



A User's Guide to the
International Convention
on the
Elimination of Racial Discrimination

September 2003



HUMAN RIGHTS COMMISSION



Published by the Joint Committee of the Irish Human Rights Commission
and the Northern Ireland Human Rights Commission

**A User's Guide to the International
Convention on the Elimination of Racial Discrimination**

**Published by the Joint Committee of the Irish Human Rights Commission and the
Northern Ireland Human Rights Commission**

August 2003

Irish Human Rights Commission

17 – 19 Lower Hatch Street
Dublin 2

Tel: +353 (0) 1 6472562

Fax: +353 (0) 1 6472515

Email: ihrc@eircom.net

Website: <http://homepage.eircom.net/~ihrc>

Northern Ireland Human Rights Commission

Temple Court
39 North Street
Belfast BT1 1NA

Tel: +44 (0)28 9024 4987

Fax: +44 (0)28 9024 7844

Email: information@nihrc.org

Website: www.nihrc.org

ISBN 1 903681 39 1

| | Page |
|--|-------------|
| Foreword | 05 |
| Introduction | 07 |
| 1. What is the Convention? | 09 |
| The scope of the Convention | 10 |
| Limitations and opt-outs | 11 |
| - <i>Non-citizens, including asylum seekers</i> | |
| 2. How does CERD work? | 15 |
| About the Committee | 15 |
| Country Reports | 16 |
| - <i>The examination or ‘dialogue’</i> | |
| - <i>Concluding Observations</i> | |
| Individual complaints | 18 |
| General Recommendations | 20 |
| 3. How can CERD be used by NGOs and others opposing racism? | 23 |
| Helping the work of the Committee | 23 |
| - <i>Commenting on government Reports</i> | |
| - <i>Lobbying and informing Committee members</i> | |
| National/regional audits and strategies | 27 |
| - <i>The World Conference Against Racism and National Action Plans</i> | |
| The role of national human rights institutions | 29 |
| Using the individual complaints procedure | 31 |
| - <i>How to raise an issue under Article 14</i> | |
| APPENDICES | |
| I. The CERD Committee | 33 |
| - <i>Current members</i> | |
| - <i>Contacting the Committee</i> | |
| II. Other useful addresses | 35 |
| III. Article 14 cases | 39 |
| - <i>Cases where a violation of the Convention was found</i> | |
| - <i>Cases where no violation found but recommendations made</i> | |
| IV. Concluding Observations relating to Northern Ireland | 45 |
| V. Text of the Convention | 49 |
| VI. Reservations and declarations | 59 |

Foreword

The International Convention on the Elimination of All Forms of Racial Discrimination is one of the oldest and most widely accepted human rights instruments, but the promotion of its principles of equality and non-discrimination is not solely a matter for the United Nations and the Committee on the Elimination of Racial Discrimination (CERD). Members of CERD are deeply appreciative of the vital contribution to the struggle against racism by non-governmental organisations (NGOs) around the world.

The written information that NGOs provide to the Committee is highly appreciated, as well as the ongoing informal contacts. The Committee also encourages governments to listen to the concerns of civil society on Convention issues. It agrees with the view taken at the World Conference against Racism that consultation between States parties and national NGOs helps to secure a more effective implementation of the Convention.

National human rights institutions also have an important role to play in combating racism and racial discrimination, and having had a long association with such institutions it gives me particular pleasure to welcome this joint publication by the Northern Ireland Human Rights Commission and the Human Rights Commission in the Republic of Ireland.

I recommend this booklet to the NGO community in both parts of Ireland and hope that they will find it helpful in their future engagement with the Committee on the Elimination of Racial Discrimination.

Morten Kjærum

Director, Danish Institute for Human Rights

and

Committee Expert, Committee on the Elimination of Racial Discrimination

Introduction

This booklet has been prepared by Commissioners and staff of our two Human Rights Commissions. It is published by the Joint Committee established by the Commissions with the mandate, under the Belfast (Good Friday) Agreement of 1998, to operate “as a forum for consideration of human rights issues in the island of Ireland”. This publication indicates the shared view of both Commissions that racism and racial discrimination are among the most pressing human rights problems in both parts of the island.

All the major international human rights instruments assert that equality is a fundamental right. Any discrimination on such grounds as race, colour, ethnic or national origin or membership of a national minority is a violation of human rights. This is the principle underlying the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), a treaty by which both Ireland and the United Kingdom are bound. The purpose of this booklet is to help Non-Governmental Organisations (NGOs), black and ethnic minority groups, community organisations, pressure groups and others to use the CERD mechanisms in the fight against racism in both parts of Ireland.

In 1978, the government of the United Kingdom told the UN Committee on the Elimination of Racial Discrimination that “the problem of racial discrimination did not exist in Northern Ireland”; in the same year, the Republic’s government signed the CERD treaty, but it failed to ratify it for another two decades. Times have changed since then, and no one now denies the reality of racial prejudice, disadvantage and discrimination. Both governments have publicly and repeatedly committed themselves to the promotion of social inclusion and racial tolerance, and the protection of minority rights. Considerable resources have been devoted to tackling the scourge of racism in both jurisdictions.

Organisations that represent and defend black and minority ethnic communities have a particularly important and valuable role to play in helping both states to recognise and live up to the obligations that they have assumed in ratifying the CERD Convention. Indeed the CERD Committee frequently stresses the need for NGOs not only to provide information to the Committee itself, but to work with governments to ensure that the treaty obligations are understood and honoured.

The two Human Rights Commissions also value the work of NGOs, which continue to have a vital role in the defence of human rights in both parts of the island. We hope that this booklet will enhance and encourage the work of those in the community and voluntary sectors who share our commitment to a fair and inclusive society and will set an example of how we, as statutory Human Rights Institutions, can co-operate with and help those in the NGO and voluntary and community sector.

Maurice Manning

President, Irish Human Rights Commission

Brice Dickson

Chief Commissioner, Northern Ireland Human Rights Commission

1. What is the CERD Convention?

The International Convention on the Elimination of Racial Discrimination (CERD, also sometimes abbreviated as ICERD) is a UN treaty aimed at eradicating racism and racial discrimination worldwide. It urges all states to outlaw discrimination and racist propaganda and to take positive steps to promote harmony and understanding. Both the UK and the Republic of Ireland have ratified the Convention.

The CERD Convention is one of a series of UN-sponsored human rights treaties and declarations that began with the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. The Universal Declaration, although not legally binding on UN members, set out in powerful language the principles that underlie all later developments in human rights law, and it explicitly rejected any form of discrimination based on race or colour. The fight against racism and discrimination has always been central to the UN agenda.

It is worth recalling that the Universal Declaration was partly the result of work by non-governmental organisations (NGOs – this is the term used in the UN system to describe any community-based or voluntary sector group). As the human rights system at the UN has evolved, it has always been open to co-operation with NGOs. This booklet is intended to help NGOs and other groups and individuals opposed to racism in Northern Ireland and the Republic to understand, contribute to and make use of the CERD Convention.

In the decades since the Universal Declaration on Human Rights, there have been many other declaratory or ‘soft law’ standards adopted by the UN, and a much smaller number of treaties. While the scores of ‘soft law’ instruments are very important in establishing best practice in securing human rights, only the treaties are legally binding, and then only for those states that formally adopt them (becoming ‘states parties’, which usually requires not just signature of the treaty but ratification by the country’s parliament).

The CERD Convention is the oldest of the seven main United Nations human rights treaties. It was adopted by the UN in 1965 and came into force in 1969. As of July 2003, some 168 countries have become parties to CERD, whether as the original signatories, by ‘acceding’ to the treaty after its creation, or by new states ‘succeeding’ to the obligations of a defunct state (such as Yugoslavia). Another eight countries have signed the Convention but have not yet ratified it. This makes CERD one of the most widely accepted human rights treaties. Only the Convention on the Rights of the Child (CRC), with 192 states, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 174 states, have been ratified by more parties. These and the other four treaties (on civil and political rights; economic, social and cultural rights; the prevention of torture, and the rights of migrant workers) all contain anti-discrimination clauses that echo the language used in CERD.

The United Kingdom ratified the CERD Convention in 1969 but the Republic of Ireland, although it signed the Convention in 1968, was one of the last countries to ratify it and did not do so until December 2000. However, when the Republic did finally ratify CERD in

2000, it also accepted the right of individual petition under *Article 14* of the Convention, allowing individuals to make complaints against Ireland to the UN Committee that oversees CERD. The UK has not yet accepted the right of individual petition, but it is currently reviewing its position and the Northern Ireland Human Rights Commission (among many others) has urged it to do so.

Some of the issues dealt with by the Convention on the Elimination of Racial Discrimination already arise under other international Human Rights treaties such as the International Covenant on Civil and Political Rights, while employment equality and human rights legislation in Northern Ireland and the Republic now give greatly improved protection to members of racial and ethnic minorities. Nonetheless, this Convention provides a new and potentially powerful tool to enable NGOs and other bodies involved in combatting racism to press for further protection and effective government action. And this is an area where such action is clearly needed if we are to stop the ugly growth of racist attitudes and build a truly tolerant and intercultural society.

The scope of the Convention

As its name implies, CERD requires, by *Article 2*, that all states that are parties to the Convention must pursue a policy of eliminating racial discrimination and promoting harmony and understanding among all racial and ethnic groups. It is a fairly short document and the rights that it protects are set out in the first seven articles (see the full text of the Convention, which is set out at *Appendix V*).

Article 1 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”.

The Convention allows for affirmative action to assist disadvantaged groups. *Article 1(4)* specifically states that special measures taken to secure equality for particular racial or ethnic groups that need such protection will not be regarded as discrimination provided that such measures are not continued any longer than necessary.

