases of the resolutions adopted by the different organs of the United Nations, the mass media contribute effectively to the strengthening of peace and international understanding, to the promotion of human rights, and to the establishment of a more just and equitable international economic order.

Article VIII

Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their functions in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.

Article IX

In the spirit of this Declaration, it is for the international community to contribute to the creation of the conditions for a free flow and wider and more balanced dissemination of information, and of the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media. UNESCO is well placed to make a valuable contribution in this respect.

Article X

1. With due respect for constitutional provisions designed to guarantee freedom of information and for the applicable international instruments and agreements, it is indispensable to create and maintain throughout the world the conditions which make it possible for the organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration.
2. It is important that a free flow and wider and better balanced dissemination of information be encouraged.
3. To this end, it is necessary that States facilitate the procurement by the mass media in the developing countries of adequate conditions and resources enabling them to gain strength and expand, and that they support

co-operation by the latter both among them selves and with the mass media in developed countries.

4. Similarly, on a basis of equality of rights, mutual advantage and respect for the diversity of the cultures which go to make up the common heritage of mankind, it is essential that bilateral and multilateral exchanges of information among all States, and in particular between those which have different economic and social systems, be encouraged and developed.

ARTICLE XI

For this declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

Declaration of Principles on Tolerance

Solemnly adopted by acclamation
by the UNESCO General Conference
on 16 November 1995.

Preamble

Bearing in mind that the United Nations Charter states "We, the peoples of the United Nations determined to save succeeding generations from the scourge of war, ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [...] and for these ends to practise tolerance and live together in peace with one another as good neighbours",

Recalling that the Preamble to the Constitution of UNESCO, adopted on 16 November 1945, states that "peace, if it is not to fail, must be founded on the intellectual and moral solidarity of mankind",

Recalling also that the Universal Declaration of Human Rights affirms that "Everyone has the right to freedom of thought, conscience and religion" (Article 18), "of opinion and expression" (Article 19), and that education "should promote understanding, tolerance and friendship among all nations, racial or religious groups" (Article 26),

Noting relevant international instruments including:

- the International Covenant on Civil and Political Rights,
- the International Covenant on Economic, Social and Cultural Rights,
- the Convention on the Elimination of All Forms of Racial Discrimination,
- the Convention on the Prevention and Punishment of the Crime of Genocide,
- the Convention on the Rights of the Child,
- the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and regional instruments,
- the Convention on the Elimination of All Forms of Discrimination against Women,
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
- the Declaration on the Elimination of All Forms of Intolerance Based on Religion or Belief,
- the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,

- the Declaration on Measures to Eliminate International Terrorism,
- the Vienna Declaration and Programme of Action of the World Conference on Human Rights,
- the Copenhagen Declaration and Programme of Action adopted by the World Summit for Social Development,
- the UNESCO Declaration on Race and Racial Prejudice,
- the UNESCO Convention and Recommendation against Discrimination in Education,

Bearing in mind the objectives of the Third Decade to Combat Racism and Racial Discrimination, the World Decade for Human Rights Education, and the International Decade of the World's Indigenous People,

Taking into consideration the recommendations of regional conferences organized in the framework of the United Nations Year for Tolerance in accordance with UNESCO General Conference 27 C/Resolution 5.14, as well as the conclusions and recommendations of other conferences and meetings organized by Member States within the programme of the United Nations Year for Tolerance,

Alarmed by the current rise in acts of intolerance, violence, terrorism, xenophobia, aggressive nationalism, racism, anti-Semitism, exclusion, marginalization and discrimination directed against national, ethnic, religious and linguistic minorities, refugees, migrant workers, immigrants and vulnerable groups within societies, as well as acts of violence and intimidation committed against individuals exercising their freedom of opinion and expression – all of which threaten the consolidation of peace and democracy both nationally and internationally and which are all obstacles to development,

Emphasizing the responsibilities of Member States to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, gender, language, national origin, religion or disability, and to combat intolerance,

Adopt and solemnly proclaim this Declaration of Principles on Tolerance.

Resolving to take all positive measures necessary to promote tolerance in our societies, because tolerance is not only a cherished principle, but also a necessity for peace and for the economic and social advancement of all peoples.

We declare the following:

Article 1: Meaning of tolerance

1.1. Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

1.2. Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.
1.3. Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.
1.4. Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

ARTICLE 2: STATE LEVEL

2.1. Tolerance at the State level requires just and impartial legislation, law enforcement and judicial and administrative process. It also requires that economic and social opportunities be made available to each person without any discrimination. Exclusion and marginalization can lead to frustration, hostility and fanaticism.
2.2. In order to achieve a more tolerant society, States should ratify existing international human rights conventions, and draft new legislation where necessary to ensure equality of treatment and of opportunity for all groups and individuals in society.
2.3. It is essential for international harmony that individuals, communities and nations accept and respect the multicultural character of the human family. Without tolerance there can be no peace, and without peace there can be no development or democracy.
2.4. Intolerance may take the form of marginalization of vulnerable groups and their exclusion from social and political participation, as well as violence and discrimination against them. As confirmed in the Declaration on Race and Racial Prejudice, "All individuals and groups have the right to be different" (Article 1.2).

ARTICLE 3: SOCIAL DIMENSIONS

3.1. In the modern world, tolerance is more essential than ever before. It is an age marked by the globalization of the economy and by rapidly increasing mobility, communication, integration and interdependence, large-scale migrations and displacement of populations, urbanization and changing social patterns. Since every part of the world is characterized by diversity, escalating intolerance and strife potentially menaces every region. It is not confined to any country, but is a global threat.

3.2. Tolerance is necessary between individuals and at the family and community levels. Tolerance promotion and the shaping of attitudes of openness, mutual listening and solidarity should take place in schools and universities, and through non-formal education, at home and in the workplace. The communication media are in a position to play a constructive role in facilitating free and open dialogue and discussion, disseminating the values of tolerance, and highlighting the dangers of indifference towards the rise in intolerant groups and ideologies.

3.3. As affirmed by the UNESCO Declaration on Race and Racial Prejudice, measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary. In this respect, particular attention should be paid to vulnerable groups which are socially or economically disadvantaged so as to afford them the protection of the laws and social measures in force, in particular with regard to housing, employment and health, to respect the authenticity of their culture and values, and to facilitate their social and occupational advancement and integration, especially through education.

3.4. Appropriate scientific studies and networking should be undertaken to co-ordinate the international community's response to this global challenge, including analysis by the social sciences of root causes and effective countermeasures, as well as research and monitoring in support of policy-making and standard-setting action by Member States.

ARTICLE 4: EDUCATION

4.1. Education is the most effective means of preventing intolerance. The first step in tolerance education is to teach people what their shared rights and freedoms are, so that they may be respected, and to promote the will to protect those of others.

4.2. Education for tolerance should be considered an urgent imperative; that is why it is necessary to promote systematic and rational tolerance teaching methods that will address the cultural, social, economic, political and religious sources of intolerance – major roots of violence and exclusion. Education policies and programmes should contribute to development of understanding, solidarity and tolerance among individuals as well as among ethnic, social, cultural, religious and linguistic groups and nations.

4.3. Education for tolerance should aim at countering influences that lead to fear and exclusion of others, and should help young people to develop capacities for independent judgement, critical thinking and ethical reasoning.

4.4. We pledge to support and implement programmes of social science research and education for tolerance, human rights and non-violence. This means devoting special attention to improving teacher training, curricula, the content of textbooks and lessons, and other educational materials including new educational technologies, with a view to educating caring and responsible citizens open to other cultures, able to appreciate the value of freedom, respectful of human dignity and differences, and able to prevent conflicts or resolve them by non-violent means.

Article 5: Commitment to action

We commit ourselves to promoting tolerance and non-violence through programmes and institutions in the fields of education, science, culture and communication.

Article 6: International Day for Tolerance

In order to generate public awareness, emphasize the dangers of intolerance and react with renewed commitment and action in support of tolerance promotion and education, we solemnly proclaim 16 November the annual International Day for Tolerance.

The texts of these instruments have been downloaded from the relevant UNESCO web-site.

Universal Declaration on the Human Genome and Human Rights

Adopted unanimously and by acclamation by the General Conference of UNESCO at its 29th session of 11 November 1997.

The General Conference,

Recalling that the Preamble of UNESCO's Constitution refers to "the democratic principles of the dignity, equality and mutual respect of men", rejects any "doctrine of the inequality of men and races", stipulates "that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of men and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern", proclaims that "peace must be founded upon the intellectual and moral solidarity of mankind", and states that the Organization seeks to advance "through the educational and scientific and cultural relations of the peoples of the world, the objectives of international peace and of the common welfare of mankind for which the United Nations Organization was established and which its Charter proclaims",

Solemnly recalling its attachment to the universal principles of human rights, affirmed in particular in the Universal Declaration of Human Rights of 10 December 1948 and in the two International United Nations Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights of 16 December 1966, in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the International United Nations Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the United Nations Declaration on the Rights of Mentally Retarded Persons of 20 December 1971, the United Nations Declaration on the Rights of Disabled Persons of 9 December 1975, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985, the United Nations Convention on the Rights of the Child of 20 November 1989, the United Nations Standard Rules on the Equalization of Opportunities for Persons

with Disabilities of 20 December 1993, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 16 December 1971, the UNESCO Convention against Discrimination in Education of 14 December 1960, the UNESCO Declaration of the Principles of International Cultural Co-operation of 4 November 1966, the UNESCO Recommendation on the Status of Scientific Researchers of 20 November 1974, the UNESCO Declaration on Race and Racial Prejudice of 27 November 1978, the ILO Convention (N° 111) concerning Discrimination in Respect of Employment and Occupation of 25 June 1958 and the ILO Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989,

Bearing in mind, and without prejudice to, the international instruments which could have a bearing on the applications of genetics in the field of intellectual property, inter alia, the Bern Convention for the Protection of Literary and Artistic Works of 9 September 1886 and the UNESCO Universal Copyright Convention of 6 September 1952, as last revised in Paris on 24 July 1971, the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967, the Budapest Treaty of the WIPO on International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedures of 28 April 1977, and the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) annexed to the Agreement establishing the World Trade Organization, which entered into force on 1st January 1995,

Bearing in mind also the United Nations Convention on Biological Diversity of 5 June 1992 and *emphasizing* in that connection that the recognition of the genetic diversity of humanity, must not give rise to any interpretation of a social or political nature which could call into question "the inherent dignity and (...) the equal and inalienable rights of all members of the human family", in accordance with the Preamble to the Universal Declaration of Human Rights,

Recalling 22 C/Resolution 13.1, 23 C/Resolution 13.1, 24 C/Resolution 13.1, 25 C/Resolutions 5.2 and 7.3, 27 C/Resolution 5.15 and 28 C/Resolutions 0.12, 2.1 and 2.2, urging UNESCO to promote and develop ethical studies, and the actions arising out of them, on the consequences of scientific and technological progress in the fields of biology and genetics, within the framework of respect for human rights and fundamental freedoms,

Recognizing that research on the human genome and the resulting applications open up vast prospects for progress in improving the health of individuals and of humankind as a whole, but emphasizing that such research should fully respect human dignity, freedom and human rights, as well as the prohibition of all forms of discrimination based on genetic characteristics,

Proclaims the principles that follow and adopts the present Declaration.

A. Human Dignity and the Human Genome

ARTICLE 1

The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.

ARTICLE 2

a) Everyone has a right to respect for their dignity and for their rights regardless of their genetic characteristics.
b) That dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity.

ARTICLE 3

The human genome, which by its nature evolves, is subject to mutations. It contains potentialities that are expressed differently according to each individual's natural and social environment including the individual's state of health, living conditions, nutrition and education.

ARTICLE 4

The human genome in its natural state shall not give rise to financial gains.

B. Rights of the Persons Concerned

ARTICLE 5

a) Research, treatment or diagnosis affecting an individual's genome shall be undertaken only after rigorous and prior assessment of the potential risks and benefits pertaining thereto and in accordance with any other requirement of national law.
b) In all cases, the prior, free and informed consent of the person concerned shall be obtained. If the latter is not in a position to consent, consent or authorization shall be obtained in the manner prescribed by law, guided by the person's best interest.
c) The right of each individual to decide whether or not to be informed of the results of genetic examination and the resulting consequences should be respected.
d) In the case of research, protocols shall, in addition, be submitted for prior review in accordance with relevant national and international research standards or guidelines.
e) If according to the law a person does not have the capacity to consent, research affecting his or her genome may only be carried out for his or her direct health benefit, subject to the authorization and the protective conditions prescribed by law. Research which does not have an expected

direct health benefit may only be undertaken by way of exception, with the utmost restraint, exposing the person only to a minimal risk and minimal burden and if the research is intended to contribute to the health benefit of other persons in the same age category or with the same genetic condition, subject to the conditions prescribed by law, and provided such research is compatible with the protection of the individual's human rights.

ARTICLE 6

No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity.

ARTICLE 7

Genetic data associated with an identifiable person and stored or processed for the purposes of research or any other purpose must be held confidential in the conditions foreseen set by law.

ARTICLE 8

Every individual shall have the right, according to international and national law, to just reparation for any damage sustained as a direct and determining result of an intervention affecting his or her genome.

ARTICLE 9

In order to protect human rights and fundamental freedoms, limitations to the principles of consent and confidentiality may only be prescribed by law, for compelling reasons within the bounds of public international law and the international law of human rights.

C. Research on the Human Genome

ARTICLE 10

No research or research applications concerning the human genome, in particular in the fields of biology, genetics and medicine, should prevail over respect for the human rights, fundamental freedoms and human dignity of individuals or, where applicable, of groups of people.

ARTICLE 11

Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted. States and competent international organizations are invited to co-operate in identifying such practices and in taking, at national or international level, the measures necessary to ensure that the principles set out in this Declaration are respected.

