

UN Convention on Racial Discrimination 1965

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The Call for India to Have a Diversity Policy & an Anti-Racial Law

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

UN Convention on the Elimination of All forms of racial Discrimination



CAFI briefing Note on UN Convention on Racial Discrimination 1965 and the Call for India to Have a Diversity Policy & an Anti-Racial Law

Introduction:

The International Convention on the elimination of All Forms of Racial Discrimination is a United Nation Convention which was adopted by the General Assembly in 1965 and it came into force in 1969. Till October 2015, it has 88 signatories and 177 parties. It is a third generation human rights instrument. The aim of the Convention is to eliminate all forms of Racial Discrimination and to promote understanding among all groups. It defines the term "*racial discrimination*" as *any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*. India ratified this convention on 3 December 1968.

The Committee on the Elimination of Racial Discrimination (CERD) was established in 1970 to monitor the implementation of the ICERD by its states parties as an Independent body and also as a first UN treaty body. According to CERD, no country is free from Racial Discrimination. Moreover the Convention includes three mechanisms by which CERD can observe its functions: Early warning, examination of inter-state complaints and examination of Individual complaints. The committee further argues that they have empirically identified the most vulnerable groups in a country. CERD consists of 18 experts who meet twice a year for three weeks at a time¹. Out of 18 members, 9 members have to face election after every two year to maintain equality and diversity. CERD also includes in its regular agenda 'preventive measures', which include early-warning aimed at preventing existing situations escalating into conflicts and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention².

Background:

The struggle against Racial Discrimination can be seen from the Colonial Period. During 1950, 1960, 1970 when countries started joining United Nation after coming out of the struggle of Colonialism, United Nation adopted a resolution seeking government of all states to "take all necessary measures to prevent all kind of racial, religious and national hatred". The almost unanimous condemnation by States of apartheid as an institutionalized policy and practice in South Africa led to an important leap forward in the fight against discrimination³. It was also realised that racial practices in any one states may create problem for other states which may curtail the principle of Unity in diversity. It is in this historical context that ICERD was adopted in 1965 by the GA with its clear reference to apartheid in Article 3⁴.

Racism is a product of the complex interaction in a given society of a race-based worldview with prejudice, stereotyping, and discrimination. Racism can be present in social, practices, or political systems (e.g., apartheid) that support the expression of prejudice or aversion in discriminatory practices. The ideology

¹ A Simple Guide to the UN treaty bodies. ISHR, 2015.

² A Handbook on International human Rights Conventions, New Delhi, National human Right Commissions. 10 December 2012.

³ SHIRANE, DAISOKE. "ICERD and CERD: A guide for civil society Actors". IMADR (Geneva office). 2011.

⁴ SHIRANE, DAISOKE. "ICERD and CERD: A guide for Civil society Actors". IMADR (Geneva office). 2011.

underlying racist practices often includes the idea that humans can be subdivided into distinct groups that are different in their social behaviour and innate capacities and that can be ranked as inferior or superior. Today, the use of the term "racism" does not easily fall under a single definition. It is usually found in, but usage is not limited to, law, the social and behavioural sciences, humanities, and popular culture. Racist ideology can become manifest in many aspects of social life. Social actions can be based in human ideas and associated with xenophobia, otherness, segregation, hierarchical ranking, supremacies, and related social phenomena. The root cause of racism and racial conflict is the false identification of the body with the person.

Recommendation suggested by General Assembly:

The Convention consists of a preamble and 25 articles divided into three parts: the first part sets out the definition and scope of racial discrimination prohibited by ICERD (Article 1) and States parties' obligations (Article 2 – 7); the second part deals with the establishment of a monitoring body, the Committee on the Elimination of Racial Discrimination (CERD) and its work (Article 8 – 16); and the third part handles other technical matters (Article 17 – 25)⁵. Some of important recommendations suggested by General Assembly are:

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.

⁵SHIRANE, DAISOKE. "ICERD and CERD: A Guide for civil society Actors". IMADR (Geneva office).2011.

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*⁶.

Provisions within Indian Constitution regarding the issue of racial discrimination:

The Constitution of India believes in the principle of liberty, equality and fraternity. **Article 14** of the Indian Constitution states that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. **Article 15** of the Constitution states, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) Access to shops, public restaurants, hotels and places of public entertainment; or (b) The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. **Article 16** states that 'Equality of opportunity in matters of public employment: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen shall, on grounds on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or any employment or office under the state'. **Article 21** states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law"

India and CERD:

India signed the Convention on 2 March 1967 and ratified it on 3 December 1968. "The Government of India declares that for reference of any dispute to the International Court of Justice for decision in terms of Article 22 of the International Convention on the Elimination of all Forms of Racial Discrimination, the consent of all parties to the dispute is necessary in each individual case"⁷. The Convention guarantees every person the right's on the basis of "race, colour, descent or national or ethnic origin"⁸.

