

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM

Written statement

Best practices, achievements and challenges of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

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The International Convention on the Elimination of All Forms of All Forms of Racial Discrimination (ICERD, the Convention) is the first UN human rights instrument which was adopted on 21st December 1965. Since its adoption, the Convention has served as a unique UN human rights treaty dedicating to eradicate racial discrimination. Best practices of the Convention can be characterised by its expert monitoring body, the Committee on the Elimination of Racial Discrimination (CERD, the Committee), the first UN treaty body.

Committee on the Elimination of Racial Discrimination (CERD)

The Committee is comprised of 18 independent experts who are elected for a term of 4 years by State parties under the article 8 of the Convention. The Committee is mandated to monitor the implementation of the Convention at the national level through examining reports of State parties on their legislative, judicial, administrative and other measures to combat racial discrimination.¹ The Committee considers the reports in Geneva where they also hold interactive dialogues with State delegations. At the consideration of State parties' reports, civil society organisations (CSOs) are also given opportunities to engage with the Committee to provide their inputs. Committee receives information from CSOs through alternative reports, informal meetings and informal briefings during lunch break. Although these are common practices among different treaty bodies, CERD is known for its openness to civil society.

Over decades, the Committee established a practice to be accessible for civil society participants even outside meeting hours. Such openness has allowed civil society actors, who invest considerable amount of efforts and resources to participate in the session, to have constructive engagement with the Committee members. It is considered as one of the best practices of the Committee, since not only it contributes to in-depth discussions with State parties and effective concluding observations, but also it empowers civil society actors including victims of racial discrimination, human rights defenders, indigenous and minority leaders to closely cooperate with the UN human rights system. In particular, victims of racial discrimination often lack opportunities to raise their voices without fear, which pushes them to further marginalisation. With this regard, the Committee is also serving as a platform for voices of victims.

General Recommendations

Furthermore, the Committee has significantly contributed to the development of the international human rights standards against racial discrimination. The Committee has issued detailed interpretations of the Convention's articles as "General Recommendations" to guide State parties to fully implement the Convention. International Movement Against All Forms of Discrimination and Racism (IMADR) has paid particular attention to the General Recommendations No. 29 on "Descent" and No. 35 on "Combatting racist hate speech".

General Recommendation No. 29 defines that "*discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status*".² It further provides indicators to identify communities based on descent including caste and analogous systems of inherited status:

- Inability or restricted ability to alter inherited status;
- Socially enforced restrictions on marriage outside the community; and
- Private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of good and water;
- Limitation of freedom to renounce inherited occupations or degrading or hazardous work;
- Subjection to debt bondage;
- Subjection to dehumanizing discourses referring to pollution or untouchability; and

¹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 9.1

² CERD 61st session (2002), General recommendation No. 29 on article 1, paragraph 1, of the Convention (Descent), paragraph 7

- Generalized lack of respect for their human dignity and equality.³

A notable achievement of the General Recommendation is that not only it has reaffirmed discrimination based on caste, but also it has included discrimination based on other analogous systems in different countries as a form of racial discrimination. This is a remarkable development in the international human rights standards, especially since the Durban Declaration and Programme of Action failed to incorporate discrimination against caste into the document. Although several State parties including India and Japan have not accepted the interpretation, descent-based communities such as Dalits and Burakumin have applied the Convention into their human rights movement.

General Recommendation No. 35 is a reaction to wide spreading racist hate speech around the world against foreigners, refugees, indigenous peoples, descent-based communities, minorities and women belonging to these communities. Racist hate speech often invites hate crimes and other atrocities. The Committee is alerted by the effect of hate speech in leading to massive human rights violations and genocide as well as in conflicts.⁴ It is essential for State parties to combat racist hate speech to prevent mass atrocities. However, not many State parties have sufficient protection measures to protect vulnerable population from racist hate speech. Its reasons range from the lack of political will to the challenge to draw a line between freedom of expression and right to equality and non-discrimination.