Article 2 requires states parties to prohibit racial discrimination, amend or nullify laws or regulations that have a discriminatory effect, ensure that public authorities or institutions do not discriminate on racial or ethnic grounds, and encourage “integrationist multiracial organisations and movements” and ways of breaking down barriers. *Article 2(2)* requires states parties to take “special and concrete measures”, where the circumstances warrant it, to guarantee equality to certain racial groups.

Article 3 prohibits racial segregation and was originally aimed mainly at the apartheid regime in South Africa. More recently, however, the CERD Committee has clarified the scope of the Article through one of the ‘general recommendations’ or ‘comments’ that UN bodies occasionally issue to provide authoritative guidance on the treaties that they oversee. The Committee’s 1995 *General Recommendation XIX* stated that this Article

can also apply to ghettoisation or *de facto* segregation of ethnic minorities, and to policies that lead to such a result.

Article 4 requires states parties to outlaw incitement to racial discrimination or violence, or the propagation of ideas of racial superiority, and to prohibit organisations that promote or incite discrimination. This has proved somewhat controversial, as there is a possibility of conflict with the rights to freedom of expression and association contained in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and non-UN instruments such as the European Convention on Human Rights. This applies particularly to the proposal to prohibit organisations. Article 4 itself states that it should be implemented with due regard to the principles in the Universal Declaration and Article 5 of the CERD Convention itself, which refers to freedom of expression and assembly.

Both Ireland and the UK have legislation outlawing incitement to hatred, but they have entered reservations indicating that they will implement Article 4 only to the extent that it is compatible with the rights protected by the Universal Declaration and Article 5 of the Convention.

Article 5 requires states to guarantee to everyone, regardless of race or ethnic origin:

- equality for all before the courts and justice system;
- protection from violence;
- equal political rights and equal access to the public service;
- and a list of another nine civil rights and 10 economic, social and cultural rights, which are spelled out in the text of the Convention and are rounded off by “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 requires the provision of effective protection and remedies against racial discrimination and a right to compensation for damage resulting from such discrimination.

Article 7 requires governments to combat racial prejudice through the education system and information campaigns.

The remaining Articles provide for the election of a Committee to monitor the implementation of the Convention (*Article 8*); require states parties to submit regular reports on their implementation of their obligations for review by the CERD Committee (*Article 9*); allow the CERD Committee to examine individual complaints against governments where the state parties concerned have so agreed (*Article 14*); and deal with organisational and administrative matters.

Limitations and opt-outs

It is a basic principle of international law that sovereign states enter into treaties voluntarily, and with the right to apply the terms of the treaty in accordance with their understanding of it. They also have the right, in most cases, to opt out of particular parts of the treaty, by recording a ‘reservation’; to limit or extend the territorial application of a treaty; to spell out how they intend to interpret a provision, by recording an ‘interpretative

declaration'; to opt into provisions that give extra effects, such as the individual complaints mechanism in Article 14 of CERD; to stop applying part of the treaty, for example for the duration of a national emergency, by notifying the treaty authority of a 'derogation'; or to withdraw altogether by 'denouncing' the treaty. States parties can object to declarations or reservations made by other states.

Both Ireland and the United Kingdom have recorded reservations to CERD. The texts of their reservations are set out at *Appendix VI*.

Non-citizens, including asylum seekers

There is also an important limitation contained in the text of the Convention itself.

At a time when many of those most vulnerable to racial prejudice and discrimination in the Republic and the UK are asylum-seekers, refugees, or migrant workers, and where many of the complaints of racism centre on the treatment of asylum-seekers, it must be pointed out that **Article 1(2)** states that "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens". And **Article 1(3)** says that the Convention cannot interfere with legal provisions "concerning nationality, citizenship or naturalisation", provided that those provisions do not discriminate against any particular nationality.

However, NGOs and others concerned about asylum-seekers in particular should not be too put off by these provisions. While the CERD Committee is unlikely to criticise overall asylum policy or individual asylum decisions, it has frequently shown that it is very concerned about the actual treatment of asylum-seekers and refugees. And it has also demonstrated concern about differential treatment of citizens and non-citizens. It found Denmark to be in breach of the Convention when a bank refused a loan to a Tunisian because he was not a Danish citizen and the Danish authorities did not act to prevent this discrimination (see *Appendix III*). And at its meeting in Geneva in March 2002, it criticised discriminatory citizenship laws in Qatar.

It seems that the CERD Committee will generally restrict the application of the 'non-citizen' exceptions to matters strictly connected with citizenship applications *per se*, or matters directly linked to asylum or immigration law, and will then apply the Convention's other provisions to any discrimination or differential treatment that is not directly and necessarily connected with citizenship, asylum or immigration applications.

In its Concluding Observations on its examination of recent Reports by the United Kingdom, the CERD Committee criticised the dispersal and 'direct provision' policies for asylum seekers. It urged that their rights be safeguarded in the asylum process, and called on the UK government to send out positive messages about asylum seekers to the general public.

The treatment of migrant workers is also becoming an increasingly important issue in both the Republic and Northern Ireland. Once again the CERD Committee is unlikely to deal with overall government policy on the admission of migrant workers, but NGOs and other interested bodies should not hesitate to raise issues to do with discriminatory treatment of

such workers once they are in the state. Moreover the CERD Committee liaises closely with the International Labour Organisation (ILO) so that the Committee may bring issues about the treatment of migrant workers that are raised with it to the attention of the ILO as well.

2. How does CERD work?

About the Committee

Each of the main United Nations human rights treaties is supervised either by an existing UN body or by a special committee established by the treaty itself. The body that supervises the implementation of CERD is the Committee on the Elimination of Racial Discrimination (often called the CERD Committee). Similar bodies supervise the other treaties like the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination Against Women.

Article 8(1) of the Convention provides for the election of the CERD Committee. It specifies that the Committee must consist of 18 independent experts in the field of racism and racial discrimination, who must be “of high moral standing and acknowledged impartiality”. These experts are nominated by their own governments but elected in a secret ballot by all the states parties to the Convention. Efforts are made to ensure a geographical balance, but there is a major gender imbalance on the Committee and there is currently only one-woman member.

Committee members serve for four years and are mostly lawyers, academics and former diplomats or government officials with experience and expertise in the area. If a vacancy arises, for example by a member’s resignation, the nominating state proposes a replacement, subject to the Committee’s approval. There is one expert from the UK on the Committee at the moment, Patrick Thornberry. There is no member from the Republic. Once elected, the members of the Committee are expected to act independently of the views of their own governments.

The Convention has four mechanisms for getting states which have ratified it (states parties) to try to eradicate racial discrimination and take positive steps to promote racial and ethnic equality and harmony. One of these mechanisms allows for one state party to make a complaint to the Committee against another state party; it has never been used so we will concentrate on the other three procedures – Country Reports, Individual Complaints, and General Recommendations.

Country Reports

Initial Reports

Article 9 requires every state which ratifies the Convention to submit an initial Report within one year of ratification giving details about how it is implementing the Convention, the size and number of ethnic minorities within its boundaries, how they are treated, and the steps being taken to carry out the key provisions of the Convention. This Report is submitted to the CERD secretariat, in the Office of the High Commissioner for Human Rights at the UN in Geneva. Because of the wide scope of the Convention, the initial Report is usually quite lengthy, and is accompanied by a large volume of supporting documentation.

The United Kingdom submitted its first Report in 1970. The UK is also obliged (by *Article 15*) to report on compliance with CERD in its overseas territories. Ireland's first Report was due in January 2002 but had still not been submitted at the time of going to press.

Periodic Reports

After submitting their first Reports under the Convention, states parties are supposedly required to submit Periodic Reports every two years, but in practice the CERD Committee only expects a full Report every four years; an updating Report is requested in the interim, but this is not insisted on. The two-year cycle is the shortest of any of the UN treaties, and it has proven difficult for states parties to meet their reporting obligations; there are many more Reports overdue for CERD (461 as of July 2003) than for any of the other six treaties.

The Periodic Report may cover the whole of the treaty's provisions, but after the first one or two Reports it is normal for the Committee to ask the state to focus on issues of particular concern. The UN is currently reviewing the whole treaty reporting system and this is likely to result in changes to the format and/or frequency of state Reports.

Since Ireland's initial Report is already over a year late, its first Periodic Report will not fall due until two years later. The UK submitted its 16th Periodic Report (due in April 2000) combined with its 17th Report (due in April 2002) at the end of November 2002.

The examination or 'dialogue'

State Reports are reviewed in public session by the 18-member CERD Committee sitting in Geneva. Traditionally this process has been called an examination, but the UN now prefers the term 'dialogue with the state party'. Representatives of the reporting government are usually present and are questioned about their government's policies by the Committee members. One member of the Committee will have been selected as the Country Rapporteur, and he or she will have studied the issues in greater depth than the others and will lead the questioning. Periodic Reports are examined in the same way as

initial Reports except that the Committee naturally focuses particularly on whether its previous criticisms or recommendations have been acted upon.

The public session is a rather formal process and does not present many opportunities for NGOs to inform or seek to influence the Committee; more effective ways to get involved are described in Part 3 below.

UK delegations are usually headed by a senior civil servant from the Home Office, rather than a government minister, and include senior officials dealing with the areas being discussed. For Northern Ireland, that will probably include representation from the Office of the First Minister and Deputy First Minister. Ireland has usually been represented at similar UN Committee hearings by a Minister or the Attorney General and a team of senior officials.