⁶United Nation, General Assembly. "Resolution adopted by the General Assembly 1904 (XVIII)". *United Nations Declaration on the Elimination of all forms of Racial Discrimination*.

⁷A Handbook on International human Rights Conventions, New Delhi, National human Right Commissions. 10 December 2012.

Anti-Racial laws around the world:

Some of the countries who have adopted anti-racial law are:

- **Australia:** Anti-Discrimination Act 1977 (NSW)
Anti-Discrimination Act 1991 (QLD)
- **Belgium :** Belgian Anti-Racism Law (1981)
- **Bolivia:** Law against racism and all forms of discrimination 2010.
- **Brazil:** Anti-discrimination laws in Brazil, 2010.
- **Colombia:** Colombian anti-discrimination act 2011 (act number 1482).
- **Germany:** General equal treatment act of 2006.
- **New Zealand:** New Zealand bill of rights act 1990 (section 19)
- **South Africa:** promotion of equality and prevention of unfair discrimination act 2000.

National Action Plan on Anti-Racial laws:

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in 2001, the Durban Review Conference held in Geneva in 2009, the Committee on the Elimination of Racial Discrimination and the Human Rights Council, through its universal periodic review, have recommended the adoption of national action plans against racial discrimination⁹. A national action plan against racial discrimination can provide the basis for the development of a comprehensive public policy against racial discrimination¹⁰. By developing such a plan, the State demonstrates that it is taking action to counter the challenges it faces in eradicating racial discrimination¹¹. And by doing so, a national action plan against racial discrimination can help States meet their obligations as parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and their commitments arising from the World Conference against Racism and the Durban Review Conference, as well as other regional and national obligations¹².

Some of the Countries who have drafted National Action Plan on Anti-Racial laws are:

⁸ Alston Philip, Smita Narula and Margaret Satterthwaite. "Hidden Apartheid: Caste Discrimination against India's 'Untouchables'" Shadow report to the UN Committee on the Elimination of Racial Discrimination". Center for human rights and global justice nyc school of law (CHR&GJ). Human Rights Watch. www.chrgj.org.

⁹ "Developing National Action Plans Against Racial Discrimination: A Practical guide". United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹⁰ "Developing National Action Plans Against Racial Discrimination: A Practical guide". United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹¹ "Developing National Action Plans Against Racial Discrimination: A Practical guide". United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹² "Developing National Action Plans Against Racial Discrimination: A Practical guide". United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

1. **The united States-Brazil** joint Action plan to eliminate Racial and Ethnic Discrimination and promote equality was signed in March 2008 and it is the first bilateral agreement targeting racism.¹³
2. **United Kingdom:** Equality Act 2010 and it is applicable in England, Scotland and wales.
3. **South Africa:** The constitution of south Africa provides for the adoption of legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination and this provision is in line with articles 1(4) of the convention, which provides for special measures 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 individual equal enjoyment or exercise of human rights¹⁴.
4. **Spain:** Human right plan (2008-2012) established several concrete commitments, among them the execution and evaluation of the strategic citizenship and Integration plan and the approval if a national and integral strategy to fight racism and xenophobia¹⁵.
5. In **Colombia**, document CONPES3660 of May 2010 contains the policies, programmes and projects that the national government is implementing in favour of Afro-descendent Colombians, in order to create sustainable human development opportunities for them and to reduce the gap between their living conditions and those of the rest of Colombian society¹⁶.

¹³ *“Developing National Action Plans Against Racial Discrimination: A Practical guide”*. United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹⁴ *“Developing National Action Plans Against Racial Discrimination: A Practical guide”*. United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹⁵ *“Developing National Action Plans Against Racial Discrimination: A Practical guide”*. United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

¹⁶ *“Developing National Action Plans Against Racial Discrimination: A Practical guide”*. United Nations Human Right. United Nation. New York and Geneva, 2014. e-ISBN97892-1-056351-2.

“Deepening Diversity, Women Rights and Democracy in India” programme contributes towards addressing the issues namely increasing violence against women and girls in conflict zones and the rise in case of growing intolerance and racial violence in India. We aim to work with committed stakeholders to address the issue of deepening diversity, racial discrimination and sexual violence in conflict zones of India through improved and strengthened civil society responses and initiatives, engaging local authorities and government structures & international efforts to address the issue. This will help in ensuring inclusive, sustainable growth in India.

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