ARTICLE 12

a) Benefits from advances in biology, genetics and medicine, concerning the human genome, shall be made available to all, with due regard to the dignity and human rights of each individual.
b) Freedom of research, which is necessary for the progress of knowledge, is part of freedom of thought. The applications of research, including applications in biology, genetics and medicine, concerning the human genome, shall seek to offer relief from suffering and improve the health of individuals and humankind as a whole.

D. Conditions for the Exercise of Scientific Activity

ARTICLE 13

The responsibilities inherent in the activities of researchers, including meticulousness, caution, intellectual honesty and integrity in carrying out their research as well as in the presentation and utilization of their findings, should be the subject of particular attention in the framework of research on the human genome, because of its ethical and social implications. Public and private science policy-makers also have particular responsibilities in this respect.

ARTICLE 14

States should take appropriate measures to foster the intellectual and material conditions favourable to freedom in the conduct of research on the human genome and to consider the ethical, legal, social and economic implications of such research, on the basis of the principles set out in this Declaration.

ARTICLE 15

States should take appropriate steps to provide the framework for the free exercise of research on the human genome with due regard for the principles set out in this Declaration, in order to safeguard respect for human rights, fundamental freedoms and human dignity and to protect public health. They should seek to ensure that research results are not used for non-peaceful purposes.

ARTICLE 16

States should recognize the value of promoting, at various levels as appropriate, the establishment of independent, multidisciplinary and pluralist ethics committees to assess the ethical, legal and social issues raised by research on the human genome and its applications.

E. Solidarity and International Co-operation

ARTICLE 17

States should respect and promote the practice of solidarity towards individuals, families and population groups who are particularly vulnerable to or affected by disease or disability of a genetic character. They should foster, *inter alia*, research on the identification, prevention and treatment of genetically-based and genetically-influenced diseases, in particular rare as well as endemic diseases which affect large numbers of the world's population.

ARTICLE 18

States should make every effort, with due and appropriate regard for the principles set out in this Declaration, to continue fostering the international dissemination of scientific knowledge concerning the human genome, human diversity and genetic research and, in that regard, to foster scientific and cultural co-operation, particularly between industrialized and developing countries.

ARTICLE 19

a) In the framework of international co-operation with developing countries, States should seek to encourage measures enabling:
   - (i) assessment of the risks and benefits pertaining to research on the human genome to be carried out and abuse to be prevented;
   - (ii) the capacity of developing countries to carry out research on human biology and genetics, taking into consideration their specific problems, to be developed and strengthened;
   - (iii) developing countries to benefit from the achievements of scientific and technological research so that their use in favour of economic and social progress can be to the benefit of all;
   - (iv) the free exchange of scientific knowledge and information in the areas of biology, genetics and medicine to be promoted.

b) Relevant international organizations should support and promote the initiatives taken by States for the above mentioned purposes.

F. Promotion of the Principles set out in the Declaration

ARTICLE 20

States should take appropriate measures to promote the principles set out in the Declaration, through education and relevant means, *inter alia* through the conduct of research and training in interdisciplinary fields and through the promotion of education in bioethics, at all levels, in particular for those responsible for science policies.

ARTICLE 21

States should take appropriate measures to encourage other forms of research, training and information dissemination conducive to raising the awareness of society and all of its members of their responsibilities regarding the fundamental issues relating to the defence of human dignity which may be raised by research in biology, in genetics and in medicine, and its applications. They should also undertake to facilitate on this subject an open international discussion, ensuring the free expression of various socio-cultural, religious and philosophical opinions.

G. Implementation of the Declaration

ARTICLE 22

States should make every effort to promote the principles set out in this Declaration and should, by means of all appropriate measures, promote their implementation.

ARTICLE 23

States should take appropriate measures to promote, through education, training and information dissemination, respect for the above mentioned principles and to foster their recognition and effective application. States should also encourage exchanges and networks among independent ethics committees, as they are established, to foster full collaboration.

ARTICLE 24

The International Bioethics Committee of UNESCO should contribute to the dissemination of the principles set out in this Declaration and to the further examination of issues raised by their applications and by the evolution of the technologies in question. It should organize appropriate consultations with parties concerned, such as vulnerable groups. It should make recommendations, in accordance with UNESCO's statutory procedures, addressed to the General Conference and give advice concerning the follow-up of this Declaration, in particular regarding the identification of practices that could be contrary to human dignity, such as germ-line interventions.

ARTICLE 25

Nothing in this Declaration may be interpreted as implying for any State, group or person any claim to engage in any activity or to perform any act contrary to human rights and fundamental freedoms, including the principles set out in this Declaration.

Part III REGIONAL INSTRUMENTS AGAINST RACIAL DISCRIMINATION

A

Regional instruments

COUNCIL OF EUROPE (CE)

The texts of these instruments have been downloaded
from the relevant Council of Europe web-site.

* The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol N°. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol N°. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.

1 Heading added according to the provisions of Protocol No. 11 (ETS No. 155).
2 New Section II according to the provisions of Protocol No. 11 (ETS No. 155).
3 The articles of this Section are renumbered according to the provisions of Protocol No. 11 (ETS No. 155).
4 Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocol No 11*

Adopted in Rome on 4 November 1950.
Entered into force on 3 September 1953.

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1[1] – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I[1]
Rights and freedoms

ARTICLE 2[1] – RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
   (a) in defence of any person from unlawful violence;
   (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3[1] – PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4[1] – PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
   (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
   (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
   (c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
   (d) any work or service which forms part of normal civic obligations.

ARTICLE 5[1] – RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   (a) the lawful detention of a person after conviction by a competent court;
   (b) the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
   (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered

necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ARTICLE 6^1 – RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   (b) to have adequate time and facilities for the preparation of his defence;
   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7[1] – NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8[1] – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9[1] – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10[1] – FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for

the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11[1] – Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12[1] – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13[1] – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14[1] – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured 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, property, birth or other status.

Article 15[1] – Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16[1] – RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17[1]– PROHIBITION OF ABUSE OF RIGHTS

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18[1] – LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II
European Court of Human Rights

ARTICLE 19 – ESTABLISHMENT OF THE COURT

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20 – NUMBER OF JUDGES

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21 – CRITERIA FOR OFFICE

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22 – ELECTION OF JUDGES

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.
7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The Plenary Court shall:

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
(b) set up Chambers, constituted for a fixed period of time;
(c) elect the Presidents of the Chambers of the Court; they may be re-elected;
(d) adopt the rules of the Court, and
(e) elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall:

1. (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
   (b) consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that:
   (a) is anonymous; or
   (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:

(a) the applicant does not intend to pursue his application; or
(b) the matter has been resolved; or
(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings

1. If the Court declares the application admissible, it shall
   (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
   (b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2. Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43 – REFERRAL TO THE GRAND CHAMBER

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44 – FINAL JUDGMENTS

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

ARTICLE 45 – REASONS FOR JUDGMENTS AND DECISIONS

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46 – BINDING FORCE AND EXECUTION OF JUDGMENTS

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

ARTICLE 47 – ADVISORY OPINIONS

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III[1,3]
Miscellaneous provisions

Article 52[1] – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53[1] – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54[1] – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55[1] – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56[1] – TERRITORIAL APPLICATION

1.[4] Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4.[4] Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57[1] – RESERVATIONS

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

ARTICLE 58[1] – DENUNCIATION

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4.[2] The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59[1] – SIGNATURE AND RATIFICATION

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

European Social Charter

Adopted in Turin on 18 October 1961.
Entered into force on 26 February 1965.

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

Being resolved to make every effort in common to improve the standard of living and to promote the social wellbeing of both their urban and rural populations by means of appropriate institutions and action,

Have agreed as follows:

PART I

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.

4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

PART II

The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

ARTICLE 1 – THE RIGHT TO WORK

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of two weeks annual holiday with pay;
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;
2. to provide for the enforcement of such regulations by measures of supervision;
3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wagefixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. (a) to regulate the employment of women workers on night work in industrial employment;
   (b) to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including school children, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
   (a) adequate and readily available training facilities for adult workers;
   (b) special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
4. to encourage the full utilisation of the facilities provided by appropriate measures such as:
   (a) reducing or abolishing any fees or charges;
   (b) granting financial assistance in appropriate cases;
   (c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
   (d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of illhealth;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (N° 102) Concerning Minimum Standards of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

(a) equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;
(b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

ARTICLE 13 – THE RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

ARTICLE 14 – THE RIGHT TO BENEFIT FROM SOCIAL WELFARE SERVICES

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

ARTICLE 15 – THE RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;

2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Article 17 – The right of mothers and children to social and economic protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Article 18 – The right to engage in a gainful occupation in the territory of other Contracting Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
   (a) remuneration and other employment and working conditions;
   (b) membership of trade unions and enjoyment of the benefits of collective bargaining;
   (c) accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

PART III

ARTICLE 20 – UNDERTAKINGS

1. Each of the Contracting Parties undertakes:
   (a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
   (b) to consider itself bound by at least five of the following articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19;
   (c) in addition to the articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party concerned is deposited.
3. Any Contracting Party may, at a later date, declare by notification to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification.
4. The Secretary General shall communicate to all the signatory governments and to the Director General of the International Labour Office any notification which he shall have received pursuant to this part of the Charter.
5. Each Contracting Party shall maintain a system of labour inspection appropriate to national conditions.

PART IV

Article 21 – Reports concerning accepted provisions

The Contracting Parties shall send to the Secretary General of the Council of Europe a report at twoyearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.

Article 22 – Reports concerning provisions which are not accepted

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

Article 23 – Communication of copies

1. Each Contracting Party shall communicate copies of its reports referred to in Articles 21 and 22 to such of its national organisations as are members of the international organisations of employers and trade unions to be invited under Article 27, paragraph 2, to be represented at meetings of the Subcommittee of the Governmental Social Committee.
2. The Contracting Parties shall forward to the Secretary General any comments on the said reports received from these national organisations, if so requested by them.

Article 24 – Examination of the reports

The reports sent to the Secretary General in accordance with Articles 21 and 22 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary General in accordance with paragraph 2 of Article 23.

Article 25 – Committee of Experts

1. The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, nominated by the Contracting Parties.
2. The members of the committee shall be appointed for a period of six years. They may be reappointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.
3. The members whose terms of office are to expire at the end of the initial period of four years shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.
4. A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 26 – Participation of the International Labour Organisation

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article 27 – Sub-committee of the Governmental Social Committee

1. The reports of the Contracting Parties and the conclusions of the Committee of Experts shall be submitted for examination to a sub-committee of the Governmental Social Committee of the Council of Europe.
2. The sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and no more than two international trade union organisations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family.
3. The sub-committee shall present to the Committee of Ministers a report containing its conclusions and append the report of the Committee of Experts.

Article 28 – Consultative Assembly

The Secretary General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the Committee of Experts. The Consultative Assembly shall communicate its views on these conclusions to the Committee of Ministers.

Article 29 – Committee of Ministers

By a majority of two-thirds of the members entitled to sit on the Committee, the Committee of Ministers may, on the basis of the report of the sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations.

PART V

Article 30 – Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. Any Contracting Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.
3. The Secretary General shall in turn inform other Contracting Parties and the Director General of the International Labour Office of all communications received in accordance with paragraph 2 of this article.

Article 31 – Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article 32 – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which

are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

ARTICLE 33 – IMPLEMENTATION BY COLLECTIVE AGREEMENTS

1. In member States where the provisions of paragraphs 1, 2, 3, 4 and 5 of Article 2, paragraphs 4, 6 and 7 of Article 7 and paragraphs 1, 2, 3 and 4 of Article 10 of Part II of this Charter are matters normally left to agreements between employers or employers' organisations and workers' organisations, or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.
2. In member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

ARTICLE 34 – TERRITORIAL APPLICATION

1. This Charter shall apply to the metropolitan territory of each Contracting Party. Each signatory government may, at the time of signature or of the deposit of its instrument of ratification or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any Contracting Party may, at the time of ratification or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary General shall have received notification of such declaration.
4. Any Contracting Party may declare at a later date, by notification addressed to the Secretary General of the Council of Europe, that, in respect of one or more of the territories to which the Charter has been extended in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.
5. The Secretary General shall communicate to the other signatory governments and to the Director General of the International Labour Office any notification transmitted to him in accordance with this article.

ARTICLE 35 – SIGNATURE, RATIFICATION AND ENTRY INTO FORCE

1. This Charter shall be open for signature by the members of the Council of Europe. It shall be ratified or approved. Instruments of ratification or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification or approval.
3. In respect of any signatory government ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval.
4. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of the Charter, the names of the Contracting Parties which have ratified or approved it and the subsequent deposit of any instruments of ratification or approval.

ARTICLE 36 – AMENDMENTS

Any member of the Council of Europe may propose amendments to this Charter in a communication addressed to the Secretary General of the Council of Europe. The Secretary General shall transmit to the other members of the Council of Europe any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary General of their acceptance. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of such amendments.

ARTICLE 37 – DENUNCIATION

1. Any Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months notice to the Secretary General of the Council of Europe who shall inform the other Parties and the Director General of the International Labour Office accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other Contracting Parties provided that at all times there are not less than five such Contracting Parties.
2. Any Contracting Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Contracting Party is bound shall never be less than 10 in the former case and 45 in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Contracting Party among those to which special reference is made in Article 20, paragraph 1, sub-paragraph b.

3. Any Contracting Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter, under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with paragraph 2 of Article 34.

ARTICLE 38 – APPENDIX

The appendix to this Charter shall form an integral part of it.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at Turin, this 18th day of October 1961, in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the Signatories.

Appendix to the Social Charter

Scope of the Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Contracting Parties.
2. Each Contracting Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Contracting Parties and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.