Concluding Observations

Some days after the public session, the CERD Committee adopts a response, called Concluding Observations, to each state's Report. This usually begins with comments on positive developments, but then raises issues of concern to the Committee, and specific suggestions or measures recommended to be taken by the state concerned. These Observations are sent to the government in question and included in the CERD Committee's Annual Report to the United Nations General Assembly. They are public documents and can be obtained from the office of the UN High Commissioner for Human Rights. They are also published on the High Commissioner's website, and should be made available by the government. The Human Rights Commissions in Belfast and Dublin can also provide copies.

The CERD Committee's conclusions are not legally binding and it has no power to enforce them or to impose penalties on defaulting states parties. It works by moral persuasion. However, the Committee's Conclusions do have some teeth because no state wants to be formally criticised in front of its peers at the United Nations for being racist or for not doing enough to stamp out racism in its territory.

A summary of the CERD Committee's comments on Northern Ireland matters in its recent Concluding Observations on the United Kingdom Reports is given in *Appendix IV*.

Individual complaints

Under *Article 14* of the Convention individuals or groups who claim that their rights have been violated can lodge a complaint with the CERD Committee if the state party concerned has signed up to the individual complaints procedure. Ireland has accepted the Article 14 procedure but only if the complaint in question has not been submitted to any other international tribunal. The UK has not yet signed up to the Article 14 procedure so the Committee cannot accept individual complaints against the UK.

The individual complaints procedure under CERD is not as well known as some of the other international complaints mechanisms and to date only 42 of the 168 states parties to the Convention have recognised the competence of the CERD Committee to handle individual complaints. The Committee has completed dealing with only 26 complaints (against just seven states) since the Article 14 procedure came into effect in 1982, while two cases are still awaiting a decision. The volume of complaints has grown over the last five years, though it still averages only three per year.

Complaints, which are called Communications, can be lodged by individuals or groups of individuals. The procedure is not as formal or as legalistic as under the European Convention on Human Rights and the complaints can be a bit broader in scope as CERD contains more positive obligations on its member states, such as taking special measures to improve the position of ethnic minorities and promoting education and information programmes to combat prejudice and promote tolerance.

The Author of a Communication (as a complainant is called) has to exhaust all effective and available remedies in his or her own country before complaining to the CERD Committee. In fact most of the 12 Communications which were held to be inadmissible were ruled out on this ground. Communications must be lodged within six months of the last decision in the domestic system, but this can be extended for exceptional reasons. They must disclose a *prima facie* case of discrimination (that is, they should show that there is a good reason to believe that the state, by its action or failure to act, broke the terms of the Convention).

Article 14 also encourages state parties to establish or designate national bodies to receive complaints about violations of CERD from people who have exhausted all the other domestic remedies but only a small number of states have done so. Ireland is not one of them.

Proceedings under Article 14 have so far been conducted entirely on paper. There have been no oral hearings before the CERD Committee, although the Committee could hold them if members felt it was necessary. The Committee first decides on the admissibility of the Communication and then on the merits, although in a number of cases they have dealt with both stages together. The procedure is a lot quicker than most international mechanisms with most decisions made within about two years and some taking even less time, compared with four to eight years for a typical case before the European Court of Human Rights.

There is no legal aid for taking cases to the CERD Committee and the Committee cannot award costs to a successful applicant, so a number of the cases taken so far have been backed by, for example, anti-racist organisations in Denmark and Norway and Roma support organisations in Slovakia. On the other hand, costs cannot be awarded against an unsuccessful applicant, so removing one possible deterrent to persons seeking to vindicate their rights through this mechanism.

Like other UN bodies that consider individual complaints, the CERD Committee cannot enforce its decisions against states even when it finds that they are in breach of their obligations under the Convention. It cannot order a state party to change the law or pay compensation and its finding does not have legal effect within the offending state unless it has incorporated the Convention into its domestic law. Neither the UK nor Ireland have done so as both states have always been reluctant to incorporate international human rights treaties into their domestic law. The UK did, of course, incorporate most of the European Convention on Human Rights in 1998, but Ireland did not do so until July 2003.

Nevertheless, because of the CERD Committee's role in reviewing the Periodic Reports of the states parties, it can exert significant pressure to try to get its recommendations implemented. Like its Concluding Observations on country Reports, the CERD Committee's findings on Article 14 complaints are often effective because governments do not like being found 'guilty' of human rights violations by international bodies. When they have been found to be in breach, they are usually keen not to repeat the experience. No government wants to be quizzed in public in Geneva about why it has ignored a finding by a key UN body that it is failing in its obligation to combat racism and racial discrimination on its own soil.

Of the 26 cases dealt with so far by the CERD Committee, 12 were held to be inadmissible, and violations of the Convention were found in six of the remaining 14 cases and no violation in the other eight. However, in several of the cases where no violation was found and in some of the inadmissible cases as well, the CERD Committee made comments and recommendations to the countries concerned. These were then followed up in the subsequent examination of those countries' Periodic Reports. As a result, even an unsuccessful case taken to the CERD Committee can still help to highlight discriminatory practices or lead to stronger measures against discrimination.

Because the Committee refers to its own jurisprudence (the decisions that it has taken on earlier cases) and the jurisprudence of other treaty bodies, it is advisable for anyone considering making a complaint under Article 14 to look at the sorts of cases that have already been decided. Some of these are listed, with summaries, in *Appendix III*.

General Recommendations

The CERD Convention is relatively short and is a product of the time when it was drafted. Inevitably issues have arisen of interpretation and clarification, and of ensuring that the treaty remains useful and relevant in a fast-changing world. The monitoring bodies set up under the various UN human rights conventions have come up with a useful way of dealing with this. They can issue General Recommendations, which effectively interpret or expand upon the provisions of the convention in question. (Some of the monitoring bodies call these General Comments.) States parties are expected to take account of these General Recommendations when submitting their Periodic Reports, and they can be relied upon in drafting Article 14 complaints as well.

The CERD Committee has issued 29 of these General Recommendations so far. Some of them are largely administrative but a number have considerable policy significance. The Committee's Secretariat has issued a useful Compilation of its first 27 General Recommendations which can be found on its website, along with the text of more recent Recommendations. The site also has a long document listing all the General Comments and General Recommendations from all the human rights treaty bodies, which is useful since other committees often touch on racial discrimination issues.

One of the most significant and comprehensive Recommendations is *General Recommendation No. XXVII* on "Discrimination against Roma". While it is clearly very important for the fairly small Roma communities in Northern Ireland and the Republic, it has obvious relevance for the treatment of Irish Travellers as well. Adopted in 2000, it urges states parties:

"2. To adopt and implement national strategies and programmes and express determined political will and moral leadership, with a view to improving the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organisation...

"5. To take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin...

"6. To take into account in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination..."

The Recommendation goes on to call for education of the population as a whole in respect and tolerance, in particular towards Roma, and for measures to prevent racist behaviour by the police towards Roma. And in three paragraphs particularly relevant to Travellers as well, it urges states parties:

"31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against any local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside

populated areas that are isolated and without access to health care and other facilities.

“32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities...

“35. To prevent, eliminate and adequately punish any discriminatory practices concerning the access of members of the Roma communities to all places and services intended for the use of the general public, including restaurants, hotels, theatres and music halls, discotheques and others.”

General Recommendation No. XXV on “Gender Related Dimensions of Racial Discrimination” stresses that racial discrimination may affect women in different ways from men and that some forms of discrimination, such as sexual violence and forced sterilisation, may be unique and specific to women, while gender bias may also make it more difficult for women to obtain access to remedies. The Recommendation urges states parties to include in their Reports data broken down by gender to enable the differential effects of prejudice on women and girls to be identified and steps taken to remedy them.

General Recommendation No. XXVIII, adopted in 2002, calls on states parties to include in their Reports information on action plans they have adopted to implement the Declaration and Programme of Action adopted by the UN World Conference Against Racism in Durban, South Africa, in 2001. Both Ireland and the UK are currently drawing up National Action Plans Against Racism (see below).

And one of the Committee’s earliest Recommendations, **General Recommendation No. IV**, adopted in 1973, may have implications for future census questions in the Republic in particular. It urged governments to include in their Reports information on the demographic composition of their populations with particular reference to race and ethnic origin. This was repeated in **General Recommendation No. XXIV**, adopted in 1999, and the CERD Committee often refers to such information as vital to assessing the level of racial prejudice or discrimination in a particular country and planning to eliminate it.

3. How can CERD be used by NGOs and others opposing racism?

Ireland and the United Kingdom voluntarily accepted certain obligations when they each ratified CERD. The CERD Committee members individually and collectively do their best to monitor compliance with the treaty by all the states parties. But for the treaty to have real value in the fight against discrimination and racism, it has to be known and used by individuals, the public sector, and community and voluntary organisations in each state. The Irish and UK governments undertook, by ratifying CERD, “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to... propagating the purposes and principles of... the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention”. But it remains a little-known instrument and both governments need to do more to promote it. The NGO community should insist that they do.

If you work in an organisation that deals with the rights guaranteed by CERD, you can help the CERD Committee do its job, for example by sending it comments on the problems that your group deals with; you can also try to make sure that the government involves groups like yours when it is drawing up its Reports to the Committee, and also when it is responding to any criticisms that the Committee makes; and, if your group is based in the Republic, you might consider supporting an individual or group complaint under Article 14. If you are doing any or all of these things, you can ask for advice and support from your Human Rights Commission, among others.

Helping the work of the Committee

The international system for protecting human rights is chronically short of money. The UN treaty bodies rely on part-time members who are serviced by a small and very hard-pressed secretariat mostly in the Office of the High Commissioner for Human Rights. In the case of CERD, there are 166 states to monitor, each supposed to submit a Report every two years, and all of the Reports that come in have to be considered in the course of only two Committee gatherings per year. The Committee sessions also have to adopt conclusions; to consider what to do about non-reporting countries, or those that are very late in reporting; to discuss and adopt General Recommendations, and to manage a great deal of other business. In an organisation with six working languages, a commitment to freedom of information, and a vast demand for its publications, this is all extremely expensive: just to process one page of a state Report costs in the region of US\$1,200.

