

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

### Introduction

Even before the adoption of the Universal Declaration on Human Rights (a non-legally binding document) in 1948, broad agreement existed that the rights which were to be enshrined in the Declaration were to be transformed into legally binding obligations through the negotiation of one or more treaties. The International Convention on the Elimination of all forms of Racial Discrimination (ICERD)<sup>1</sup> was the first treaty to be negotiated and it was adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969.<sup>2</sup>

### The International Convention on the Elimination of all forms of Racial Discrimination

The Convention in general

The Convention defines “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’ (article 1). The Convention requires States parties, at all levels, to eliminate all forms of racial discrimination and to prohibit any form of racial discrimination by any persons, groups or organizations (article 2), and to adopt measures to prohibit any forms of dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and acts of violence and incitement of such acts, and any form of assistance to such activities (article 4). States parties by signing and ratifying the Convention undertake to guarantee civil, political, economic, social and cultural rights, without any form of racial discrimination, regarding: participation in elections; security of person; freedom of movement; nationality; freedom of thought, conscience and religion; freedom of opinion and expression; work; housing;

public health and medical care; education; and the right to equal participation in cultural activities (article 5). The Convention also assures to everyone within the State party’s jurisdiction effective protection and remedies against any acts of racial discrimination, and the right to seek just and adequate reparation for any damage suffered following discrimination (article 6).

The following two sections consider those obligations in the Convention which are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.



<sup>1</sup> The International Convention on the Elimination of All Forms of Racial Discrimination will herein be referred to as the Convention, treaty or the ICERD.

<sup>2</sup> If otherwise not referenced the information included in this fact sheet can be found in the Convention on the Elimination of All Forms of Discrimination or on the website of the Office of the United Nations High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org)).





## The Committee on the Elimination of Racial Discrimination

### The Committee in general

The Committee on the Elimination of Racial Discrimination was established under article 8 of the Convention. The Committee examines reports submitted by States parties (in accordance with article 9) on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the ICERD. In responding to these reports the Committee issues so-called “concluding observations” where the Committee outlines its concerns and recommendations to the State party.<sup>3</sup> The Committee also issues interpretations in the form of general recommendations<sup>4</sup> where the content of the Convention, thematic issues or methods of work are explained and elaborated upon. The aim of these general recommendations is to clarify States parties’ duties with respect to certain provisions and suggest approaches to implementing the treaty. The Committee may, moreover, consider individual or group communications concerning allegations of violations of rights contained in the Convention (article 14). In order for the mechanism to be accessible to a State party’s citizens the State party in question must have made a declaration under article 14 accepting the competence of the Committee to consider such communications. Once the Committee has reached a decision regarding the communication it issues an opinion on the merits of the complaint. The Committee will often include suggestions and/or recommendations to the State party concerned or to all States parties even if it has formally found that there has been no violation of the Convention. The Committee may also entertain inter-state claims (article 11) whereby a State party may bring to the Committee’s attention that another State party is not fulfilling its obligations under the Convention. This procedure has, however, never been employed. Lastly, the Committee holds regular thematic discussions on issues related to racial discrimination and the Convention.

### How can the Committee help in ensuring the right to health?

Having considered a State party’s report, the Committee may, among other things, highlight in the concluding observations the State party’s shortcomings in relation to implementing the right to health, but also for other directly or indirectly health-related rights. The Committee may also indicate how the State party should go about correcting these shortcomings. Both the report and the concluding observations are available to the public. Following the concluding observations, the Committee may request additional

<sup>3</sup> The concluding observations are publicly available on the United Nations human rights treaty bodies’ database of the Office of the United Nations High Commissioner for Human Rights ([www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf)).

<sup>4</sup> In other human rights committees these recommendations are known as general comments.

### Direct linkages to health

In article 5, the Convention establishes that States parties must prohibit and 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 in enjoying their civil, political, economic, social and cultural rights, which also encompasses the right to health. The ICERD in paragraph (e)(iv) of article 5 specifically guarantees the right of everyone to public health, medical care, social security and social services, without any form of discrimination.

### Indirect linkages to health

The fulfilment of the right to health without any form of discrimination is also linked to the realization of other health-related human rights without any form of discrimination. Such health-related rights which are enshrined in the ICERD include the right to work, housing, education, and to form and join trade unions (article 5). In addition, States parties must protect the freedoms of access to public space, thought, conscience, religion, opinion and expression without any form of discrimination (article 5).

information from States parties or remind the State party of recommendations included in the previous concluding observations of the Committee and their obligations as parties to the ICERD.<sup>5</sup> The Committee may also make use of procedures which aim to either prevent or limit serious violations of the Convention.<sup>6</sup> All of these means may be used to raise the issue of health rights both within a State party and at the international level through the Committee. The Committee has not issued a specific general recommendation on racial discrimination and the right to health. However, it has issued general recommendations in relation to the Roma,<sup>7</sup> descent<sup>8</sup> and non-citizens<sup>9</sup> where the right to health has been considered.