Part II

ARTICLE 1, PARAGRAPH 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

ARTICLE 4, PARAGRAPH 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

ARTICLE 4, PARAGRAPH 5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

ARTICLE 6, PARAGRAPH 4

It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31.

ARTICLE 7, PARAGRAPH 8

It is understood that a Contracting Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work.

ARTICLE 12, PARAGRAPH 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution a Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Contracting Parties.

ARTICLE 13, PARAGRAPH 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to nationals of other Contracting Parties a treatment which is in conformity with the provisions of the said Convention.

ARTICLE 19, PARAGRAPH 6

For the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

ARTICLE 20, PARAGRAPH 1

It is understood that the "numbered paragraphs" may include articles consisting of only one paragraph.

Part V

ARTICLE 30

The term "in time of war or other public emergency" shall be so understood as to cover also the threat of war.

European Convention on the Legal Status of Migrant Workers

Adopted on 24 November 1977.
Entered into force on 1 May 1983.

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress while respecting human rights and fundamental freedoms;

Considering that the legal status of migrant workers who are nationals of Council of Europe member States should be regulated so as to ensure that as far as possible they are treated no less favourably than workers who are nationals of the receiving State in all aspects of living and working conditions;

Being resolved to facilitate the social advancement of migrant workers and members of their families;

Affirming that the rights and privileges which they grant to each other's nationals are conceded by virtue of the close association uniting the member States of the Council of Europe by means of its Statute,

Have agreed as follows:

CHAPTER I

Article 1 – Definition

1. For the purpose of this Convention, the term "migrant worker" shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.
2. This Convention shall not apply to:
   (a) frontier workers;
   (b) artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession;
   (c) seamen;
   (d) persons undergoing training;

(e) seasonal workers; seasonal migrant workers are those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, on the basis of a contract for a specified period or for specified employment;
(f) workers, who are nationals of a Contracting Party, carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party.

CHAPTER II

ARTICLE 2 – FORMS OF RECRUITMENT

1. The recruitment of prospective migrant workers may be carried out either by named or by unnamed request and in the latter case shall be effected through the intermediary of the official authority in the State of origin if such an authority exists and, where appropriate, through the intermediary of the official authority of the receiving State.
2. The administrative costs of recruitment, introduction and placing, when these operations are carried out by an official authority, shall not be borne by the prospective migrant worker.

ARTICLE 3 – MEDICAL EXAMINATIONS AND VOCATIONAL TEST

1. Recruitment of prospective migrant workers may be preceded by a medical examination and a vocational test.
2. The medical examination and the vocational test are intended to establish whether the prospective migrant worker is physically and mentally fit and technically qualified for the job offered to him and to make certain that his state of health does not endanger public health.
3. Arrangements for the reimbursement of expenses connected with medical examination and vocational test shall be laid down when appropriate by bilateral agreements, so as to ensure that such expenses do not fall upon the prospective migrant worker.
4. A migrant worker to whom an individual offer of employment is made shall not be required, otherwise than on grounds of fraud, to undergo a vocational test except at the employer's request.

ARTICLE 4 – RIGHT OF EXIT – RIGHT TO ADMISSION – ADMINISTRATIVE FORMALITIES

1. Each Contracting Party shall guarantee the following rights to migrant workers:
   - the right to leave the territory of the Contracting Party of which they are nationals;
   - the right to admission to the territory of a Contracting Party in order to take up paid employment after being authorised to do so and obtaining the necessary papers.

2. These rights shall be subject to such limitations as are prescribed by legislation and are necessary for the protection of national security, public order, public health or morals.
3. The papers required of the migrant worker for emigration and immigration shall be issued as expeditiously as possible free of charge or on payment of an amount not exceeding their administrative cost.

Article 5 – Formalities and procedure relating to the work contract

Every migrant worker accepted for employment shall be provided prior to departure for the receiving State with a contract of employment or a definite offer of employment, either of which may be drawn up in one or more of the languages in use in the State of origin and in one or more of the languages in use in the receiving State. The use of at least one language of the State of origin and one language of the receiving State shall be compulsory in the case of recruitment by an official authority or an officially recognised employment bureau.

Article 6 – Information

1. The Contracting Parties shall exchange and provide for prospective migrants appropriate information on their residence, conditions of and opportunities for family reunion, the nature of the job, the possibility of a new work contract being concluded after the first has lapsed, the qualifications required, working and living conditions (including the cost of living), remuneration, social security, housing, food, the transfer of savings, travel, and on deductions made from wages in respect of contributions for social protection and social security, taxes and other charges. Information may also be provided on the cultural and religious conditions in the receiving State.
2. In the case of recruitment through an official authority of the receiving State, such information shall be provided, before his departure, in a language which the prospective migrant worker can understand, to enable him to take a decision in full knowledge of the facts. The translation, where necessary, of such information into a language that the prospective migrant worker can understand shall be provided as a general rule by the State of origin.
3. Each Contracting Party undertakes to adopt the appropriate steps to prevent misleading propaganda relating to emigration and immigration.

Article 7 – Travel

1. Each Contracting Party undertakes to ensure, in the case of official collective recruitment, that the cost of travel to the receiving State shall never be borne by the migrant worker. The arrangements for payment shall be determined under bilateral agreements, which may also extend these measures to families and to workers recruited individually.
2. In the case of migrant workers and their families in transit through the territory of one Contracting Party en route to the receiving State, or on their return journey to the State of origin, all steps shall be taken by the

competent authorities of the transit State to expedite their journey and prevent administrative delays and difficulties.

3. Each Contracting Party shall exempt from import duties and taxes at the time of entry into the receiving State and of the final return to the State of origin and in transit:
   (a) the personal effects and movable property of migrant workers and members of their family belonging to their household;
   (b) a reasonable quantity of hand-tools and portable equipment necessary for the occupation to be engaged in.

   The exemptions referred to above shall be granted in accordance with the laws or regulations in force in the States concerned.

CHAPTER III

ARTICLE 8 – WORK PERMIT

1. Each Contracting Party which allows a migrant worker to enter its territory to take up paid employment shall issue or renew a work permit for him (unless he is exempt from this requirement), subject to the conditions laid down in its legislation.
2. However, a work permit issued for the first time may not as a rule bind the worker to the same employer or the same locality for a period longer than one year.
3. In case of renewal of the migrant worker's work permit, this should as a general rule be for a period of at least one year, in so far as the current state and development of the employment situation permits.

ARTICLE 9 – RESIDENCE PERMIT

1. Where required by national legislation, each Contracting Party shall issue residence permits to migrant workers who have been authorised to take up paid employment on their territory under conditions laid down in this Convention.
2. The residence permit shall in accordance with the provisions of national legislation be issued and, if necessary, renewed for a period as a general rule at least as long as that of the work permit. When the work permit is valid indefinitely, the residence permit shall as a general rule be issued and, if necessary, renewed for a period of at least one year. It shall be issued and renewed free of charge or for a sum covering administrative costs only.
3. The provisions of this Article shall also apply to members of the migrant worker's family who are authorised to join him in accordance with Article 12 of this Convention.
4. If a migrant worker is no longer in employment, either because he is temporarily incapable of work as a result of illness or accident or because he is involuntarily unemployed, this being duly confirmed by the competent authorities, he shall be allowed for the purpose of the application of Article 25 of this Convention to remain on the territory of the receiving State for a period which should not be less than five months. Nevertheless,

no Contracting Party shall be bound, in the case provided for in the above sub-paragraph, to allow a migrant worker to remain for a period exceeding the period of payment of the unemployment allowance.

5. The residence permit, issued in accordance with the provisions of paragraphs 1 to 3 of this Article, may be withdrawn:
   (a) for reasons of national security, public policy or morals;
   (b) if the holder refuses, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for him by an official medical authority with a view to the protection of public health;
   (c) if a condition essential to its issue or validity is not fulfilled.
   Each Contracting Party nevertheless undertakes to grant to migrant workers whose residence permits have been withdrawn, an effective right to appeal, in accordance with the procedure for which provision is made in its legislation, to a judicial or administrative authority.

ARTICLE 10 – RECEPTION

1. After arrival in the receiving State, migrant workers and members of their families shall be given all appropriate information and advice as well as all necessary assistance for their settlement and adaption.
2. For this purpose, migrant workers and members of their families shall be entitled to help and assistance from the social services of the receiving State or from bodies working in the public interest in the receiving State and to help from the consular authorities of their State or origin. Moreover, migrant workers shall be entitled, on the same basis as national workers, to help and assistance from the employment services. However, each Contracting Party shall endeavour to ensure that special social services are available, whenever the situation so demands, to facilitate or co-ordinate the reception of migrant workers and their families.
3. Each Contracting Party undertakes to ensure that migrant workers and members of their families can worship freely, in accordance with their faith; each Contracting Party shall facilitate such worship, within the limit of available means.

ARTICLE 11 – RECOVERY OF SUMS DUE IN RESPECT OF MAINTENANCE

1. The status of migrant workers must not interfere with the recovery of sums due in respect of maintenance to persons in the State of origin to whom they have maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.
2. Each Contracting Party shall take the steps necessary to ensure the recovery of sums due in respect of such maintenance, making use as far as possible of the form adopted by the Committee of Ministers of the Council of Europe.
3. As far as possible, each Contracting Party shall take steps to appoint a single national or regional authority to receive and despatch applications for sums due in respect of maintenance provided for in paragraph 1 above.

4. This Article shall not affect existing or future bilateral or multilateral agreements.

ARTICLE 12 – FAMILY REUNION

1. The spouse of a migrant worker who is lawfully employed in the territory of a Contracting Party and the unmarried children thereof, as long as they are considered to be minors by the relevant law of the receiving State, who are dependent on the migrant worker, are authorised on conditions analogous to those which this Convention applies to the admission of migrant workers and according to the admission procedure prescribed by such law or by international agreements to join the migrant worker in the territory of a Contracting Party, provided that the latter has available for the family housing considered as normal for national workers in the region where the migrant worker is employed. Each Contracting Party may make the giving of authorisation conditional upon a waiting period which shall not exceed twelve months.
2. Any State may, at any time, by declaration addressed to the Secretary General of the Council of Europe, which shall take effect one month after the date of receipt, make the family reunion referred to in paragraph 1 above further conditional upon the migrant worker having steady resources sufficient to meet the needs of his family.
3. Any State may, at any time, by declaration addressed to the Secretary General of the Council of Europe, which shall take effect one month after the date of its receipt, derogate temporarily from the obligation to give the authorisation provided for in paragraph 1 above, for one or more parts of its territory which it shall designate in its declaration, on the condition that these measures do not conflict with obligations under other international instruments. The declarations shall state the special reasons justifying the derogation with regard to receiving capacity.

   Any State availing itself of this possibility of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and shall ensure that these measures are published as soon as possible. It shall also inform the Secretary General of the Council of Europe when such measures cease to operate and the provisions of the Convention are again being fully executed.

   The derogation shall not, as a general rule, affect requests for family reunion submitted to the competent authorities, before the declaration is addressed to the Secretary General, by migrant workers already established in the part of the territory concerned.

ARTICLE 13 – HOUSING

1. Each Contracting Party shall accord to migrant workers, with regard to access to housing and rents, treatment not less favourable than that accorded to its own nationals, insofar as this matter is covered by domestic laws and regulations.

2. Each Contracting Party shall ensure that the competent national authorities carry out inspections in appropriate cases in collaboration with the respective consular authorities, acting within their competence, to ensure that standards of fitness of accommodation are kept up for migrant workers as for its own nationals.
3. Each Contracting Party undertakes to protect migrant workers against exploitation in respect of rents, in accordance with its laws and regulations on the matter.
4. Each Contracting Party shall ensure, by the means available to the competent national authorities, that the housing of the migrant worker shall be suitable.

Article 14 – Pretraining – Schooling – Linguistic training – Vocational training and retraining

1. Migrant workers and members of their families officially admitted to the territory of a Contracting Party shall be entitled, on the same basis and under the same conditions as national workers, to general education and vocation training and retraining and shall be granted access to higher education according to the general regulations governing admission to respective institutions in the receiving State.
2. To promote access to general and vocational schools and to vocational training centres, the receiving State shall facilitate the teaching of its language or, if there are several, one of its languages to migrant workers and members of their families.
3. For the purpose of the application of paragraphs 1 and 2 above, the granting of scholarships shall be left to the discretion of each Contracting Party which shall make efforts to grant the children of migrant workers living with their families in the receiving State – in accordance with the provisions of Article 12 of this Convention – the same facilities in this respect as the receiving State's nationals.
4. The workers' previous attainments, as well as diplomas and vocational qualifications acquired in the State of origin, shall be recognised by each Contracting Party in accordance with arrangements laid down in bilateral and multilateral agreements.
5. The Contracting Parties concerned, acting in close co-operation shall endeavor to ensure that the vocational training and retraining schemes, within the meaning of this Article, cater as far as possible for the needs of migrant workers with a view to their return to their State of origin.

Article 15 – Teaching of the migrant worker's mother tongue

The Contracting Parties concerned shall take actions by common accord to arrange, so far as practicable, for the migrant worker's children, special courses for the teaching of the migrant worker's mother tongue, to facilitate, *inter alia*, their return to their State of origin.

ARTICLE 16 – CONDITIONS OF WORK

1. In the matter of conditions of work, migrant workers authorised to take up employment shall enjoy treatment not less favourable than that which applies to national workers by virtue of legislative or administrative provisions, collective labour agreement or custom.
2. It shall not be possible to derogate by individual contract from the principle of equal treatment referred to in the foregoing paragraph.

ARTICLE 17 – TRANSFER OF SAVINGS

1. Each Contracting Party shall permit, according to the agreements laid down by its legislation, the transfer of all or such parts of the earnings and savings of migrant workers as the latter may wish to transfer.
   This provision shall apply also to the transfer of sums due by migrant workers in respect of maintenance. The transfer of sums due by migrant workers in respect of maintenance shall on no account be hindered or prevented.
2. Each Contracting Party shall permit, under bilateral agreements or by other means, the transfer of such sums as remain due to migrant workers when they leave the territory of the receiving State.