The huge task facing the human rights treaty bodies creates a very valuable opportunity for those with high-quality information to offer. Like most UN bodies, the CERD Committee does not have the resources to carry out its own research into the situation in every state party to the Convention. The key objective for any NGO hoping to influence

what is said about its country is to feed in reliable information, at the right time, to those who are most likely to take an interest.

However dedicated they may be, it is scarcely possible for every Committee member to read every word of every country Report. And it is often the case that a reporting country will, for its own reasons, omit some of the most relevant information or bury it in page after page of less useful material. But if an NGO can provide the Committee, or its members, with a short, readable, highly-focused and, above all, accurate report on the situation in a particular country, there is every chance that it will find a grateful and attentive readership.

The other side of this coin is that an NGO input can become part of the problem if, instead of helping the Committee members to grasp the key points, it simply deluges them with even more pages of dense prose and unfathomable or unreliable statistics. What is more, if an NGO contribution makes serious claims but fails to provide any evidence, or if it looks too much like an angry attack on the government of the day, it is a lot less likely to hit home than a clearly reasoned document with a calm tone. The credibility of your NGO will be severely damaged if anything that you say to the UN system is easily refuted by your government; but an argument that relies on statistics from the state itself may be very hard to counter.

So long as you bear in mind that you are aiming to help the Committee do its job, there are a number of opportunities for your NGO to intervene. And this applies as well to trades unions, churches, academics, or anyone else who is concerned about racism and racial discrimination.

Commenting on government Reports

The CERD Committee is very open to receiving information from NGOs about the situation in each state party, especially coming up to their review of the state party's Reports, and it has recently urged NGOs to continue supplying such information in good time (General Recommendation No. XXVIII, adopted in March 2002). This is often the only way the Committee can check the accuracy of the state party's Reports. The Committee has also urged National Human Rights Institutions (NHRIs) to supply it with information about the position in their home countries. These are bodies like the Human Rights Commission in the Republic, and the Northern Ireland Human Rights Commission (which is treated as an NHRI even though it is limited to one region of the UK). The Committee also welcomes inputs from other public bodies such as ombudsman offices, equality authorities and anti-discrimination agencies. But NGOs in particular often act as the eyes and ears of the Committee.

Soon after a state Report is submitted to the Committee, the NGO (or other interested body) should obtain a copy. This will be available free of charge from the Department of Foreign Affairs (for the Republic) or from the Home Office (for the UK): both addresses are in Appendix II. It is important that your own submission to the CERD Committee takes account of what the official Report says: for example, there is no need to repeat

information that is given accurately by the state, nor would you want to base your document on a draft of the state Report in case the final text is quite different.

Study the state Report carefully and identify any gaps or weaknesses. Depending on how much you want to challenge in the Report, or add to it, there are three main options. Possibly the most effective way for interested bodies to get their views heard by the CERD Committee is to submit a 'shadow' report that has the same format as the official Report, making it easier for Committee members to follow it. But unless yours is a major representative organisation, that may be too ambitious. You could then consider getting together with other organisations to do a joint NGO report, which might carry even more weight; you should in any case try to find out which other groups or networks are planning to make submissions, and what they intend to say. Finally, you have the option of putting together a shorter document that just highlights the special concerns of your organisation or community.

Whether you are submitting a two-page document on a single issue, or a more substantial report covering many Articles of the Convention, remember the importance of clarity, accuracy and brevity. Check facts and state sources. Where possible, relate the points you are making to specific Articles and paragraphs of the Convention, and to section or paragraphs of the state Report; do not clutter up the paper with material on matters not covered by CERD. If the document is long, cut it down, put an executive summary at the front, and break up the text with tables, boxes or bullet-point lists. Use numbered paragraphs. Remember that although English is the main working language of the United Nations, many Committee members do not have English as their first language, and NGO documents are not translated. Unless your group has the resources to produce the submission (or a summary of it) in another official UN language (French, Spanish, Russian, Chinese or Arabic), you should use only standard English, and avoid abbreviations or expressions that are not likely to be understood by a non-native speaker with limited knowledge of your country.

Any submission intended to influence the examination of the Report, now called the 'dialogue with the state party', will need to get to the Committee well before the date set for that country's session. You can check that date on the UN website, or (for the Republic) by contacting the Department of Foreign Affairs or the Irish Human Rights Commission; or (for the UK Report) contact the Home Office Race Equality Unit or the Northern Ireland Human Rights Commission.

The Committee's secretariat normally prepares a presentation to Committee members a few months or weeks before the state Report is due to be considered; this briefing draws on all the material, including NGO submissions, that are available at the time. If you want to make sure that your material is included, you can check the timing of the briefing with the CERD secretariat, or with the Human Rights Commission in Belfast or Dublin. But if you miss that deadline, you can still post or e-mail your submission to the secretariat and they will pass it on to the members; obviously something that arrives a few weeks before the Committee meets is much more likely to get through to members, and to be read, than a last-minute e-mail. You should if possible plan to send 40 paper copies as well as an e-mailed version of your submission.

It is really worth putting in the effort to send information to the CERD Committee, and the Committee will appreciate it: although its members and staff have great expertise, the Committee can only take up those issues on which it has good information. This process gives NGOs, NHRIs and other interested bodies a unique opportunity to comment on, challenge, and criticise where appropriate, their government's policies before a world stage, and perhaps secure Comments or suggestions from the CERD Committee that may lead their government to change or modify its policies.

Lobbying and informing Committee members

It is important to realise that you do not have to engage with the UN system only through written responses to your government's Reports. It is also possible to send information to the Committee at any time, either through the secretariat in Geneva or by contacting those members (the great majority) who allow the secretariat to disclose their details. Material that arrives between Reports is stored centrally and made available for the next reporting cycle. It is especially important to send material to the country rapporteur, that is, the Committee member who will lead the examination of the Report. The Human Rights Commissions (in Belfast and Dublin) can tell you who the country rapporteur is and may also be able to give you individual members' contact details. The official address for the CERD secretariat is in Appendix I.

There are also some (limited) opportunities to talk face to face to Committee members. For example, the country rapporteur, or another member, may come to your country on some other business and you might be able to arrange a meeting.

Every one of the UN human rights committees has a slightly different way of doing things, and unfortunately, from the NGO point of view, the CERD Committee does not follow the practice of several other committees in holding 'pre-sessional hearings' where NGOs can talk directly to the Committee. Generally, however, if NGOs from a state party wish to attend the public session of 'dialogue' on the state Report, the Committee will set aside some time to meet them informally, for example during the lunch break on the day before the session. This gives a final opportunity for NGOs to remind the Committee of their concerns, and to feed in last-minute information (but you should not expect the Committee to be able to react instantly to any new issues that you raise at this late state). There is no translation service at these informal meetings so generally only Committee members with good English attend.

If your NGO is especially interested in racism and discrimination, you may want to attend the hearing on the UK or Irish Report. This is not difficult to arrange, nor is it very expensive. There are a few low-cost airlines flying between Geneva and several English airports, and scheduled services with other carriers. Before you go you need to contact the CERD secretariat to arrange for 'accreditation'. This normally means that your organisation has to write a short letter saying why you want to attend. The secretariat adds your name to a list. When you arrive in Geneva, you take your passport to the UN accreditation centre just beside the main UN building, fill in a form and get a photographic ID card. This will get you into the main UN building, called the Palais des

Nations, and into the human rights headquarters a mile or so away at the Palais Wilson. The CERD sessions may be in either of these buildings.

Apart from any lunchtime meeting that may be arranged, you may find it difficult to talk to the Committee members. Representatives of NGOs (and various other observers) sit at the back of the room where the public session takes place, and they have no right to speak unless invited to do so. You cannot interrupt Committee members in the middle of a meeting and, since their work programme is very intense, some members do not like to be approached during the breaks. You can, however, bring copies of your organisation's report or statement, and set them on a table at the side of the room. If it is your first time, seek out people who can give you friendly advice, and maybe introduce you to Committee members. There will be other NGO people around, including representatives of international networks that your group may be part of. There may also be one or two people from the Human Rights Commissions and other public bodies. Since there will also be government representatives present, from departments and units with a special interest in race and discrimination issues, the session should provide plenty of opportunities for making new contacts and promoting your organisation.

National/regional audits and strategies

So far we have talked about what happens after the Report from the government is submitted. But this is less than half the story; for anti-racist NGOs, the real work is not about using the CERD reporting process to get your government's record assessed, but about using your government's acceptance of CERD obligations to try to improve the situation on the ground. This treaty has not yet been written into either UK or Irish law, but it can make a difference.

The process of compiling a CERD Report requires governments to address the issues of racial prejudice and discrimination in their own societies. They have to carry out periodic audits of their policies from the perspective of the impact those policies can have on racial and ethnic minorities and on racial harmony. That in itself is a valuable exercise and they then have to subject themselves to outside scrutiny of their policies and record. If the CERD Committee does criticise some aspects of law, practice or Government policy, then NGOs in particular can use that criticism as a valuable campaigning tool to secure change.

So NGOs must do three things.

- *They must study CERD and decide for themselves whether the human rights that the treaty defines are being protected or violated.*
- *They must help the body in charge of monitoring the treaty, the CERD Committee, to do its job.*
- *But they must also engage positively with all relevant government departments and public bodies to ensure that those authorities are taking note of what the treaty says and what the Committee says.*

The last task has two aspects: the pre-Report phase, where NGOs should seek opportunities to influence what the government tells the Committee, and the follow-up phase, where NGOs need to press government to take positive action to address the problems that the Committee identifies.