In this light, the General Recommendation provides detailed interpretation of the article 4 of the Convention as well as the articles 5 and 7. While the Committee advises that criminalisation of racist expression should be applied only for serious cases⁵, the document provides detailed indicators to qualify such expression as criminal offences: the content and form of speech: the economic, social and political climate: the position or status of the speaker: the reach of hate speech: and the objectives of the speech.⁶ Although more than half of 20 State parties putting reservation on the article 4 argue that such reservation is necessary to protect freedom of opinion and expression and freedom of peaceful assembly and association, the General Recommendation can guide them to withdraw reservation and protect vulnerable populations from hate speech while guaranteeing those freedoms. The General Recommendation also helps to develop a national legal framework to tackle hate speech through applying the Committee's interpretation.

Early Warning Measures and Urgent Procedures

The Committee's good practices are also represented by its unique Early-Warning Measures and Urgent Procedures. Early warning measures is designed to prevent ongoing issues from escalating into conflicts, which also function as confidence-building measures to promote racial tolerance and prevent conflicts especially in post-conflict countries.⁷ Urgent procedures address pressing issues to avoid or limit the scale of serious violations of the Convention.⁸ In 2007, the Committee adopted the revised guideline which set out nine indicators to identify a situation which requires the Committee's action.⁹ The Committee has taken a number of actions including decisions, statements and letters concerning serious violations of the Convention. In 2010, the Committee issued letters to the Council of Europe and European Union to alert the situation of Roma people in Europe. It was the first time that regional bodies were addressed by the Committee in the early warning and urgent procedures.¹⁰ Through this unique mechanism, the Committee enhances the Convention's nature to prevent human rights violations.

Challenges

Over 50 years, the Convention has significantly contributed to the fight against racial discrimination around the world. Yet, in order to achieve the goal of the Convention, State parties have the responsibility to fully implement the instrument at the national level. It is the obligation of State parties to report its progress in implementation to the Committee which exists to monitor and assist State parties through examining reports. However, as of 23 November 2015, 92 State parties have not submitted their initial or/and periodic reports by due date.¹¹ Regrettably, it significantly hinders the implementation of the Convention.

Moreover, among 177 State parties, only 57 countries have made declaration to recognise the competence of the Committee to receive individual communications under the article 14.¹² The individual communications procedure can

³ Ibid, paragraph (a)

⁴ CERD (2013), General recommendation No. 35 on Combatting racist hate speech (CERD/C/GC/35)

⁵ Ibid, paragraph 12

⁶ Ibid, paragraph 15

⁷ CERD, Early-Warning Measures and Urgent Procedures:

<http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx#about>

⁸ Ibid

⁹ See "Guidelines for the Early Warning and Urgent Actions Procedures", General Assembly 48th session, Annual Report (A/62/18) at:

<http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx#about>

¹⁰ IMADR (2011), *ICERD and CERD: A Guide for Civil Society Actors*, page 22

¹¹ CERD (2015), Status of submission of reports by States parties under article 9 (1) of the Convention (CERD/C/88/2)

¹² United Nations Treaty Collection: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

be a last resort for victims of racial discrimination to seek redress who have exhausted all available domestic remedies. It is concerning to note that the number of State parties recognising the individual communications procedure remains especially low among African and Asia-Pacific countries. Only 3 Asia-Pacific State parties have made declaration under the article 14 where there is no regional human rights protection mechanism. Hence, it can be said that victims of racial discrimination in Asia-Pacific countries have a limited access to remedy.

Conclusion

The International Convention on the Elimination of All Forms of Racial Discrimination has played the major role to combatting racial discrimination for half a century. Its Committee has established close partnership with civil society organisations and developed the international human rights standards against racial discrimination. Challenges remain in timely submission of State parties' reports, individual communications procedures and implementation of the Convention. State parties should fulfil its obligations to implement the instrument at the national level and regularly report the progress to the Committee within deadline. State parties, which have not yet done so, are encouraged to recognise the competence of the Committee to receive individual communications. Racial discrimination cannot be eradicated by a single force, therefore constructive cooperation among the UN treaty body, State parties and civil society organisations is essential to achieve the goal of the Convention.