ARTICLE 18 – SOCIAL SECURITY

1. Each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families, equality of treatment with its own nationals, in the matter of social security, subject to conditions required by national legislation and by bilateral or multilateral agreements already concluded or to be concluded between the Contracting Parties concerned.
2. The Contracting Parties shall moreover endeavour to secure to migrant workers and members of their families the conservation of rights in course of acquisition and acquired rights, as well as provision of benefits abroad, through bilateral and multilateral agreements.

ARTICLE 19 – SOCIAL AND MEDICAL ASSISTANCE

Each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families who are lawfully present in its territory, social and medical assistance on the same basis as nationals in accordance with the obligations it has assumed by virtue of other international agreements and in particular of the European Convention on Social and Medical Assistance of 1953.

ARTICLE 20 – INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES – INDUSTRIAL HYGIENE

1. With regard to the prevention of industrial accidents and occupational diseases and to industrial hygiene, migrant workers shall enjoy the same rights and protection as national workers, in application of the laws of a Contracting Party and collective agreements and having regard to their particular situation.

2. A migrant worker who is victim of an industrial accident or who has contracted an occupational disease in the territory of the receiving State shall benefit from occupational rehabilitation on the same basis as national workers.

Article 21 – Inspection of working conditions

Each Contracting Party shall inspect or provide for inspection of the conditions of work of migrant workers in the same manner as for national workers. Such inspection shall be carried out by the competent bodies or institutions of the receiving State and by any other authority authorised by the receiving State.

Article 22 – Death

Each Contracting Party shall take care, within the framework of its laws and, if need be, within the framework of bilateral agreements, that steps are taken to provide all help and assistance necessary for the transport to the State of origin of the bodies of migrant workers deceased as the result of an industrial accident.

Article 23 – Taxation on earnings

1. In the matter of earnings and without prejudice to the provisions on double taxation contained in agreements already concluded or which may in future be concluded between Contracting Parties, migrant workers shall not be liable, in the territory of a Contracting Party, to duties, charges, taxes or contributions of any description whatsoever either higher or more burdensome than those imposed on nationals in similar circumstances. In particular, they shall be entitled to deductions or exemptions from taxes or charges and to all allowances, including allowance for dependants.
2. The Contracting Parties shall decide between themselves, by bilateral or multilateral agreements on double taxation, what measures might be taken to avoid double taxation on the earnings of migrant workers.

Article 24 – Expiry of contract and discharge

1. On the expiry of a work contract concluded for a special period at the end of the period agreed on and on the case of anticipated cancellation of such a contract or cancellation of a work contract for an unspecified period, migrant workers shall be accorded treatment not less favourable than that accorded to national workers under the provisions of national legislation or collective labour agreements.
2. In the event of individual or collective dismissal, migrant workers shall receive the treatment applicable to national workers under national legislation or collective labour agreements, as regards the form and period of notice, the compensation provided for in legislation or agreements or such as may be due in cases of unwarranted cancellation of their work contracts.

ARTICLE 25 – RE-EMPLOYMENT

1. If a migrant worker loses his job for reasons beyond his control, such as redundancy or prolonged illness, the competent authority of the receiving State shall facilitate his re-employment in accordance with the laws and regulations of that State.
2. To this end the receiving State shall promote the measures necessary to ensure, as far as possible, the vocational retraining and occupational rehabilitation of the migrant worker in question, provided that he intends to continue in employment in the State concerned afterwards.

ARTICLE 26 – RIGHT OF ACCESS TO THE COURTS AND ADMINISTRATIVE AUTHORITIES IN THE RECEIVING STATE

1. Each Contracting Party shall secure to migrant workers treatment not less favourable than that of its own nationals in respect of legal proceedings. Migrant workers shall be entitled, under the same conditions as nationals, to full legal and judicial protection of their persons property and their right and interests; in particular, they shall have, in the same manner as nationals, the right of access to the competent courts and administrative authorities, in accordance with the law of the receiving State, and the right to obtain the assistance of any person of their choice who is qualified by the law of that State, for instance in disputes with employers, members of their families or third parties. The rules of private international law of the receiving State shall not be affected by this Article.
2. Each Contracting Party shall provide migrant workers with legal assistance on the same conditions as for their own nationals and, in the case of civil or criminal proceedings, the possibility of obtaining the assistance of an interpreter where they cannot understand or speak the language used in court.

ARTICLE 27 – USE OF EMPLOYMENT SERVICES

Each Contracting Party recognises the right of migrant workers and of the members of their families officially admitted to its territory to make use of employment services under the same conditions as national workers subject to the legal provisions and regulations and administrative practice, including conditions of access, in force in that State.

ARTICLE 28 – EXERCISE OF THE RIGHT TO ORGANISE

Each Contracting Party shall allow to migrant workers the right to organise for the protection of their economic and social interests on the conditions provided for by national legislation for its own nationals.

ARTICLE 29 – PARTICIPATION IN THE AFFAIRS OF THE UNDERTAKING

Each Contracting Party shall facilitate as far as possible the participation of migrant workers in the affairs of the undertaking on the same conditions as national workers.

CHAPTER IV

ARTICLE 30 – RETURN HOME

1. Each Contracting Party shall, as far as possible, take appropriate measures to assist migrant workers and their families on the occasion of their final return to their State of origin, and in particular the steps referred to in paragraphs 2 and 3 of Article 7 of this Convention. The provision of financial assistance shall be left to the discretion of each Contracting Party.
2. To enable migrant workers to know, before they set out on their return journey, the conditions on which they will be able to resettle in their State of origin, this State shall communicate to the receiving State, which shall keep available for those who request it, information regarding in particular:
   - possibilities and conditions of employment in the State of origin;
   - financial aid granted for economic reintegration;
   - the maintenance of social security rights acquired abroad;
   - steps to be taken to facilitate the finding of accommodation;
   - equivalence accorded to occupational qualifications obtained abroad and any tests to be passed to secure their official recognition;
   - equivalence accorded to educational qualification, so that migrant workers' children can be admitted to schools without down-grading.

CHAPTER V

ARTICLE 31 – CONSERVATION OF ACQUIRED RIGHTS

No provision of this Convention may be interpreted as justifying less favourable treatment than that enjoyed by migrant workers under the national legislation of the receiving State or under bilateral and multilateral agreements to which that State is a Contracting Party.

ARTICLE 32 – RELATIONS BETWEEN THIS CONVENTION AND THE LAWS OF THE CONTRACTING PARTIES OR INTERNATIONAL AGREEMENTS

The provisions of this Convention shall not prejudice the provisions of the laws of the Contracting Parties or of any bilateral or multilateral treaties, conventions, agreements or arrangements, as well as the steps taken to implement them, which are already in force, or may come into force, and under which more favourable treatment has been, or would be, accorded to the persons protected by the Convention.

ARTICLE 33 – APPLICATION OF THE CONVENTION

1. A Consultative Committee shall be set up within a year of the entry into force of this Convention.

2. Each Contracting Party shall appoint a representative to the Consultative Committee. Any other member State of the Council of Europe may be represented by an observer with the right to speak.
3. The Consultative Committee shall examine any proposals submitted to it by one of the Contracting Parties with a view to facilitating or improving the application of the Convention, as well as any proposal to amend it.
4. The opinions and recommendations of the Consultative Committee shall be adopted by a majority of the members of the Committee; however, proposals to amend the Convention shall be adopted unanimously by the members of the Committee.
5. The opinions, recommendations and proposals of the Consultative Committee referred to above shall be addressed to the Committee of Ministers of the Council of Europe, which shall decide on the action to be taken.
6. The Consultative Committee shall be convened by the Secretary General of the Council of Europe and shall meet, as a general rule, at least once every two years and, in addition, whenever at least two Contracting Parties or the Committee of Ministers so requests. The committee shall also meet at the request of one Contracting Party whenever the provisions of paragraph 3 of Article 12 are applied.
7. The Consultative Committee shall draw up periodically, for the attention of the Committee of Ministers, a report containing information regarding the laws and regulations in force in the territory of the Contracting Parties in respect of matters provided for in this Convention.

CHAPTER VI

Article 34 – Signature, ratification and entry into force

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force on the first day of the third month following the date of the deposit of the fifth instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, approving or accepting subsequently, the Convention shall enter into force on the first day of the third month following the date of the deposit of its instrument of ratification, acceptance or approval.

Article 35 – Territorial scope

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration to the Secretary General of the Council of Europe, extend the application

of this Convention to all or any of the territories for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

2. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn. Such withdrawal shall take effect six months after receipt by the Secretary General of the Council of Europe of the declaration of withdrawal.

Article 36 – Reservations

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, make one or more reservations which may relate to no more than nine articles of Chapters II to IV inclusive, other than Articles 4, 8, 9, 12, 16, 17, 20, 25, 26.
2. Any Contracting Party may, at any time, wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 37 – Denunciation of the Convention

1. Each Contracting Party may denounce this Convention by notification addressed to the Secretary General of the Council of Europe, which shall take effect six months after the date of its receipt.
2. No denunciation may be made within five years of the date of the entry into force of the Convention in respect of the Contracting Party concerned.
3. Each Contracting Party which ceases to be a member of the Council of Europe shall cease to be a Party to this Convention six months after the date on which it loses its quality as a member of the Council of Europe.

Article 38 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance or approval;
(c) any notification received in respect of paragraphs 2 and 3 of Article 12;
(d) any date of entry into force of this Convention in accordance with Article 34 thereof;
(e) any declaration received in pursuance of the provisions of Article 35;
(f) any reservation made in pursuance of the provisions of paragraph 1 of Article 36;
(g) withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 36;
(h) any notification received in pursuance of the provisions of Article 37 and the date on which denunciation takes place.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 24th day of November 1977, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

Convention on the Participation of Foreigners in Public Life at Local Level

Adopted on 5 February 1992.
Entered into force on 1 May 1997.

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress while respecting human rights and fundamental freedoms;

Reaffirming their commitment to the universal and indivisible nature of human rights and fundamental freedoms based on the dignity of all human beings;

Having regard to Articles 10, 11, 16 and 60 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Considering that the residence of foreigners on the national territory is now a permanent feature of European societies;

Considering that foreign residents generally have the same duties as citizens at local level;

Aware of the active participation of foreign residents in the life of the local community and the development of its prosperity, and convinced of the need to improve their integration into the local community, especially by enhancing the possibilities for them to participate in local public affairs,

Have agreed as follows:

PART I

ARTICLE 1

1. Each Party shall apply the provisions of Chapters A, B, and C.
   However, any Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it reserves the right not to apply the provisions of either Chapter B or Chapter C or both.

2. Each Party which has declared that it will apply one or two chapters only may, at any subsequent time, notify the Secretary General that it agrees to apply the provisions of the chapter or chapters which it had not accepted at the moment of depositing its instrument of ratification, acceptance, approval or accession.

ARTICLE 2

For the purposes of this Convention, the term "foreign residents" means persons who are not nationals of the State and who are lawfully resident on its territory.

Chapter A
Freedoms of expression, assembly and association

ARTICLE 3

Each Party undertakes, subject to the provisions of Article 9, to guarantee to foreign residents, on the same terms as to its own nationals:

(a) the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises;

(b) the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defence of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.

ARTICLE 4

Each Party shall endeavour to ensure that reasonable efforts are made to involve foreign residents in public inquiries, planning procedures and other processes of consultation on local matters.

Chapter B
Consultative bodies to represent foreign residents at local level

ARTICLE 5

1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1:
   (a) to ensure that there are no legal or other obstacles to prevent local authorities in whose area there is a significant number of foreign residents from setting up consultative bodies or making other appropriate institutional arrangements designed:
      – (i) to form a link between themselves and such residents,
      – (ii) to provide a forum for the discussion and formulation of the opinions, wishes and concerns of foreign residents on matters which particularly affect them in relation to local public life, including the activities and responsibilities of the local authority concerned, and
      – (iii) to foster their general integration into the life of the community;
   (b) to encourage and facilitate the establishment of such consultative bodies or the making of other appropriate institutional arrangements for the representation of foreign residents by local authorities in whose area there is a significant number of foreign residents.
2. Each Party shall ensure that representatives of foreign residents participating in the consultative bodies or other institutional arrangements referred to in paragraph 1 can be elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents.

Chapter C
Right to vote in local authority elections

ARTICLE 6

1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections.
2. However, a Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only.

ARTICLE 7

Each Party may, either unilaterally or by bilateral or multilateral agreement, stipulate that the residence requirements laid down in Article 6 are satisfied by a shorter period of residence.

PART II

ARTICLE 8

Each Party shall endeavour to ensure that information is available to foreign residents concerning their rights and obligations in relation to local public life.

ARTICLE 9

1. In time of war or other public emergency threatening the life of the nation, the rights accorded to foreign residents under Part I may be subjected to further restrictions to the extent strictly required by the exigencies of the situation, provided that such restrictions are not inconsistent with the Party's other obligations under international law.
2. As the right recognised by Article 3.a carries with it duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
3. The right recognised by Article 3.b may not be subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
4. Any measure taken in accordance with the present article must be notified to the Secretary General of the Council of Europe, who shall inform the other Parties. The same procedure shall apply when such measures are revoked.
5. Nothing in this Convention shall be construed as limiting or derogating from any of the rights which may be guaranteed under the laws of any Party or under any other treaty to which it is a party.

ARTICLE 10

Each Party shall inform the Secretary General of the Council of Europe of any legislative provision or other measure adopted by the competent authorities on its territory which relates to its undertakings under the terms of this Convention.