In the pre-Report work, there should be several round-table meetings between government officials and representatives of ethnic community organisations, human rights pressure groups and advice services, the equality and human rights agencies, and others with expertise on the matters covered by the treaty. Government should be willing to circulate successive drafts of the Report among this group, and should as far as possible try to address any shortcomings in its content. However, at the end of the day, it is the government's document and it may choose to ignore the suggestions of NGOs, the human rights and equality bodies, or anybody else. Of course, if it does, this could be brought to the attention of the CERD Committee.

After the Committee issues its Concluding Observations, the NGOs and others (collectively or individually) should ask government for a plan of action, with targets and timescales, to deal with the problems that the Committee has highlighted. Not everything that the NGOs raise will be included, but it is likely that enough areas of concern will be set out to provide the basis for a strong campaign. In the past, some governments have tended to relax after the examination, and to do little about the criticisms until another reporting cycle comes around. That is not acceptable and both Human Rights Commissions would strongly oppose such an approach. The NGO community in both states is also much more alive nowadays to the value of UN comments in holding governments to account.

Some NGOs in the Republic have already done this with the findings of the UN Human Rights Committee under the International Covenant on Civil and Political Rights, which is similar to the CERD process. The Children's Rights Alliance has also used the UN Convention on the Rights of the Child (CRC) in the same way and a number of women's groups have made effective use of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In the UK, the main children's rights NGOs and the Northern Ireland Human Rights Commission have been involved in discussions about following up on the CRC Concluding Observations, and the Joint Parliamentary Committee on Human Rights (JCHR) has held hearings on the CRC and another UN treaty, the International Covenant on Economic, Social and Cultural Rights.

The JCHR will probably make a practice of following up CERD Concluding Observations, at least until some other body (such as the proposed human rights institution for England and Wales) takes on that role. Contact details for the JCHR, which always welcomes evidence from NGOs, are given in Appendix II. To date the corresponding body of the Oireachtas, the Joint Committee on Foreign Affairs Sub-Committee on Human Rights, has not routinely discussed the Concluding Observations of treaty bodies, but it may do so for CERD. If the CERD Committee raises issues about legislation, these might also be addressed by the Joint Committee on Justice, Equality, Defence and Women's Rights. After the first Irish report has been considered, the Irish Human Rights Commission will try to ensure that the Concluding Observations are discussed by the appropriate body and will help NGOs to make representations.

Regardless of what happens in the Oireachtas, there will certainly be consultation between government and civil society through the National Consultative Committee on Racism and Interculturalism.

The World Conference Against Racism and National Action Plans

The UN-sponsored World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in September 2001 adopted a Programme of Action and called on all governments to draw up National Action Plans to combat racism. Both the UK and Irish governments have committed themselves to implementing the Durban Programme and drawing up National Action Plans.

The CERD Committee strongly supported the Durban Conference and at its meeting in March 2002, the Committee urged all states parties to include in their country Reports information on their plans for implementing the Durban Programme of Action. In its comments on the individual Reports reviewed at the March 2002 meeting and subsequent meetings, the Committee several times repeated that request.

As a result, NGOs and lobbying groups will have an opportunity to raise both the content of the Irish and UK National Action Plans and the rate of progress in implementing them when the two governments' Reports are next reviewed by the CERD Committee. Since part of the UK National Action Plan needs to address the specific circumstances of Northern Ireland, there is also an opportunity for NGOs to work with the Northern Ireland Departments on the development of what is being called the Race Equality Strategy, which is being co-ordinated by the Office of the First Minister and Deputy First Minister. The overall UK Plan (known as NAPAR) is being developed by the Race Equality Unit in the Home Office, and the National Action Plan for Ireland (known as NPAR) is the responsibility of the Department of Justice, Equality and Law Reform. Contact addresses are given in Appendix II. At the time of writing the Steering Group for the Irish NPAR had just published the outcome of its consultative process for the National Action Plan.

The role of national human rights institutions

This booklet is aimed at helping community and voluntary organisations to engage with the UN monitoring process, so when we say that the "official" human rights bodies—the Northern Ireland Human Rights Commission and the Irish Human Rights Commission—also provide information to the CERD Committee and engage in follow-up work, we do not mean to discourage NGOs from taking part independently. The two Commissions try hard to keep in touch with the black and minority ethnic sector, and with other human rights NGOs, but they recognise that community-based groups have a special expertise and knowledge, and they may have priorities and perspectives that are different from those of the Commissions.

The Northern Ireland Human Rights Commission has been in existence since 1999, and after some initial difficulties it now has a reasonably effective working relationship with the various government offices involved in treaty monitoring. The Irish Commission is a

relatively new body but it is working to develop the same sort of relationship with the corresponding Departments in the Republic. In both cases, the Commissions work from a model agreed by the United Nations as the best role for what the international community terms a 'National Human Rights Institution' or NHRI. The Paris Principles, endorsed by the UN General Assembly in 1993, say among other things that NHRIs should be able to advise governments and parliaments "on any matters concerning the protection and promotion of human rights"; they should promote the harmonization of laws with international human rights instruments, and the implementation of those instruments; they should contribute to reports to treaty bodies, and may express their own opinions on such reports; they should co-operate with the UN system and other human rights systems, and they should publicise "efforts to combat all forms of discrimination, in particular racial discrimination". They are also expected to "develop relations with the non-governmental organisations devoted to protecting and promoting human rights... to combating racism [and] to protecting particularly vulnerable groups (especially... migrant workers [and] refugees)".

Since the official Reports to the CERD Committee are the sole responsibility of the State party, the contribution of the two Commissions to them will normally be limited to providing the governments with comments on drafts to ensure, as far as possible, that the documents that go to the UN give a full and accurate picture. The governments are not obliged to take account of any views that the Commissions give, and therefore it is likely that the Commissions will prepare their own independent submissions to the treaty body. These will usually be prepared in consultation with the NGO sector, and for smaller NGOs that do not want to make their own submissions, this may be a good opportunity to feed in their information and opinions.

By and large the UN system has tended to treat NHRIs in much the same way as NGOs. They were not normally given special opportunities to speak in committee sessions, but their reports may have been regarded by some committee members as more independent and authoritative than those of campaigning groups. Of course this was not always the case; some NGOs submitted excellent information and some national institutions were not truly independent or were unable to work the UN system. The UN human rights bodies are now tending to give a bigger role to NHRIs and to place more weight on their submissions. The two Commissions are committed to making use of this opportunity to the best of their ability but it is for others to judge how effective they are.

The CERD Committee has repeatedly expressed its support for National Institutions that help to further Convention rights, whether these are broad-based NHRIs or specialist bodies dealing with racial discrimination. For example, General Recommendation No. XVII (1993) called on States parties to establish National Institutions to promote CERD principles. General Recommendation No. XXVIII (2002) noted "the important role that national human rights institutions play in combating racism and racial discrimination, and... the need to strengthen such institutions and provide them with greater resources".

The Committee is also happy to take information from anti-discrimination bodies such as (in Northern Ireland) the Equality Commission and (in the Republic) the Equality Authority and the National Consultative Committee on Racism and Interculturalism (NCCRI). The two Human Rights Commissions are keen to co-operate with other public

sector agencies, but it is a matter for those bodies as to whether they engage directly with the UN system. To date only the Equality Commission has done so, commenting on some Northern Ireland matters in the UK Report. In the Republic, the Equality Authority has been involved in gathering information for the official Report but does not at present anticipate making a separate input. The NCCRI will provide information and support to help NGOs make submissions, and will offer independent advice to the Irish government and the CERD Committee on the Irish context, but has not yet decided whether it will make a submission on its own behalf; its role may change and evolve over time. It has been involved (as has the Irish Human Rights Commission) in consultations with the government about the Ireland's Initial Report to the CERD Committee.

Using the individual complaints procedure

We will now look at the Article 14 procedure for dealing with individual complaints. Because the UK has not yet accepted the Committee's jurisdiction under Article 14, only readers in the Republic can lodge individual complaints for the moment. However, the decisions of the Committee on such complaints are an important indicator of the Committee's views on issues that are likely to be raised in connection with the UK's country reports. And, of course, the Northern Ireland Human Rights Commission will continue to urge the UK government to allow individual complaints to be made under Article 14.

Like most international complaints procedures, the CERD procedure is long drawn-out and somewhat frustrating. As we have already indicated, complaints can only be made where domestic remedies have been exhausted and must then be submitted within six months of the final domestic decision. There is no legal aid for taking individual complaints, so this option is only really feasible where the complainant is backed by an organisation that can fund him or her. On the other hand, making a complaint to the CERD Committee is less costly than taking a domestic court case as the work is essentially done by written submissions. The Committee can hold oral hearings if necessary but it generally does not do so, so there are no travel costs and costs cannot be awarded against an unsuccessful litigant.

How to raise an issue under Article 14

A complaint under Article 14 can be submitted in writing to the Petitions Team at the address given in Appendix I. It can also be made by e-mail to tb-petitions.hchr@unog.ch. The UN website gives guidance on how to present the complaint; look for Factsheet No. 7, at <http://193.194.138.190/html/menu6/2/fs7.htm>. Advice is also available from the Northern Ireland Human Rights Commission or the Irish Human Rights Commission.