<sup>5</sup> Article 9.1(b) and rule 65 of the Committee's rules of procedures.

<sup>6</sup> These are known as early warning or urgent procedures.

<sup>7</sup> General Recommendation No. 27, 'Discrimination against Roma', 16 August 2000.

<sup>8</sup> General Recommendation No. 29, 'Article 1, paragraph 1 of the Convention (Descent)', 1 November 2002. As for the meaning of "descent", the Committee specifies 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 which nullify or impair their equal enjoyment of human rights, Preamble of the Recommendation.

<sup>9</sup> General Recommendation No. 30, 'Discrimination Against Non Citizens', 1 October 2004.

The Committee in referring to the Roma and descent-based communities highlights the necessity to ensure that they have equal access to health care and to involve them in the designation and implementation of health programmes. In considering non-citizens, the Committee highlights the importance of removing obstacles which prevent them in their enjoyment of the right to health and that States parties are obliged to recognize the right of non-citizens to an adequate standard of physical and mental health. If an individual or group of individuals believe that they have been discriminated against, according to the Convention's definition, in exercising or enjoying their right to health they can submit a communication to the Committee. After the Committee has considered the case and issued an opinion, the State party is invited to inform the Committee of the action it has taken on the Committee's suggestions and recommendations.<sup>10</sup> On receipt of that information, the Committee may take whatever steps it deems to be appropriate. The topics of the thematic discussions have included non-citizens and racial discrimination, discrimination based on descent, and discrimination against the Roma, where State parties, intergovernmental and nongovernmental organizations

<sup>10</sup> Rule 95(5) of the Committee's rules of procedure.







have been invited to express their views on the subject. This is a further opportunity to raise the issue of the right to health, both through state channels and individually.

### **Other instruments dealing with race discrimination and health**

Other institutions or instruments which deal with the issue of racial discrimination and health include the WHO Constitution, which in its preamble states that every human being has the right to enjoy the highest attainable standard of health without distinction of race, and the Durban Declaration, the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in 2001 in Durban, South Africa. The latter Declaration and its related Programme of Action, include several references to health services and access to health care systems, the racial discrimination involved, and the necessity that States take action against such discrimination.<sup>11</sup>

Furthermore, part of the mandate of the Special Rapporteur on the Right to Health of the United Nations Commission on Human Rights, now Human Rights Council,<sup>12</sup> includes considering article 5(e)(iv) of the ICERD. In addition, the Working Group of Experts

on People of African Descent of the Human Rights Council has recently considered the relationship between racism and health.<sup>13</sup> Also, the Committee on Economic, Social and Cultural Rights in its general comment on health,<sup>14</sup> referring to the International Covenant on Economic, Social and Cultural Rights, proscribes, inter alia, any form of discrimination in access to health care and underlying determinants of health.<sup>15</sup>

### **Eastern Mediterranean Region ratifications**

The countries of the Eastern Mediterranean Region that have ratified the Convention are Afghanistan, Bahrain, Egypt, Islamic Republic of Iran, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen. The total number of States parties to the Convention is 170 (as of January 2006).<sup>16</sup>

<sup>13</sup> *Report of the Working Group of Experts and People of African Descent on its fourth session*, UN Doc. E/CN.4/2005/21, 26 January 2005.

<sup>14</sup> General Comment No. 14, 'The right to the highest attainable standard of health', E/C.12/2000/4, 11 August 2000.

<sup>15</sup> *Ibid.* para. 18, which reads in whole as follows: 'By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.'

<sup>16</sup> Ratifications, signatures and reservations to international human rights instruments can be found at: [www.ohchr.org/english/countries/ratification/index.htm](http://www.ohchr.org/english/countries/ratification/index.htm)

<sup>11</sup> A/CONF.189/12. Examples of "health" paragraphs in the Durban Declaration: 31, 33, 51 and 75; and in the Programme of Action, para. 8(c), 18, 49, 109 and 110(b).

<sup>12</sup> The United Nations Commission on Human Rights has been replaced by the United Nations Human Rights Council as per United Nations General Assembly resolution A/RES/60/251 adopted on 15 March 2006. The Commission on Human Rights ceased to exist on 16 June 2006, see press release at: [www.un.org/News/Press/docs/2006/ecosoc6192.doc.htm](http://www.un.org/News/Press/docs/2006/ecosoc6192.doc.htm)