PART III

ARTICLE 11

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 12

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 11.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 13

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

ARTICLE 14

Undertakings subsequently given by Parties to the Convention in accordance with Article 1, paragraph 2, shall be deemed to be an integral part of the ratification, acceptance, approval or accession of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

ARTICLE 15

The provisions of this Convention shall apply to all the categories of local authorities existing within the territory of each Party. However, each Contracting State may, when depositing its instrument of ratification, acceptance, approval or accession, specify the categories of territorial authorities to which it intends to confine the scope of this Convention or which it intends to exclude from its scope.

ARTICLE 16

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month

following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

ARTICLE 17

No reservation may be made in respect of the provisions of this Convention, other than that mentioned in Article 1, paragraph 1.

ARTICLE 18

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

ARTICLE 19

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance, approval or accession;
(c) any date of entry into force of this Convention in accordance with Articles 12, 13 and 16;
(d) any notification received in application of the provisions of Article 1, paragraph 2;
(e) any notification received in application of the provisions of Article 9, paragraph 4;
(f) any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 5th day of February 1992, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

European Charter for Regional or Minority Languages

Adopted on 5 November 1992.
Entered into force on 1 March 1998.

Preamble

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the work carried out within the CSCE and in particular to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990;

Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;

Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;

Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

Have agreed as follows:

PART I
General provisions

ARTICLE 1 – DEFINITIONS

For the purposes of this Charter:

(a) "regional or minority languages" means languages that are:
  – (i) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
  – (ii) different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants;

(b) "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

(c) "non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

ARTICLE 2 – UNDERTAKINGS

1. Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.
2. In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

ARTICLE 3 – PRACTICAL ARRANGEMENTS

1. Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
2. Any Party may, at any subsequent time, notify the Secretary General that it accepts the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval, or that it will apply paragraph 1 of the present article to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory.

3. The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the ratification, acceptance or approval and will have the same effect as from their date of notification.

Article 4 – Existing regimes of protection

1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.
2. The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.

Article 5 – Existing obligations

Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.

Article 6 – Information

The Parties undertake to see to it that the authorities, organisations and persons concerned are informed of the rights and duties established by this Charter.

PART II
Objectives and principles pursued in accordance with Article 2, paragraph 1

Article 7 – Objectives and principles

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:
   (a) the recognition of the regional or minority languages as an expression of cultural wealth;
   (b) the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
   (c) the need for resolute action to promote regional or minority languages in order to safeguard them;
   (d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;
   (e) the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar

form, as well as the establishment of cultural relations with other groups in the State using different languages;

(f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;

(g) the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;

(h) the promotion of study and research on regional or minority languages at universities or equivalent institutions;

(i) the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.
3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.
4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.
5. The Parties undertake to apply, *mutatis mutandis*, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

PART III

Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph 2

ARTICLE 8 – EDUCATION

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:
   (a) – (i) to make available pre-school education in the relevant regional or minority languages; or
   – (ii) to make available a substantial part of pre-school education in the relevant regional or minority languages; or
   – (iii) to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or
   – (iv) if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;
   (b) – (i) to make available primary education in the relevant regional or minority languages; or
   – (ii) to make available a substantial part of primary education in the relevant regional or minority languages; or
   – (iii) to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
   – (iv) to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;
   (c) – (i) to make available secondary education in the relevant regional or minority languages; or
   – (ii) to make available a substantial part of secondary education in the relevant regional or minority languages; or
   – (iii) to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
   – (iv) to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;
   (d) – (i) to make available technical and vocational education in the relevant regional or minority languages; or
   – (ii) to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or

– (iii) to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
– (iv) to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

(e) – (i) to make available university and other higher education in regional or minority languages; or
– (ii) to provide facilities for the study of these languages as university and higher education subjects; or
– (iii) if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

(f) – (i) to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or
– (ii) to offer such languages as subjects of adult and continuing education; or
– (iii) if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;

(g) to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

(h) to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;

(i) to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.

2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

ARTICLE 9 – JUDICIAL AUTHORITIES

1. The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

(a) in criminal proceedings:
  – (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
  – (ii) to guarantee the accused the right to use his/her regional or minority language; and/or
  – (iii) to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or
  – (iv) to produce, on request, documents connected with legal proceedings in the relevant regional or minority language, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

(b) in civil proceedings:
  – (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
  – (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
  – (iii) to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;

(c) in proceedings before courts concerning administrative matters:
  – (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
  – (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
  – (iii) to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;

(d) to take steps to ensure that the application of sub-paragraphs i and iii of paragraphs b and c above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned.

2. The Parties undertake:

(a) not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or

(b) not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or

(c) not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.

3. The Parties undertake to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.

Article 10 – Administrative authorities and public services

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:
   (a) – (i) to ensure that the administrative authorities use the regional or minority languages; or
   – (ii) to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or
   – (iii) to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or
   – (iv) to ensure that users of regional or minority languages may submit oral or written applications in these languages; or
   – (v) to ensure that users of regional or minority languages may validly submit a document in these languages;
   (b) to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;
   (c) to allow the administrative authorities to draft documents in a regional or minority language.
2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:
   (a) the use of regional or minority languages within the framework of the regional or local authority;
   (b) the possibility for users of regional or minority languages to submit oral or written applications in these languages;
   (c) the publication by regional authorities of their official documents also in the relevant regional or minority languages;
   (d) the publication by local authorities of their official documents also in the relevant regional or minority languages;
   (e) the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
   (f) the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
   (g) the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.

3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:
   (a) to ensure that the regional or minority languages are used in the provision of the service; or
   (b) to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
   (c) to allow users of regional or minority languages to submit a request in these languages.
4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:
   (a) translation or interpretation as may be required;
   (b) recruitment and, where necessary, training of the officials and other public service employees required;
   (c) compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.
5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

ARTICLE 11 – MEDIA

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:
   (a) to the extent that radio and television carry out a public service mission:
      – (i) to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or
      – (ii) to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
      – (iii) to make adequate provision so that broadcasters offer programmes in the regional or minority languages;
   (b) – (i) to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or
      – (ii) to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;
   (c) – (i) to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or
      – (ii) to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;
   (d) to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;

(e) – (i) to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or
– (ii) to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;

(f) – (i) to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or
– (ii) to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;

(g) to support the training of journalists and other staff for media using regional or minority languages.

2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Article 12 – Cultural activities and facilities

1. With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including *inter alia* the use of new technologies – the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:
   (a) to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;
   (b) to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

(c) to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;
(d) to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;
(e) to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;
(f) to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;
(g) to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;
(h) if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.

2. In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.
3. The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.

Article 13 – Economic and social life

1. With regard to economic and social activities, the Parties undertake, within the whole country:
   (a) to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;
   (b) to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
   (c) to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
   (d) to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.

2. With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:
   (a) to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;
   (b) in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
   (c) to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
   (d) to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;
   (e) to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

Article 14 – Transfrontier exchanges

The Parties undertake:

(a) to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;
(b) for the benefit of regional or minority languages, to facilitate and/or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.

PART IV
Application of the Charter

Article 15 – Periodical reports

1. The Parties shall present periodically to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted. The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report.
2. The Parties shall make their reports public.

Article 16 – Examination of the reports

1. The reports presented to the Secretary General of the Council of Europe under Article 15 shall be examined by a committee of experts constituted in accordance with Article 17.
2. Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part III of this Charter. After consulting the Party concerned, the committee of experts may take account of this information in the preparation of the report specified in paragraph 3 below. These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.
3. On the basis of the reports specified in paragraph 1 and the information mentioned in paragraph 2, the committee of experts shall prepare a report for the Committee of Ministers. This report shall be accompanied by the comments which the Parties have been requested to make and may be made public by the Committee of Ministers.
4. The report specified in paragraph 3 shall contain in particular the proposals of the committee of experts to the Committee of Ministers for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.
5. The Secretary General of the Council of Europe shall make a two-yearly detailed report to the Parliamentary Assembly on the application of the Charter.

Article 17 – Committee of experts

1. The committee of experts shall be composed of one member per Party, appointed by the Committee of Ministers from a list of individuals of the highest integrity and recognised competence in the matters dealt with in the Charter, who shall be nominated by the Party concerned.
2. Members of the committee shall be appointed for a period of six years and shall be eligible for reappointment. A member who is unable to complete a term of office shall be replaced in accordance with the procedure laid down

in paragraph 1, and the replacing member shall complete his predecessor's term of office.

3. The committee of experts shall adopt rules of procedure. Its secretarial services shall be provided by the Secretary General of the Council of Europe.

PART V
Final provisions

ARTICLE 18

This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 19

1. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of Article 18.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 20

1. After the entry into force of this Charter, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Charter.
2. In respect of any acceding State, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

ARTICLE 21

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made.
2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

ARTICLE 22

1. Any Party may at any time denounce this Charter by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

ARTICLE 23

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Charter of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance, approval or accession;
(c) any date of entry into force of this Charter in accordance with Articles 19 and 20;
(d) any notification received in application of the provisions of Article 3, paragraph 2;
(e) any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 5th day of November 1992, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Charter.

Framework Convention for the Protection of National Minorities

Adopted in Strasbourg on 1 November 1995.
Entered into force on1 February 1998

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents

of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

SECTION I

ARTICLE 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

ARTICLE 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

ARTICLE 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

SECTION II

ARTICLE 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

ARTICLE 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

ARTICLE 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

ARTICLE 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

ARTICLE 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

ARTICLE 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

ARTICLE 10

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

ARTICLE 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

ARTICLE 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
2. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

ARTICLE 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
2. The exercise of this right shall not entail any financial obligation for the Parties.

ARTICLE 14

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

ARTICLE 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

ARTICLE 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

ARTICLE 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

ARTICLE 18

1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

ARTICLE 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

SECTION III

ARTICLE 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

ARTICLE 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

ARTICLE 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

ARTICLE 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental

Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

SECTION IV

ARTICLE 24

1. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
2. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

ARTICLE 25

1. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
2. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
3. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

ARTICLE 26

1. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
2. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

SECTION V

ARTICLE 27

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 28

1. This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 29

1. After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.
2. In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

ARTICLE 30

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 31

1. Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

ARTICLE 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance, approval or accession;
(c) any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;
(d) any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

European Social Charter (Revised)

Adopted in Strasbourg on 3 May 1996.
Entered into force on 1 July 1999

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

PART I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, have the right to a special protection.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to independence, social integration and participation in the life of the community.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Children and young persons have the right to appropriate social, legal and economic protection.
18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

21. Workers have the right to be informed and to be consulted within the undertaking.
22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
23. Every elderly person has the right to social protection.
24. All workers have the right to protection in cases of termination of employment.
25. All workers have the right to protection of their claims in the event of the insolvency of their employer.
26. All workers have the right to dignity at work.
27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
29. All workers have the right to be informed and consulted in collective redundancy procedures.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

PART II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

ARTICLE 1 – THE RIGHT TO WORK

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

ARTICLE 2 – THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;2.to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should

be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
   (a) adequate and readily available training facilities for adult workers;
   (b) special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;
5. to encourage the full utilisation of the facilities provided by appropriate measures such as:
   (a) reducing or abolishing any fees or charges;
   (b) granting financial assistance in appropriate cases;
   (c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
   (d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of illhealth;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
   (a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
   (b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
   (b) to protect children and young persons against negligence, violence or exploitation;

(c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
   (a) remuneration and other employment and working conditions;
   (b) membership of trade unions and enjoyment of the benefits of collective bargaining;
   (c) accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self employed migrants insofar as such measures apply;
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

(a) access to employment, protection against dismissal and occupational reintegration;
(b) vocational guidance, training, retraining and rehabilitation;
(c) terms of employment and working conditions, including remuneration;
(d) career development, including promotion.

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

(a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
(b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions

which could have an important impact on the employment situation in the undertaking.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

(a) to the determination and the improvement of the working conditions, work organisation and working environment;
(b) to the protection of health and safety within the undertaking;
(c) to the organisation of social and socio-cultural services and facilities within the undertaking;
(d) to the supervision of the observance of regulations on these matters.

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
  (a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  (b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  (a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  (b) the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

(a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or

conduct or based on the operational requirements of the undertaking, establishment or service;

(b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
   (a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
   (b) to take account of their needs in terms of conditions of employment and social security;
   (c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and

conditions of which should be determined by national legislation, collective agreements or practice;

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

(a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

(b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

(a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

(b) to review these measures with a view to their adaptation if necessary.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

PART III

ARTICLE A – UNDERTAKINGS

1. Subject to the provisions of Article B below, each of the Parties undertakes:
   (a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
   (b) to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;
   (c) to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.
2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.
3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.
4. Each Party shall maintain a system of labour inspection appropriate to national conditions.

ARTICLE B – LINKS WITH THE EUROPEAN SOCIAL CHARTER AND THE 1988 ADDITIONAL PROTOCOL

1. No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.
2. Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

PART IV

Article C – Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D – Collective complaints

1. The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.
2. Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol.

PART V

Article E – Non-discrimination

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.

Article F – Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G – Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the

protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I – Implementation of the undertakings given

1. Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:
   (a) laws or regulations;
   (b) agreements between employers or employers' organisations and workers' organisations;
   (c) a combination of those two methods;
   (d) other appropriate means.
2. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J – Amendments

1. Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.
2. Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.
3. Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it.

In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

4. Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

PART VI

Article K – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L – Territorial application

1. This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.

4. Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M – Denunciation

1. Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A, paragraph 1, subparagraph b.
3. Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N – Appendix

The appendix to this Charter shall form an integral part of it.

Article O – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance or approval;
(c) any date of entry into force of this Charter in accordance with Article K;
(d) any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;
(e) any amendment in accordance with Article J;
(f) any denunciation in accordance with Article M;
(g) any other act, notification or communication relating to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this revised Charter.

Done at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office.