Appendix III indicates the sorts of issues that have been dealt with so far under Article 14. The complaints where violations have been found involved:

- *Gross discrimination against Roma families by Slovakian municipalities (Koptova -v- The Slovak Republic, August 2000);*

- *Refusal of a bank loan to a Tunisian living in Denmark because he was not a Danish citizen and failure by the Danish authorities to remedy this (Ziad Habassi -v- Denmark, 1999);*
- *Residents in the Dutch city of Utrecht preventing a Moroccan immigrant from occupying an apartment allocated to him by the municipal authorities. The state failed to provide him with an effective remedy (LK -v- The Netherlands, 1993);*
- *Failure by the police and public authorities to investigate properly claims by a Danish citizen of Pakistani origin that he had been abused and discriminated against by school authorities (Kashid Ahmad -v- Denmark, 2000);*
- *Failure of the Dutch authorities to provide a remedy when a Turkish immigrant was dismissed from her job for discriminatory reasons (Yilmaz-Dogan -v- The Netherlands, 1988).*
- *Failure of the Australian courts to prohibit use of an offensive term in the name of a football stand (Stephen Hagan -v- Australia, 2003).*

The Committee cannot enforce its rulings against the state party concerned, but where it finds a violation of the Convention, it generally makes recommendations that the state party should change the law or practice concerned. The Irish Government, which has accepted the Article 14 procedure, is sensitive to such rulings by international bodies, though it can be slow to implement them. Nevertheless, the Article 14 procedure could be a useful tool for seeking changes in the law in the Republic. And even unsuccessful cases can have an effect (as also discussed in Appendix III). Most of the individual complaints which did not succeed were ruled inadmissible for technical reasons and in a number of such cases the Committee took the opportunity to make recommendations to the state party anyway.

Article 14 can only be used when all domestic remedies have been tried and failed, so with the growing use of the Republic's post-1998 equality and equal status laws, there may be less scope for making individual complaints under the CERD Convention. However, it is likely that there will still be some areas where there are gaps in the legislation and an where an Article 14 complaint to the CERD Committee would put added pressure on the Irish Government to fill such gaps before it is found to have violated a provision of the Convention.

One area in particular where the CERD Committee might find the Republic's laws to be wanting is on the question of the prohibition of incitement to racial hatred and racist propaganda, and the issue of racist abuse. The Irish Government has already acknowledged that the Republic's Prohibition of Incitement to Hatred Act is ineffective and is reviewing its provisions. If the review is too long drawn-out, or if the result is unsatisfactory, interested NGOs and others could decide to highlight the issue to the CERD Committee as a way of putting pressure on the Government. They might consider supporting an Article 14 complaint by a victim of incitement to hatred or racist abuse who has got no satisfaction through the domestic legal system.

APPENDIX I

The CERD Committee

As noted above, members of the Committee on the Elimination of Racial Discrimination (called Committee Experts) are elected from a list of candidates proposed by states parties. There are 18 members each serving four-year terms, with elections for half of the posts taking place every two years. Each state may nominate one person, and the voting takes place by secret ballot at a Meeting of States Parties. Those securing the highest number of votes are elected, provided that they have the support of an absolute majority of states parties. The Committee elects its own “Bureau” of officers for a two-year term.

Members elected in 2000, terms of office expiring in 2004:

Marc BOSSUYT (Belgium)
Ion DIACONU (Romania – chairperson)
Patricia Nozipho JANUARY-BARDILL (South Africa)
Raghavan Vasudevan PILLAI (India – vice-chairperson)
TANG Chengyuan (China)
Mohamed Aly THIAM (Guinea)
Luis VALENCIA RODRÍGUEZ (Ecuador)
Mario Jorge YUTZIS (Argentina – vice-chairperson)
The Russian expert, Yuri Reshetov, died in office in 2003.

Members elected in 2002, terms of office expiring in January 2006:

Mahmoud ABOUL-NASR (Egypt)
Nourredine AMIR (Algeria – vice-chairperson)
Régis de GOUTTES (France)
Patrick THORBERRY (United Kingdom – rapporteur)
Kurt HERNDL (Austria)
Morten KJAERUM (Denmark)
Jose A. Lindgren ALVES (Brazil)
Agha SHAHI (Pakistan)
Linos Alexander SICILIANOS (Greece)

Contacting the Committee

Mailing address: CERD, OHCHR, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland. (The secretariat is actually located in the Palais Wilson.)
Telephone +41 (22) 917 9395; fax +41 (22) 917 9022.

The Secretary of the Committee is Nathalie Prouvez (nprouvez@ohchr.org).

APPENDIX II

Other useful addresses

Amnesty International Irish section

Seán MacBride House, 48 Fleet Street, Dublin 2

Tel. (01) 677 6361; fax (01) 677 6392; e-mail info@amnesty.ie; <http://www.amnesty.ie>

Department of Foreign Affairs

Iveagh House, St Stephen's Green, Dublin 2

Tel. (01) 478 0822; <http://www.gov.ie/iveagh/> (see under "Policies" for link to Human Rights Unit; the website also carries the text of human rights treaty reports and Concluding Observations)

Department of Justice, Equality and Law Reform

72-76, St Stephen's Green, Dublin 2

Tel. (01) 602 8202; fax (01) 661 5461; e-mail equalityinfo@justice.ie;
<http://www.justice.ie/> (includes link to National Action Plan web pages)

Equality Authority

Clonmel Street, Dublin 2

Tel. (01) 417 3333; fax (01) 417 3366; Lo-Call number 1890 245545; Text Phone (01) 4173385; e-mail info@equality.ie; <http://www.equality.ie/>

Garda Racial and Intercultural Office

Tel. (01) 666 3150; <http://www.garda.ie/angarda/racial.html>

Irish Council for Civil Liberties (ICCL)

Dominick Court, 40-41 Lower Dominick Street, Dublin 1

Tel. (01) 878 3136; fax (01) 878 3109; e-mail iccl@iol.ie; <http://www.iccl.ie/>

Irish Human Rights Commission (IHRC)

17-19 Lower Hatch Street, Dublin 2

Tel. (01) 647 2562; fax. (01) 647 2515; e-mail ihrc@eircom.net;
<http://homepage.eircom.net/~ihrc/>

Irish Traveller Movement

4-5 Eustace Street, Dublin 2

Tel. (01) 679 6577; fax (01) 679 6578; e-mail itmtrav@indigo.ie;
<http://www.itmtrav.com/>

Know Racism / National Anti-Racism Awareness Programme

Bishop's Square, Redmond's Hill, Dublin 2

Tel. (01) 479 0272; fax (01) 479 0201; e-mail info@antiracism.gov.ie;
<http://www.knowracism.ie>

National Consultative Committee on Racism and Interculturalism (NCCRI)

20 Harcourt Street, Dublin 2

Tel. (01) 478 5777; fax (01) 478 5778; e-mail nccri@eircom.net;

<http://www.nccri.com/>

Office of the Director of Equality Investigations (ODEI—the equality tribunal)

3 Clonmel Street, Dublin 2

Tel. (01) 477 4100; fax (01) 477 4141; e-mail info@odei.ie; <http://www.odei.ie>

Pavee Point Travellers Centre

46 North Great Charles Street, Dublin 1

Tel. (01) 878 0255; fax (01) 874 2626; e-mail pavee@iol.ie; <http://www.paveepoint.ie>

1990 Trust / Black Information Link

Suite 12, Winchester House, 9 Cranmer Road, London SW9 6EJ

Tel. 020- 7582 1990; fax 0870 127 7657; e-mail blink1990@blink.org.uk;

<http://www.blink.org.uk/>

Department for Constitutional Affairs Human Rights Unit

Selborne House, 54-60 Victoria Street, London SW1E 6QW

Tel. 020-7210 8500; e-mail humanrightsunit@homeoffice.gsi.gov.uk;

<http://www.lcd.gov.uk/hract/hramenu.htm>

Home Office Race Equality Unit

Public Enquiry Team, Home Office, 7th Floor, 50 Queen Anne's Gate, London SW1H 9AT

Tel. 0870 000 1585; fax 020-7273 2065; Textphone 020-7273 3476; e-mail public.enquiries@homeoffice.gsi.gov.uk;

<http://www.homeoffice.gov.uk/inside/org/dob/direct/reu.html>

Joint Committee on Human Rights (JCHR)

Committee Office, House of Commons, 7 Millbank, London SW1P 3JA

Tel. 020-7219 2797; fax 020-7219 8393; e-mail jchr@parliament.uk;

http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm

Joint Council for the Welfare of Immigrants (JCWI)

115 Old Street, London EC1V 9RT

Tel. 020-7251 8708; fax 020-7251 8707; e-mail info@jcwi.org.uk;

<http://www.jcwi.org.uk/>

JUSTICE

59 Carter Lane, London EC4V 5AQ

Tel. 020-7329 5100; fax 020-7329 5055; e-mail admin@justice.org.uk;

<http://www.justice.org.uk/>

Liberty

21 Tabard Street, London SE1 4LA

Tel. 020-7403 3888; fax 020-7407 5354; e-mail info@liberty-human-rights.org.uk;
<http://www.liberty-human-rights.org.uk/>

Runnymede Trust

Suite 106, The London Fruit & Wool Exchange, Brushfield Street, London E1 6EP
Tel. 020-7377 9222; fax 020-7377 6622; e-mail info@runnymedetrust.org;
<http://www.runnymedetrust.org/> (includes information on the UK Race and Europe Network—UKREN)

Amnesty International Northern Ireland

397 Ormeau Road, Belfast BT7 3GP

Tel. (028) 9064 3000; e-mail enquiriesni@amnesty.org.uk;
<http://www.amnesty.org.uk/amnesty/nationaloffices/ni/index.shtml>

Committee on the Administration of Justice (CAJ)

45-47 Donegal Street, Belfast BT1 2BR

Tel. (028) 9096 1122; fax (028) 9024 6706; <http://www.caj.org.uk/>

Equality Commission for Northern Ireland (ECNI)