Appendix to the Revised European Social Charter

Scope of the Revised European Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.
   This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.
2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.
3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

ARTICLE 1, PARAGRAPH 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

ARTICLE 2, PARAGRAPH 6

Parties may provide that this provision shall not apply:

(a) to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

(b) where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

ARTICLE 3, PARAGRAPH 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

ARTICLE 4, PARAGRAPH 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

ARTICLE 4, PARAGRAPH 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

ARTICLE 6, PARAGRAPH 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

ARTICLE 7, PARAGRAPH 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

ARTICLE 7, PARAGRAPH 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

ARTICLE 8, PARAGRAPH 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

(a) if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
(b) if the undertaking concerned ceases to operate;
(c) if the period prescribed in the employment contract has expired.

ARTICLE 12, PARAGRAPH 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

ARTICLE 13, PARAGRAPH 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

ARTICLE 16

It is understood that the protection afforded in this provision covers single-parent families.

ARTICLE 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

ARTICLE 19, PARAGRAPH 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

ARTICLE 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.
2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.
3. This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.
4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

ARTICLES 21 AND 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

ARTICLE 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

ARTICLE 23, PARAGRAPH 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

ARTICLE 24

1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.
2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
   (a) workers engaged under a contract of employment for a specified period of time or a specified task;
   (b) workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
   (c) workers engaged on a casual basis for a short period.
3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
   (a) trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
   (b) seeking office as, acting or having acted in the capacity of a workers' representative;
   (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
   (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
   (e) maternity or parental leave;
   (f) temporary absence from work due to illness or injury.
4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

ARTICLE 25

1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.
2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.
3. The workers' claims covered by this provision shall include at least:
   (a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;
   (b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;
   (c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.
4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

ARTICLE 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

ARTICLE 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

ARTICLES 28 AND 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

ARTICLE A, PARAGRAPH 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

ARTICLE B, PARAGRAPH 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

(a) Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;
(b) Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;
(c) Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;
(d) Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

ARTICLE E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

ARTICLE F

The terms “in time of war or other public emergency” shall be so understood as to cover also the threat of war.

ARTICLE I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

ARTICLE J

The term “amendment” shall be extended so as to cover also the addition of new articles to the Charter.

European Convention on Nationality

Adopted on 6 November 1997.
Entered into force on 1 March 2000.

Preamble

The member States of the Council of Europe and the other States signatory to this Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;
Bearing in mind the numerous international instruments relating to nationality, multiple nationality and statelessness;
Recognising that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;
Desiring to promote the progressive development of legal principles concerning nationality, as well as their adoption in internal law and desiring to avoid, as far as possible, cases of statelessness;
Desiring to avoid discrimination in matters relating to nationality;
Aware of the right to respect for family life as contained in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms;
Noting the varied approach of States to the question of multiple nationality and recognising that each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality;
Agreeing on the desirability of finding appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals;
Considering it desirable that persons possessing the nationality of two or more States Parties should be required to fulfil their military obligations in relation to only one of those Parties;
Considering the need to promote international co-operation between the national authorities responsible for nationality matters,

Have agreed as follows:

Chapter I
General matters

Article 1 – Object of the Convention

This Convention establishes principles and rules relating to the nationality of natural persons and rules regulating military obligations in cases of multiple nationality, to which the internal law of States Parties shall conform.

Article 2 – Definitions

For the purpose of this Convention:

(a) "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin;
(b) "multiple nationality" means the simultaneous possession of two or more nationalities by the same person;
(c) "child" means every person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier;
(d) "internal law" means all types of provisions of the national legal system, including the constitution, legislation, regulations, decrees, case-law, customary rules and practice as well as rules deriving from binding international instruments.

Chapter II
General principles relating to nationality

Article 3 – Competence of the State

1. Each State shall determine under its own law who are its nationals.
2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality.

Article 4 – Principles

The rules on nationality of each State Party shall be based on the following principles:

(a) everyone has the right to a nationality;
(b) statelessness shall be avoided;
(c) no one shall be arbitrarily deprived of his or her nationality;
(d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

ARTICLE 5 – NON-DISCRIMINATION

1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

Chapter III
Rules relating to nationality

ARTICLE 6 – ACQUISITION OF NATIONALITY

1. Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:
   (a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;
   (b) foundlings found in its territory who would otherwise be stateless.
2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
   (a) at birth *ex lege*; or
   (b) subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.
3. Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application.
4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:
   (a) spouses of its nationals;
   (b) children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;
   (c) children one of whose parents acquires or has acquired its nationality;
   (d) children adopted by one of its nationals;

(e) persons who were born on its territory and reside there lawfully and habitually;
(f) persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned;
(g) stateless persons and recognised refugees lawfully and habitually resident on its territory.

ARTICLE 7 – LOSS OF NATIONALITY *EX LEGE* OR AT THE INITIATIVE OF A STATE PARTY

1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:
   (a) voluntary acquisition of another nationality;
   (b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
   (c) voluntary service in a foreign military force;
   (d) conduct seriously prejudicial to the vital interests of the State Party;
   (e) lack of a genuine link between the State Party and a national habitually residing abroad;
   (f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
   (g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.
2. A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.
3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

ARTICLE 8 – LOSS OF NATIONALITY AT THE INITIATIVE OF THE INDIVIDUAL

1. Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.
2. However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.

ARTICLE 9 – RECOVERY OF NATIONALITY

Each State Party shall facilitate, in the cases and under the conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.

Chapter IV
Procedures relating to nationality

Article 10 – Processing of applications

Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time.

Article 11 – Decisions

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

Article 12 – Right to a review

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

Article 13 – Fees

1. Each State Party shall ensure that the fees for the acquisition, retention, loss, recovery or certification of its nationality be reasonable.
2. Each State Party shall ensure that the fees for an administrative or judicial review be not an obstacle for applicants.

Chapter V
Multiple nationality

Article 14 – Cases of multiple nationality *ex lege*

1. A State Party shall allow:
   (a) children having different nationalities acquired automatically at birth to retain these nationalities;
   (b) its nationals to possess another nationality where this other nationality is automatically acquired by marriage.
2. The retention of the nationalities mentioned in paragraph 1 is subject to the relevant provisions of Article 7 of this Convention.

Article 15 – Other possible cases of multiple nationality

The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:

(a) its nationals who acquire or possess the nationality of another State retain its nationality or lose it;
(b) the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.

ARTICLE 16 – CONSERVATION OF PREVIOUS NATIONALITY

A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required.

ARTICLE 17 – RIGHTS AND DUTIES RELATED TO MULTIPLE NATIONALITY

1. Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.
2. The provisions of this chapter do not affect:
   (a) the rules of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality;
   (b) the application of the rules of private international law of each State Party in cases of multiple nationality.

Chapter VI
State succession and nationality

ARTICLE 18 – PRINCIPLES

1. In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention and in paragraph 2 of this article, in particular in order to avoid statelessness.
2. In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:
   (a) the genuine and effective link of the person concerned with the State;
   (b) the habitual residence of the person concerned at the time of State succession;
   (c) the will of the person concerned;
   (d) the territorial origin of the person concerned.
3. Where the acquisition of nationality is subject to the loss of a foreign nationality, the provisions of Article 16 of this Convention shall apply.

ARTICLE 19 – SETTLEMENT BY INTERNATIONAL AGREEMENT

In cases of State succession, States Parties concerned shall endeavour to regulate matters relating to nationality by agreement amongst themselves and, where applicable, in their relationship with other States concerned. Such agreements shall respect the principles and rules contained or referred to in this chapter.

ARTICLE 20 – PRINCIPLES CONCERNING NON-NATIONALS

1. Each State Party shall respect the following principles:

(a) nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State;
(b) persons referred to in sub-paragraph a shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights.

2. Each State Party may exclude persons considered under paragraph 1 from employment in the public service involving the exercise of sovereign powers.

Chapter VII
Military obligations in cases of multiple nationality

ARTICLE 21 – FULFILMENT OF MILITARY OBLIGATIONS

1. Persons possessing the nationality of two or more States Parties shall be required to fulfil their military obligations in relation to one of those States Parties only.
2. The modes of application of paragraph 1 may be determined by special agreements between any of the States Parties.
3. Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to persons possessing the nationality of two or more States Parties:
   (a) Any such person shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident. Nevertheless, they shall be free to choose, up to the age of 19 years, to submit themselves to military obligations as volunteers in relation to any other State Party of which they are also nationals for a total and effective period at least equal to that of the active military service required by the former State Party;
   (b) Persons who are habitually resident in the territory of a State Party of which they are not nationals or in that of a State which is not a State Party may choose to perform their military service in the territory of any State Party of which they are nationals;
   (c) Persons who, in accordance with the rules laid down in paragraphs a and b, shall fulfil their military obligations in relation to one State Party, as prescribed by the law of that State Party, shall be deemed to have fulfilled their military obligations in relation to any other State Party or States Parties of which they are also nationals;
   (d) Persons who, before the entry into force of this Convention between the States Parties of which they are nationals, have, in relation to one of those States Parties, fulfilled their military obligations in accordance with the law of that State Party, shall be deemed to have fulfilled the

same obligations in relation to any other State Party or States Parties of which they are also nationals;

(e) Persons who, in conformity with paragraph a, have performed their active military service in relation to one of the States Parties of which they are nationals, and subsequently transfer their habitual residence to the territory of the other State Party of which they are nationals, shall be liable to military service in the reserve only in relation to the latter State Party;

(f) The application of this article shall not prejudice, in any respect, the nationality of the persons concerned;

(g) In the event of mobilisation by any State Party, the obligations arising under this article shall not be binding upon that State Party.

ARTICLE 22 – EXEMPTION FROM MILITARY OBLIGATIONS OR ALTERNATIVE CIVIL SERVICE

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are also applicable to persons possessing the nationality of two or more States Parties:

(a) Article 21, paragraph 3, sub-paragraph c, of this Convention shall apply to persons who have been exempted from their military obligations or have fulfilled civil service as an alternative;

(b) persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of that State Party. Nevertheless, they should be deemed not to have satisfied their military obligations in relation to a State Party or States Parties of which they are equally nationals and where military service is required unless the said habitual residence has been maintained up to a certain age, which each State Party concerned shall notify at the time of signature or when depositing its instruments of ratification, acceptance or accession;

(c) also persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have enlisted voluntarily in the military forces of that Party for a total and effective period which is at least equal to that of the active military service of the State Party or States Parties of which they are also nationals without regard to where they have their habitual residence.

Chapter VIII
Co-operation between the States Parties

Article 23 – Co-operation between the States Parties

1 With a view to facilitating co-operation between the States Parties, their competent authorities shall:
   (a) provide the Secretary General of the Council of Europe with information about their internal law relating to nationality, including instances of statelessness and multiple nationality, and about developments concerning the application of the Convention;
   (b) provide each other upon request with information about their internal law relating to nationality and about developments concerning the application of the Convention.
2. States Parties shall co-operate amongst themselves and with other member States of the Council of Europe within the framework of the appropriate intergovernmental body of the Council of Europe in order to deal with all relevant problems and to promote the progressive development of legal principles and practice concerning nationality and related matters.

Article 24 – Exchange of information

Each State Party may at any time declare that it shall inform any other State Party, having made the same declaration, of the voluntary acquisition of its nationality by nationals of the other State Party, subject to applicable laws concerning data protection. Such a declaration may indicate the conditions under which the State Party will give such information. The declaration may be withdrawn at any time.

Chapter IX
Application of the Convention

Article 25 – Declarations concerning the application of the Convention

1. Each State may declare, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, that it will exclude Chapter VII from the application of the Convention.
2. The provisions of Chapter VII shall be applicable only in the relations between States Parties for which it is in force.
3. Each State Party may, at any subsequent time, notify the Secretary General of the Council of Europe that it will apply the provisions of Chapter VII excluded at the time of signature or in its instrument of ratification, acceptance, approval or accession. This notification shall become effective as from the date of its receipt.

ARTICLE 26 – EFFECTS OF THIS CONVENTION

1. The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality.
2. This Convention does not prejudice the application of:
   (a) the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality and its Protocols;
   (b) other binding international instruments in so far as such instruments are compatible with this Convention, in the relationship between the States Parties bound by these instruments.

Chapter X
Final clauses

ARTICLE 27 – SIGNATURE AND ENTRY INTO FORCE

1. This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

   Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force, for all States having expressed their consent to be bound by the Convention, on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Convention in accordance with the provisions of the preceding paragraph.
3. In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

ARTICLE 28 – ACCESSION

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Convention.

2. In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 29 – Reservations

1. No reservations may be made to any of the provisions contained in Chapters I, II and VI of this Convention. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to other provisions of the Convention so long as they are compatible with the object and purpose of this Convention.
2. Any State which makes one or more reservations shall notify the Secretary General of the Council of Europe of the relevant contents of its internal law or of any other relevant information.
3. A State which has made one or more reservations in accordance with paragraph 1 shall consider withdrawing them in whole or in part as soon as circumstances permit. Such withdrawal shall be made by means of a notification addressed to the Secretary General of the Council of Europe and shall become effective as from the date of its receipt.
4. Any State which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 30, paragraph 2, may, in respect of the territory concerned, make one or more reservations in accordance with the provisions of the preceding paragraphs.
5. A State Party which has made reservations in respect of any of the provisions in Chapter VII of the Convention may not claim application of the said provisions by another State Party save in so far as it has itself accepted these provisions.

Article 30 – Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 31 – DENUNCIATION

1. Any State Party may at any time denounce the Convention as a whole or Chapter VII only by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

ARTICLE 32 – NOTIFICATIONS BY THE SECRETARY GENERAL

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Convention of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance, approval or accession;
(c) any date of entry into force of this Convention in accordance with Articles 27 or 28 of this Convention;
(d) any reservation and withdrawal of reservations made in pursuance of the provisions of Article 29 of this Convention;
(e) any notification or declaration made under the provisions of Articles 23, 24, 25, 27, 28, 29, 30 and 31 of this Convention;
(f) any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this sixth day of November 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention and to any State invited to accede to this Convention.

B

ORGANIZATION OF AFRICAN UNITY (OAU)

The texts of this instrument
have been downloaded from the relevant
Organization of African Unity web-site.

African Charter on Human and Peoples' Rights

Adopted on 27 June 1981.
Entered into force on 1 October 1986.

Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights";

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights providing *inter alia* for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples' of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality

and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

PART I
Rights and Duties

Chapter I – Human and Peoples' Rights

ARTICLE 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

ARTICLE 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
   (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
   (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
   c) the right to defence, including the right to be defended by counsel of his choice;
   d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ARTICLE 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

ARTICLE 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

ARTICLE 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics rights and freedoms of others.

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

ARTICLE 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ARTICLE 17

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively to ensure the exercise of the right to development.

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
   (a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
   (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

ARTICLE 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

ARTICLE 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Chapter II –Duties

ARTICLE 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect, his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART II
Measures of Safeguard

ARTICLE 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same State.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

ARTICLE 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

ARTICLE 35

1. The Secretary General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

ARTICLE 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

ARTICLE 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 39

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear cost of the staff and services.

ARTICLE 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

ARTICLE 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and immunities of the Organization of African Unity.

ARTICLE 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

Chapter III – Mandate of the Commission

ARTICLE 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
   (a) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments;
   (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;
   (c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a state Party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter IV – Procedure of the Commission

ARTICLE 46

The commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

ARTICLE 47

If a state party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter.

This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

ARTICLE 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

ARTICLE 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

ARTICLE 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

ARTICLE 56

Communication relating to human and peoples' rights referred to in Article 55 received by the commission, shall be considered if they:

1. indicate their authors even if the latter request anonymity,
2. are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. are not based exclusively on news disseminated through the mass media,
5. are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,
6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the commission is seized with the matter, and
7. do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

ARTICLE 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

ARTICLE 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.
2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter V – Applicable Principles

ARTICLE 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the parties to the present Charter are members.

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

ARTICLE 62

Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

ARTICLE 63

1. The present Charter shall be open to signature, ratification or adherence of the member states of the Organization of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member states of the Organization of African Unity.

PART III
General Provisions

ARTICLE 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

ARTICLE 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

C

ORGANIZATION OF AMERICAN STATES (OAS)

The texts of these instruments
have been downloaded from the relevant
Organization of American States web-site.

American Convention on Human Rights – Pact of San José, Costa Rica

Adopted on 22 November 1969.
Entered into force on 18 July 1978.

Preamble

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I
State Obligations and Rights Protected

Chapter I – General Obligations

ARTICLE 1 – OBLIGATION TO RESPECT RIGHTS

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
2. For the purposes of this Convention, "person" means every human being.

ARTICLE 2 – DOMESTIC LEGAL EFFECTS

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Chapter II – Civil and Political Rights

ARTICLE 3 – RIGHT TO JURIDICAL PERSONALITY

Every person has the right to recognition as a person before the law.

ARTICLE 4 – RIGHT TO LIFE

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5 – Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6 – Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labor:
   (a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
   (b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
   (c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
   (d) work or service that forms part of normal civic obligations.

ARTICLE 7 – RIGHT TO PERSONAL LIBERTY

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

ARTICLE 8 – RIGHT TO A FAIR TRIAL

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
   (a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
   (b) prior notification in detail to the accused of the charges against him;
   (c) adequate time and means for the preparation of his defense;
   (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
   (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend

himself personally or engage his own counsel within the time period established by law;
(f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
(g) the right not to be compelled to be a witness against himself or to plead guilty; and
(h) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9 – Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10 – Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11 – Right to Privacy

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12 – Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13 – Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
   (a) respect for the rights or reputations of others; or
   (b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar 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.

Article 14 – Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15 – Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of

national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16 – Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17 – Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18 – Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19 – Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20 – Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

ARTICLE 21 – RIGHT TO PROPERTY

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

ARTICLE 22 – FREEDOM OF MOVEMENT AND RESIDENCE

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right lo leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.

ARTICLE 23 – RIGHT TO PARTICIPATE IN GOVERNMENT

1. Every citizen shall enjoy the following rights and opportunities:
   (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
   (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
   (c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

ARTICLE 24 – RIGHT TO EQUAL PROTECTION

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

ARTICLE 25 – RIGHT TO JUDICIAL PROTECTION

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
   (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
   (b) to develop the possibilities of judicial remedy; and
   (c) to ensure that the competent authorities shall enforce such remedies when granted.

Chapter III – Economic, Social and Cultural Rights

ARTICLE 26 – PROGRESSIVE DEVELOPMENT

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Chapter IV – Suspension of Guarantees, Interpretation and Application

ARTICLE 27 – SUSPENSION OF GUARANTEES

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right

to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28 – Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.
3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29 – Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

(a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
(b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30 – Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31 – Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

Chapter V – Personal Responsibilities

Article 32. Relationship between Duties and Rights
1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

Part II
Means of Protection

Chapter VI – Competent Organs

ARTICLE 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

(a) the Inter-American Commission on Human Rights, referred to as "The Commission"; and
(b) the Inter-American Court of Human Rights, referred to as "The Court".

Chapter VII – Inter-American Commission on Human Rights

Section 1: Organization

ARTICLE 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

ARTICLE 35

The Commission shall represent all the member countries of the Organization of American States.

ARTICLE 36
1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.
2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of

the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

ARTICLE 37

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.
2. No two nationals of the same state may be members of the Commission.

ARTICLE 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

ARTICLE 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

ARTICLE 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

Section 2: Functions

ARTICLE 41

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

(a) to develop an awareness of human rights among the peoples of America;
(b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
(c) to prepare such studies or reports as it considers advisable in the performance of its duties;
(d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

(e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
(f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
(g) to submit an annual report to the General Assembly of the Organization of American States.

ARTICLE 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

ARTICLE 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

Section 3: Competence

ARTICLE 44

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

ARTICLE 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.
4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

ARTICLE 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
   (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
   (b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
   (c) that the subject of the petition or communication is not pending in another international proceeding for settlement; and
   (d) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.
2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
   (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
   (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
   (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

ARTICLE 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

(a) any of the requirements indicated in Article 46 has not been met;
(b) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
(c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or
(d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section 4: Procedure

ARTICLE 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:
   (a) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.
   (b) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
   (c) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
   (d) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.
   (e) The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.
   (f) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.
2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

ARTICLE 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of

the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

ARTICLE 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.
2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.
3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

ARTICLE 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.
2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

Chapter VIII – Inter-American Court of Human Rights

Section 1: Organization

ARTICLE 52

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.
2. No two judges may be nationals of the same state.

ARTICLE 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.
2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

ARTICLE 54

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.
3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

ARTICLE 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.
3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an *ad hoc* judge.
4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.
5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

ARTICLE 56

Five judges shall constitute a quorum for the transaction of business by the Court.

ARTICLE 57

The Commission shall appear in all cases before the Court.

ARTICLE 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court considers it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.
2. The Court shall appoint its own Secretary.
3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

ARTICLE 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respects not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

ARTICLE 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

Section 2: Jurisdiction and Functions

ARTICLE 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

ARTICLE 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

ARTICLE 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

ARTICLE 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

ARTICLE 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Section 3: Procedure

ARTICLE 66

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

ARTICLE 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

ARTICLE 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

ARTICLE 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

Chapter IX – Common Provisions

ARTICLE 70

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

ARTICLE 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

ARTICLE 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

ARTICLE 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

Part III
General and Transitory Provisions

Chapter X – Signature, Ratification, Reservations, Amendments, Protocols and Denunciation

ARTICLE 74

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.
3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

ARTICLE 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

ARTICLE 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.
2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States

Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

ARTICLE 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.
2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

ARTICLE 78

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.
2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

Chapter XI – Transitory Provisions

Section 1: Inter-American Commission on Human Rights

ARTICLE 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

ARTICLE 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Section 2. Inter-American Court of Human Rights

ARTICLE 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

ARTICLE 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights – Protocol of San Salvador

Adopted on 17 November 1988.
Entered into force on 16 November 1999

Preamble

The States Parties to the American Convention on Human Rights "Pact San José, Costa Rica",

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified;

Recognizing the benefits that stem from the promotion and development of cooperation among States and international relations;

Recalling that, in accordance with the Universal Declaration of Human Rights and the American Convention on Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights;

Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed,

perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and

Considering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into the protective system thereof,

Have agreed upon the following Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador":

Article 1 – Obligation to Adopt Measures

The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

Article 2 – Obligation to Enact Domestic Legislation

If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.

Article 3 – Obligation of nondiscrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Article 4 – Inadmissibility of Restrictions

A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

Article 5 – Scope of Restrictions and Limitations

The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.

Article 6 – Right to Work

1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.
2. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

Article 7 – Just, Equitable, and Satisfactory Conditions of Work

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

(a) Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;

(b) The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;

(c) The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;

(d) Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;

(e) Safety and hygiene at work;

(f) The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;

(g) A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;
(h) Rest, leisure and paid vacations as well as remuneration for national holidays.

Article 8 – Trade Union Rights

1. The States Parties shall ensure:
   (a) The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;
   (b) The right to strike.
2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.
3. No one may be compelled to belong to a trade union.

Article 9 – Right to Social Security

1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.
2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

Article 10 – Right to Health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
   (a) Primary health care, that is, essential health care made available to all individuals and families in the community;
   (b) Extension of the benefits of health services to all individuals subject to the State's jurisdiction;

(c) Universal immunization against the principal infectious diseases;
(d) Prevention and treatment of endemic, occupational and other diseases;
(e) Education of the population on the prevention and treatment of health problems, and
(f) Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

ARTICLE 11 – RIGHT TO A HEALTHY ENVIRONMENT

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

ARTICLE 12 – RIGHT TO FOOD

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

ARTICLE 13 – RIGHT TO EDUCATION

1. Everyone has the right to education.
2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.
3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:
   (a) Primary education should be compulsory and accessible to all without cost;
   (b)Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
   (c) Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
   (d) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;

(e) Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.

4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.
5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

Article 14 – Right to the Benefits of Culture

1. The States Parties to this Protocol recognize the right of everyone:
   (a) To take part in the cultural and artistic life of the community;
   (b) To enjoy the benefits of scientific and technological progress;
   (c) To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.
3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

Article 15 – Right to the Formation and the Protection of Families

1. The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions.
2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.
3. The States Parties hereby undertake to accord adequate protection to the family unit and in particular:
   (a) To provide special care and assistance to mothers during a reasonable period before and after childbirth;
   (b) To guarantee adequate nutrition for children at the nursing stage and during school attendance years;
   (c) To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities;
   (d) To undertake special programs of family training so as to help create a stable and positive environment in which children will receive and develop the values of understanding, solidarity, respect and responsibility.

Article 16 – Rights of Children

Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

Article 17 – Protection of the Elderly

Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

(a) Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
(b) Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
(c) Foster the establishment of social organizations aimed at improving the quality of life for the elderly.

Article 18 – Protection of the Handicapped

Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

(a) Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;
(b) Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter;
(c) Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;
(d) Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

Article 19 – Means of Protection

1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit

periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.

2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.
3. The Secretary General of the Organization of American States shall also transmit to the specialized organizations of the inter-American system of which the States Parties to the present Protocol are members, copies or pertinent portions of the reports submitted, insofar as they relate to matters within the purview of those organizations, as established by their constituent instruments.
4. The specialized organizations of the inter-American system may submit reports to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture relative to compliance with the provisions of the present Protocol in their fields of activity.
5. The annual reports submitted to the General Assembly by the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture shall contain a summary of the information received from the States Parties to the present Protocol and the specialized organizations concerning the progressive measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and the general recommendations they consider to be appropriate in this respect.
6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.
7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.
8. The Councils and the Inter-American Commission on Human Rights, in discharging the functions conferred upon them in this article, shall take into account the progressive nature of the observance of the rights subject to protection by this Protocol.

Article 20 – Reservations

The States Parties may, at the time of approval, signature, ratification or accession, make reservations to one or more specific provisions of this Protocol, provided that such reservations are not incompatible with the object and purpose of the Protocol.

Article 21 – Signature, Ratification or Accession. Entry into Effect

1. This Protocol shall remain open to signature and ratification or accession by any State Party to the American Convention on Human Rights.
2. Ratification of or accession to this Protocol shall be effected by depositing an instrument of ratification or accession with the General Secretariat of the Organization of American States.
3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession.
4. The Secretary General shall notify all the member states of the Organization of American States of the entry of the Protocol into effect.

Article 22 – Inclusion of other Rights and Expansion of those Recognized

1. Any State Party and the Inter-American Commission on Human Rights may submit for the consideration of the States Parties meeting on the occasion of the General Assembly proposed amendments to include the recognition of other rights or freedoms or to extend or expand rights or freedoms recognized in this Protocol.
2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

Adopted on 7 June 1999.
Not yet entered into force.

The States Parties to this Convention,

Reaffirming that persons with disabilities have the same human rights and fundamental freedoms as other persons; and that these rights, which include freedom from discrimination based on disability, flow from the inherent dignity and equality of each person;

Considering that the Charter of the Organization of American States, in Article 3.j. establishes the principle that "social justice and social security are bases of lasting peace";

Concerned by the discrimination to which people are subject based on their

Bearing in mind the agreement of the International Labour Organisation on the vocational rehabilitation and employment of disabled persons (Convention 159); the Declaration of the Rights of Mentally Retarded Persons (UN General Assembly resolution 2856 (~XVI) of December 20, 1971); the Declaration on the Rights of Disabled Persons (VN General Assembly resolution 3447 (XXX) of December 9, 1975); the World Programme of Action concerning Disabled Persons (UN General Assembly resolution 37/52 of December 3, 1982); the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" (1988); the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (UN General Assembly resolution 46/119 of December 17, 1991); the Declaration of Caracas of the Pan American Health Organization; resolution AGJRES. 1249 (XXIII-O/93), "Situation of Persons with Disabilities in the American Hemisphere"; the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (VN General Assembly resolution 48/96 of December 20, 1993); the Declaration of Managua (December 1993); the Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights (157/93); resolution AG/RES. 1356 (XXV-O/95), "Situation of Persons with Disabilities in the American Hemisphere"; and AG/RES. 1369 (XXVI-O/96),

"Panama Commitment to Persons with Disabilities in the American Hemisphere"; and

Committed to eliminating discrimination, in all its forms and manifestations, against persons with disabilities,

Have agreed as follows:

Article I

For the purposes of this Convention, the following terms are defined:

1. **Disability**
   The term "disability" means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.