Equality House, 7-9 Shaftesbury Square, Belfast BT2 7DP

Tel. (028) 9050 0600; fax (028) 9024 8687; Text phone (028) 9050 0589; e-mail
information@equalityni.org; <http://www.equalityni.org/>

Northern Ireland Council for Ethnic Minorities (NICEM)

3rd Floor, Ascot House, 24-31 Shaftesbury Square, Belfast BT2 7DB

Tel. (028) 9023 8645; fax (028) 9031 9485; e-mail info@nicem.org.uk;
<http://www.nicem.org.uk>

Northern Ireland Human Rights Commission (NIHRC)

Temple Court, 39 North Street, Belfast BT1 1NA

Tel. (028) 9024 3987; fax (028) 9024 7844; e-mail information@nihrc.org;
<http://www.nihrc.org>

OFMDFM Race Equality Unit

Anti-Discrimination Branch 1, Office of the First Minister & Deputy First Minister,
Room E3.19, Castle Buildings, Stormont, Belfast BT4 3SR

Tel (028) 9052 3248 or 9052 3417; fax (028) 9052 3323; e-mail
Race.Equality@ofmdfmni.gov.uk; <http://www.ofmdfmni.gov.uk/raceequality/>

OFMDFM Human Rights Unit

Community Relations, Human Rights and Victims Division, Office of the First
Minister & Deputy First Minister, Room A5.18, Castle Buildings, Stormont Estate,
Belfast BT4 3SR

Tel. (028) 9052 8477; fax (028) 9052 8426; e-mail human.rights@ofmdfmni.gov.uk;
<http://www.humanrightsni.gov.uk/index.cfm>

European Commission against Racism and Intolerance (ECRI)

Conseil de l'Europe, F-67075 Strasbourg CEDEX, France

Fax +33 3 8841 3987; <http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/>

European Council on Refugees and Exiles (ECRE)

Clifton Centre, Unit 22, 3rd Floor, 110 Clifton Street, London EC2A 4HT

Tel. 020-7729 5152; fax 020-7729 5141; e-mail ecre@ecre.org; <http://www.ecre.org/>

European Monitoring Centre on Racism and Xenophobia (EUMC)

Rahlgasse 3, A-1060 Vienna, Austria

Tel. +43 (1) 580 30-0; fax +43 (1) 580 30-99; e-mail information@eumc.eu.int;

<http://www.eumc.at/>

European Network Against Racism (ENAR)

43 rue de la Charité, B-1210 Brussels, Belgium

Tel. +32 (2) 229 3570; fax +32 (2) 229 35 75; e-mail info@enar-eu.org,

<http://www.enar-eu.org>

Anti-Racism Information Service (ARIS)

14, avenue Trembley, 1209 Geneva, Switzerland

Tel. +41 (22) 740 3530; fax +41 (22) 740 3565; e-mail [centre-docs@antiracism-](mailto:centre-docs@antiracism-info.org)

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

International Service for Human Rights (ISHR)

Rue de Varembé 1, Case postale 16, CH-1211 Geneva 20, Switzerland

Tel. +41 (22) 733 5123; fax +41 (22) 733 0826; e-mail inf@ishr-sidh.ch;

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

International Federation of Human Rights Leagues (FIDH)

17, passage de la Main d'Or, 75011 Paris, France

Tel. +33 (1) 4355 2518; fax +33 (1) 43 55 18 80; [http://www.fidh.org/fidh-](http://www.fidh.org/fidh-en/index.htm)

[en/index.htm](http://www.fidh.org/fidh-en/index.htm)

We know that this is not a comprehensive list, but many of the websites listed provide links to other organisations of interest. We would be grateful if readers could let us know of any other contacts that you have found helpful in your work on CERD issues.

Article 14 cases

As explained in part 2 above, states that ratify CERD can choose to allow individuals to bring complaints to the CERD Committee once they have exhausted all appropriate domestic remedies. Part 3 explains the procedure for making a complaint. This optional procedure has been accepted by Ireland (so long as the same complaint has not been made to another international body) but it has not yet been accepted by the United Kingdom. The following cases illustrate how the Committee has dealt with complaints that, in its opinion, showed unsatisfactory implementation of CERD, even in some of the cases where it did not actually find that the complainant's rights had been violated.

More details of these and other CERD cases can be found on the UN website at <http://www.unhcr.ch/html/menu2/8/art14.htm>.

Cases where a violation of the Convention was found

Yilmaz-Dogan -v- The Netherlands (No. 1/1984)

Complaint lodged in 1984, Decision given in 1988

Discrimination against a pregnant Turkish worker

Ms Yilmaz-Dogan was a Turkish national living in the Netherlands and working in a textile firm. In 1982 her employer applied to a local court to terminate her contract when she became pregnant. He complained that when a Dutch worker had a baby, she stopped working, but foreign women workers kept on working "and at the slightest setback disappear on sick leave under the terms of the Sickness Act". He said that employers could not afford such conduct. The court approved the termination of the contract. There was no procedure for appealing against its decision.

Ms Yilmaz-Dogan then asked the Public Prosecutor to file charges against her employer under the law outlawing racial discrimination. He refused and his refusal was upheld by the Court of Appeal, which said that while the employer's remarks were objectionable, it was not clear that he intended to discriminate on racial grounds.

No further appeal was possible so Ms Yilmaz-Dogan complained to the CERD Committee that the Netherlands had violated her right to equal access to work (**Article 5(e)(i)** of the Convention) and to an effective remedy (**Article 6**), and had failed to take criminal proceedings against her employer for racial discrimination, as required by **Article 4** of the Convention.

The CERD Committee held that the Netherlands had not sufficiently protected Ms Yilmaz-Dogan's rights to equal access to work under **Article 5**. It rejected the complaints under **Articles 4** and **6**, saying that the state was not obliged to prosecute in all such cases. The Committee urged the Dutch authorities to try to secure other employment for Ms Yilmaz-Dogan and/or provide her with some other remedy.

LK -v- The Netherlands (No. 4/1991)

Complaint lodged in 1991, Decision given in 1993

Moroccan prevented from occupying local authority house

Mr LK was a partially disabled Moroccan citizen living in the Netherlands. In 1989 he was allocated a local authority house in Utrecht. When he went to view the house, a crowd gathered shouting “no more foreigners” and threatened to burn the house and wreck his car if he moved in. Residents then sent a petition to the local authority refusing to accept him in their street. Mr LK complained to the police and asked them to prosecute the protestors and petitioners under the anti-discrimination laws. The police decided to take no action and he asked the Court of Appeal to order a prosecution. It rejected his application in 1991 on the grounds that the petition was not deliberately insulting and did not constitute an incitement to discriminate. The Supreme Court refused to intervene.

Mr LK then complained to the CERD Committee about breaches of his rights to freedom of residence (**Article 5(d)(i)**), to equal access to housing (**5(e)(iii)**), and to an effective remedy (**Article 6**). He also complained about breaches of the State’s obligation to prohibit racial discrimination (**2(1)(d)**), and to prevent public authorities from promoting discrimination (**4(c)**).

The CERD Committee held that the residents’ remarks and their threats to Mr LK constituted incitement to discrimination and violence. The Committee said that the mere enactment of a law prohibiting discrimination did not fulfil a country’s obligations under the Convention. The Committee accepted that the Dutch authorities had discretion as to when to prosecute, but said that in Mr LK’s case the authorities had not acted with due diligence and expedition and had not afforded him adequate protection and remedies.

The Committee recommended that the Dutch authorities provide Mr LK with appropriate relief and review their policy and procedures on prosecuting for racial discrimination. They asked the Netherlands government to include information on the measures taken by it in the Netherlands’ next Periodic Report under the Convention.

Ziad Ahmed Habassi -v- Denmark (No. 10/1997)

Complaint lodged in 1997, Decision given in 1999

Tunisian refused a bank loan

Mr Habassi was a Tunisian, married to a Danish citizen and living and working in Denmark. He applied for a bank loan to buy car accessories but was told that it was bank policy to grant loans only to Danish citizens. Backed by a local anti-racism group, Habassi complained to the police that the bank was breaking Danish anti-discrimination laws. The police contacted the bank, which said that it had insisted on Danish citizenship only to ensure that it could enforce repayment of the loan. The police then decided to take no further action and Mr Habassi complained to the Public Prosecutor, who refused to intervene.

There was no other way of getting the Danish authorities to act against the bank, so Mr Habassi complained to the CERD Committee under Article 14 of the Convention. He claimed that Denmark was in breach of **Article 2(1)(d)** by failing to stop racial discrimination by the bank, and of **Article 6** by not providing him with an effective remedy. In the meantime, the bank had granted the loan to Mr Habassi’s wife, who was a Danish citizen.

The CERD Committee said that nationality or citizenship were not appropriate conditions for ensuring repayment of a loan. Residence in the state, employment and family ties were more appropriate criteria. The state authorities should have investigated the matter more thoroughly to establish whether the bank’s policy was discriminatory. The Committee held that Mr Habassi was denied an effective remedy to his complaint contrary to **Article 6** of the Convention in conjunction with **Article 2(1)(d)**. They recommended that Denmark take measures to prevent racial discrimination in the loan market and to compensate Mr Habassi and they asked to be informed about the measures taken to comply with their recommendations.

Kashif Ahmad -v- Denmark (No. 16/1999)

Complaint lodged in 1999, Decision given in 2000

Racist remarks by a high school headmaster

Mr Ahmad was a Danish citizen of Pakistani background and a high school student. In June 1998 he and his brother went to the high school to meet a friend coming out of an exam. A number of young people outside

the exam hall, including Mr Ahmad and his brother, appear to have been making noise and a teacher asked them to leave. They refused to go and the headmaster was called and summoned the police. There was an altercation and the headmaster, and possibly the teacher, called the Ahmad brothers “a bunch of monkeys”. The headmaster then barred Mr Ahmad from attending his graduation ceremony.