2. **Discrimination against persons with disabilities**
   (a) The term "discrimination against persons with disabilities" means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.
   (b) A distinction or preference adopted by a State Party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.

Article II

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society.

Article III

To achieve the objectives of this Convention, the States Parties undertake:

1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:
   (a) Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing

or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;

(b) Measures to ensure that new buildings, vehicles, and facilities constructed or manufactured within their respective territories facilitate transportation, communications, and access by persons with disabilities;

(c) Measures to eliminate, to the extent possible, architectural, transportation, and communication obstacles to facilitate access and use by persons with disabilities, and

(d) Measures to ensure that persons responsible for applying this Convention and domestic law in this area are trained to do so.

2. To work on a priority basis in the following areas:

(a) Prevention of all forms of preventable disabilities;

(b) Early detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities; and

(c) Increasing of public awareness through educational campaigns aimed at eliminating prejudices, stereotypes, and other attitudes that jeopardize the right of persons to live as equals, thus promoting respect for and coexistence with persons with disabilities;

ARTICLE IV

To achieve the objectives of this Convention, the States Parties undertake to:

1. Cooperate with one another in helping to prevent and eliminate discrimination against persons with disabilities;
2. Collaborate effectively in:

(a) Scientific and technological research related to the prevention of disabilities and to the treatment, rehabilitation, and integration into society of persons with disabilities; and

(b) The development of means and resources designed to facilitate or promote the independence, self-sufficiency, and total integration into society of persons with disabilities, under conditions of equality.

ARTICLE V

1. To the extent that it is consistent with their respective internal laws, the States Parties shall promote participation by representatives of organizations of persons with disabilities, non-governmental organizations working in this area, or, if such organizations do not exist, persons with disabilities, in the development, execution, and evaluation of measures and policies to implement this Convention.
2. The States Parties shall create effective communication channels to disseminate among the public and private organizations working with persons with disabilities the normative and juridical advances that may be achieved in order to eliminate discrimination against persons with disabilities.

ARTICLE VI

1. To follow up on the commitments undertaken in this Convention, a Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities, composed of one representative appointed by each State Party, shall be established.
2. The committee shall hold its first meeting within the 90 days following the deposit of the 11th instrument of ratification. Said meeting shall be convened by the General Secretariat of the Organization of American States and shall be held at the Organization's headquarters, unless a State Party offers to host it.
3. At the first meeting, the States Parties undertake to submit a report to the Secretary General of the Organization for transmission to the Committee so that it may be examined and reviewed. Thereafter, reports shall be submitted every four years.
4. The reports prepared under the previous paragraph shall include information on measures adopted by the Member States pursuant to this Convention and on any progress made by the States Parties in eliminating all forms of discrimination against persons with disabilities. The reports shall indicate any circumstances or difficulties affecting the degree of fulfillment of the obligations arising from this Convention.
5. The Committee shall be the forum for assessment of progress made in the application of the Convention and for the exchange of experience among the States Parties. The reports prepared by the committee shall reflect the deliberations; shall include information on any measures adopted by the States Parties pursuant to this Convention, on any progress they have made in eliminating all forms of discrimination against persons with disabilities, and on any circumstances or difficulties they have encountered in the implementation of the Convention; and shall include the committee's conclusions, its observations. and its general suggestions for the gradual fulfillment of the Convention.
6. The committee shall draft its rules of procedure and adopt them by a simple majority.
7. The Secretary General shall provide the Committee with the support it requires in order to perform its functions.

ARTICLE VII

No provision of this Convention shall be interpreted as restricting, or permitting the restriction by States Parties of the enjoyment of the rights of persons with disabilities recognized by customary international law or the international instruments by which a particular State Party is bound.

ARTICLE VIII

1. This Convention shall be open for signature by all Member States in Guatemala City, Guatemala, on June 8, 1999, and, thereafter, shall remain open for signature by all states at the headquarters of the Organization of American States, until its entry into force.

2. This Convention is subject to ratification.
3. This Convention shall enter into force for the ratifying States on the 30th day following the date of deposit of the sixth instrument of ratification by a Member State of the Organization of American States.

ARTICLE IX

After its entry into force, this Convention shall be open for accession by all states that have not signed it.

ARTICLE X

1. The instruments of ratification and accession shall be deposited with the General Secretariat of the Organization of American States.
2. For each state that ratifies or accedes to the Convention after the sixth instrument of ratification has been deposited, the Convention shall enter into force on the 30th day following deposit by that state of its instrument of ratification or accession.

ARTICLE XI

1. Any State Party may make proposals for amendment of this Convention. Said proposals shall be submitted to the General Secretariat of the OAS for dissemination to the States Parties.
2. Amendments shall enter into force for the states ratifying them on the date of deposit of the respective instruments of ratification by two thirds of the Member States. For the remaining States Parties, they shall enter into force on the date of deposit of their respective instruments of ratification.

ARTICLE XII

The States may enter reservations to this Convention when ratifying or acceding to it, provided that such reservations are not incompatible with the aim and purpose of the Convention and relate to one or more specific provisions thereof.

ARTICLE XIII

This Convention shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to have force and effect for the denouncing state one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other States Parties. Such denunciation shall not exempt the State Party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.

ARTICLE XIV

1. The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall

send a certified copy thereof to the United Nations Secretariat for registration and publication pursuant to Article 102 of the United Nations Charter.

2. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the states that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation, and any reservations entered.

Annex

BIOGRAPHICAL DATA OF CONTRIBUTORS

Michael BANTON Former member, United Nations Committee on the Elimination of Racial Discrimination. President (1987-1989) and Chairman (1996-1998), Royal Anthropological Institute of Great Britain and Ireland. President, International Sociological Association Research Committee on Ethnic, Race and Minority Relations (1990-1994). Author of *Racial Theories* and many other books and articles.

Berhe Tesfu COSTANTINOS was until recently Senior Policy Advisor in UNDP, New York. As key adviser on governance, poverty, HIV/AIDS and sustainable development, he was the principal focal point for policy support to governments and civil societies in Africa. He has served as board chairman and member of major African non-governmental organizations networks, faith-based organizations and research institutions and has worked on conflict and post-conflict planning of programmes. Author of 80 papers published in professional journals.

Virginia BONOAN DANDAN Chairperson of the United Nations Committee on Economic, Social and Cultural Rights. Professor of Fine Arts and Dean of the College of Fine Arts at the University of Philippines. A wide range of national and international activities in various functions – as an artist, expert, researcher and trainer – has enabled her to gain extensive experience in the field of human rights, and, in particular, economic, social and cultural rights.

Asbjorn EIDE Member of the UN Sub-Commission on the Promotion and Protection of Human Rights (former title: Sub-Commission on the Prevention of Discrimination and Protection of Minorities) from 1981-1983 and from 1988 until the present. Chairman of the Sub-Commission in 1996. Founder and former Director of the Norwegian Institute of Human Rights and Chairman of the following working groups: the rights of indigenous peoples (1982-1983); contemporary forms of slavery (1988-1989); minorities (since 1995). Director and senior fellow of the International Peace Research Institute, Oslo (1970-1986). Secretary General (1971-1975), International Peace Research Association. Special Rapporteur on a number of human rights issues. Initiator of international networks of Human Rights Research, Information, and Documentation. Author of numerous articles and author and editor of a number of books on human rights, peace and conflict issues.

Régis de GOUTTES Avocat Général, Cour de Cassation, Paris. Member of the French National Advisory Committee on Human Rights and former Deputy Director of Legal Affairs, Ministry of Foreign Affairs. Member of the United Nations Committee of the Elimination of Racial Discrimination (CERD). Member and former Chairman of the Steering Committee for Human Rights of the Council of Europe.

Pierre-Henri IMBERT Director-General of Human Rights, Council of Europe. Occupies various academic functions in France in the field of human rights and international law. Before joining the Secretariat of the Council of Europe in 1976, he was Professor of Law, University of Caen in France. He has published extensively on various questions of international law and human rights law.

Morris LIPSON is presently a consultant with the Office of the United Nations High Commissioner for Human Rights (OHCHR). Professor of Philosophy at various universities in the United States (1981-1992), he has published widely in the field, including papers on children's rights. He practised law in the United States at the American Civil Liberties Union and at Trial Lawyers for Public Justice, working in the areas of human rights and civil liberties.

Irene McCLURE Academic awards include a scholarship from the Commission fédérale suisse pour étudiants étrangers (1996) and the Francis Melville Prize for the top female graduate (1994), University of Glasgow. She joined the ILO in 1996 and until 1999 worked as Research Assistant in the Migration Programme and as Consultant in the Equality and Human Rights Coordination Branch. She is currently working with the Commission for Racial Equality in Scotland.

Edna Maria SANTOS ROLAND (Edna Roland) Psychologist. President, Fala Preta Organization of Black Women, Brazil. Member of the International Working and Advisory Group of the Comparative Human Relations Initiative.

Jyoti SHANKAR SINGH Executive Coordinator, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), since 2000. Previously Director, Information and External Relations Division, United Nations Population Fund – UNFPA (1980-1990), Director, Technical and Evaluation Division, UNFPA (1990-1995), Deputy Executive Director, UNFPA (1995-1996), Chairman, The Earth Times (1996-1998), Special Adviser to UNFPA on ICPD+5 (1998-1999), Executive Coordinator, United Nations General Assembly Special Session on Beijing+5 (2000).

Janusz SYMONIDES Professor of International Law and International Relations, Warsaw University and Nicolaus Copernicus University, Torun. Director, UNESCO Division of Human Rights, Democracy and Peace (1989-2000). Director, Polish Institute of International Relations (1980-1987). Member of many editorial boards and scientific councils; author of over 500 publications including many books.

Patrick A. TARAN Director, Migrants Rights International since January 1999, responsible for development and management of this independent global human rights monitoring body. Currently working as Senior Migration Specialist in the Migration Branch, International Labour Office. He was responsible for preparing the ILO High-Level Meeting on Achieving Equality in Employment for Migrant Workers, Geneva, 8-11 March 2000. He also works on a consultancy basis as Programme Officer for the joint UNITAR-UNFPA-IOM-ILO International Migration Policy Programme, designing content and course materials of international migration courses for government officials.

Katarina TOMASEVSKI Professor of International Law and International Relations, Faculty of Law, University of Lund, and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. External Lecturer at the Centre for African Studies, University of Copenhagen. United Nations Special Rapporteur on the Right to Education by the Commission on Human Rights in 1998. Previously worked at the Danish Centre for Human Rights, Copenhagen, McGill Centre for Medicine, Ethics and Law, Montreal, the Global Programme on AIDS of the World Health Organization, Geneva, and Institute for Social Research, Zagreb. Author of more than 150 articles and a number of books, including Responding to Human Rights Violations, 1946-1999, Kluwer, Dordrecht, 2000.

Luis VALENCIA RODRIGUEZ is a member of the United Nations Committee on the Elimination of Racial Discrimination and an Independent Expert of the Commission on Human Rights on the right to own property. He is Professor of International Law at the Central University in Quito, Ecuador. He has been a member of the Ecuadorian Foreign Service since 1944 and was Minister for Foreign Affairs from 1965 to 1966 and from 1981 to 1984. He was the Ecuadorian Ambassador to Bolivia, Brazil, Peru and Venezuela, and Permanent Representative to the United Nations.

Theo Van BOVEN Professor of International Law, University of Maastricht. Vice-President, International Commission of Jurists. Member of the Board of Trustees of the United Nations Voluntary Trust Fund on Contemporary forms of Slavery. President, Netherlands Society of International Law. Former Director, United Nations Division of Human Rights. Member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities – now Sub-Commission on the Promotion and Protection of Human Rights (1975-1976) and (1986-1991). Registrar of the International Criminal Tribunal for the Former Yugoslavia (1994). Member of the United Nations Committee of the Elimination of Racial discrimination (1992-2000).

Rüdiger Wolfrum Professor of National Public and International Public Law. Since 1993 he has held a chair at the University of Heidelberg. Director, Institute of International Law, University of Kiel and Vice-Rector (1990-1993) of that university. Since 1993, Director, Max Planck Institute for Comparative Public Law and International Law, the major research institute on that topic in Germany. Since 1996, Vice-President, German Research Foundation. Since August 1996 he has been judge and then Vice-President of the International Tribunal for the Law of the Sea, Hamburg (1996-1999). He published widely in various fields of international public law, focusing on the law of the sea, the law concerning Antarctica, environmental law, as well as on human rights and United Nations issues.

Roger ZEGERS de BEIJL (deceased 1999) worked as Senior Specialist on Discrimination Against Migrant Workers in the ILO. He developed a new major work item on combating discrimination against migrant workers and an umbrella-project "Combating Discrimination Against Migrant Workers and Ethnic Minorities in the World of Work" under which sub-projects have been developed in approximately ten migrant receiving countries in Europe and the traditional immigration countries Australia, Canada and the USA. The High-Level Meeting on Achieving Equality in Employment for Migrant Workers, organized in Geneva 8-11 March 2000, was the closing activity of this project.