Mr Ahmad complained to the police that the head master had used insulting and racist language. The police spoke to the headmaster and then dropped the case, saying they did not regard the remarks as racist since they could have been used towards people of Danish ethnic origin as well. The Public Prosecutor upheld the police decision.

Mr Ahmad complained to the CERD Committee, claiming that the police had not investigated the matter properly and that his rights under **Article 2(1)(d)** prohibiting discrimination, and **Article 6** on the right to an effective remedy, had been violated.

The CERD Committee held that Mr Ahmad had been insulted in public. But were the insults racist in character? The Committee said that if the police had held a proper investigation they could have established if the headmaster’s remarks were racist. Similar remarks had been deemed racist by the Danish Court. The Committee found that Mr Ahmad had been denied effective protection against racial discrimination contrary to **Article 6** of the Convention due to the inadequate police investigation. It recommended that Denmark should ensure that police and Public Prosecutors properly investigated complaints of racial discrimination in the future.

Anna Koptova -v- Slovakia (No. 13/1998)
Complaint lodged in 1998, Decision given in 2000
Roma families barred from villages

Ms Koptova was a Slovak citizen of Roma origin working for an ethnic minorities organisation. In June 1997 the councils of two Slovak villages passed resolutions banning a group of Roma families from living there. A month later, temporary dwellings occupied by the families in a nearby village were burned down. Other Roma families were also forced to leave. Ms Koptova’s organisation asked the General Prosecutor to investigate the council resolutions and apply to the Constitutional Court to annul them. The Constitutional Court rejected the application and the Prosecutor’s Office dropped its investigation.

Ms Koptova then complained to the CERD Committee that her rights had been violated under a number of Articles of the Convention: **2(1)(a)** - states must prohibit discrimination by public authorities; **2(1)(c)** - states must repeal discriminatory laws; **3** - states must prevent racial segregation; **4(c)** - states must prevent public authorities from promoting discrimination; **5(d)(i)** - states must guarantee freedom of movement and residence; and **6** - states must provide effective remedies.

Ms Koptova was not from either of the villages in question and had not visited them since the ban on the Roma families but she argued that, like the European Court of Human Rights, the CERD Committee should hold that a person did not have to be directly affected by a measure to count as a victim. It should be sufficient if she/he runs the risk of being adversely affected by the measure in question. The Slovak Government in reply claimed that the resolutions had been repealed in 1998, making the case moot and they also raised procedural objections.

The CERD Committee held that the council resolutions applied to other Roma as well as the families who had been living in the area and found that this was a breach of **Article 5(d)(i)** - freedom of movement and residence. The Committee recommended that Slovakia should take prompt and effective measures to eliminate practices restricting the freedom of movement of Roma people in its jurisdiction.

Stephen Hagan -v- Australia (No. 26/2002)
Complaint lodged in July 2002, Decision given in March 2003
Offensive name given to a sports facility

Mr Hagan was an Australian of Aboriginal origin. He complained that the grandstand of a major football stadium in his area was called the “Nigger Brown Stand” after a prominent local sportsman. He said this was offensive and insulting to himself and his family and prevented them from having access to it. When the stadium refused to change the name, he took a case to the Federal Court in 2000 under the Racial Discrimination Act.

The court rejected his complaint, noting *inter alia* that the stand had been named in 1960 and there had been no complaints in the past, and saying that the Racial Discrimination Act did not protect the “personal sensitivities of individuals”. The High Court refused leave to appeal.

Mr Hagan then complained to the CERD Committee, which dismissed the argument that there had been no complaints over the years. It said that the Convention was a living instrument and must be applied in “the circumstances of contemporary society”. The Committee said that the wording could be considered offensive and insulting and recommended that the Australian authorities take steps to remove the offending term and report back on what action they had taken.

Cases where no violation found but recommendations made

Even when the CERD Committee has not found a violation of the Convention or where it has found a Communication (a complaint) to be inadmissible, it can still make recommendations to the government concerned with a view to resolving the problem that led to the complaint being made. As mentioned above, the CERD Committee has made recommendations in nine of the 20 cases that were deemed inadmissible or where no violation was found.

Three cases where recommendations were made concerned access to bars or restaurants. In **Lacko -v- Slovakia, No. 11/1998** a group of Roma were refused service in the restaurant of the main railway station in the city of Kosice. The police and local prosecutor’s office refused to prosecute the restaurant owner and it was only after Mr Lacko had complained to the CERD Committee that the owner was finally prosecuted and convicted. The Committee found no violation because the owner had eventually been charged but it called for stronger legislation to guarantee access to public facilities and speedier enforcement measures.

BJ -v- Denmark, No. 17/1999 and **MB -v- Denmark, No. 20/2000** concerned an Iranian man and a Brazilian woman who were refused admission to a disco and a nightclub respectively. In the first case, the doorman was fined for breach of the anti-discrimination laws but the court refused to compensate Mr BJ because he had suffered no physical harm. In the second case, the police investigation was perfunctory and Ms MB claimed that they had not collected evidence which could have established whether she had been discriminated against. The Committee found no violations but it said that Danish law should allow compensation to be awarded for the humiliation of being refused admittance on racial grounds and that there should be prompt and thorough investigation of claims of discrimination by bars, nightclubs etc.

FA -v- Norway, No. 18/2000 involved an accommodation agency that sold lists of flats where about half the entries said “Whites only”, “No foreigners” etc. The agency’s owner was fined but the conviction was overturned by a higher court. The complaint was made outside the time limit and was therefore inadmissible but the Committee urged Norway to take effective measures to stop such discriminatory practices.

ZUBS -v- Australia, No. 6/1995 and **BMS -v- Australia, No. 8/1996** involved Australian citizens of Pakistani and Indian origin respectively. Mr ZUBS claimed he had been discriminated against while employed by the fire service. Mr BMS was a doctor who had trained in India and had subsequently worked in the UK and Ireland. He claimed that he and other foreign-trained doctors were discriminated against when they applied for registration in Australia. The Committee found no violation in either case but recommended that Australia should simplify its procedures for dealing with complaints of racial discrimination. It said it was not necessarily discriminatory to require foreign trained doctors to pass a test before registration in

Australia but said the Medical Council should make its procedures more transparent and ensure that they did not have a discriminatory effect.

In **Narrainen -v- Norway, No. 3/1991**, the complainant was a Norwegian citizen of Tamil origin. His conviction on drugs charges was upheld by a jury one of whose members had said that he should be sent back where he came from. The court refused to disqualify the juror, saying her remarks had not influenced the verdict and such views were not uncommon in Norway. The Committee said it could not conclude that there had been a violation of the Convention but it urged Norway to make every effort to ensure the impartiality of jurors and prevent bias in judicial proceedings.

In **CP -v- Denmark, No. 5/1994**, the Committee made a comment rather than a recommendation. The complainant, an African American, claimed he was dismissed on racist grounds by the Technical School in Roskilde. He took a case for unlawful dismissal but was unsuccessful and did not appeal in time. He claimed he had not been informed about the time limit. The Committee held that his complaint was inadmissible, but said that it was questionable, especially in a case alleging racial discrimination, whether the authorities had done enough to ensure that he had the fullest access to the courts.

In **Sadiq -v- Denmark, No. 25/2002**, where a decision was given in March 2003, a Danish building worker of Iraqi origin complained that he had been subjected to racist abuse by his former employer and the police had dropped the case because the abusive remarks had been made at work and not in a public place. Mr Sadiq could have tried other legal options but he did not believe they would have any effect. The Committee held that he had not exhausted domestic remedies because “mere doubts about the effectiveness of available civil remedies do not absolve a petitioner from pursuing them”. But it also suggested that the Danish legislation on racist statements did not meet the requirements of **Article 4** and **Article 6** of the Convention because it only outlawed statements made “publicly or with the intention of wider dissemination”. It urged Denmark to reconsider its legislation.

APPENDIX IV

Concluding Observations relating to Northern Ireland

The United Kingdom has been “examined” many times by the CERD Committee but few of the Concluding Observations have been specifically directed at the situation in Northern Ireland. (Of course, there have been many comments on UK-wide matters, such as immigration and citizenship, which apply equally to Northern Ireland.)

In **1978** the Committee observed (UK 5th Report):

334. Some members of the Committee, observing that it was unusual for national legislation not to apply to a State’s entire territory, inquired why the [Race Relations] Act [1976] did not apply to Northern Ireland. The representative of the United Kingdom recalled that the various territories making up the United Kingdom often had separate legislation of their own. He added that, owing to the United Kingdom’s immigration procedures, the problem of racial discrimination did not exist in Northern Ireland; and that the legislation applied there was aimed at solving problems of a political, cultural and religious nature, which were the problems troubling Northern Ireland.

In **1980** the Committee observed (UK 6th Report):

389. ... Furthermore, it was noted that the Race Relations Act 1976 did not extend to Northern Ireland; that there was no detailed presentation in the report of the legislation in force in that part of the country; and therefore it was not possible to determine whether legislation valid in Northern Ireland fulfilled the requirements of the Convention. In this connection, the wish was expressed that the text of such legislation, in particular, the text of the prevention of Incitement to Hatred Act (Northern Ireland) 1970, would be made available to the Committee. ...

395. With reference to article 4 of the Convention, the [UK] representative stated that incitement to racial discrimination was already a criminal offence. ... He referred to the practical and constitutional reasons why the Race Relations Act 1976 did not extend to Northern Ireland already explained in the report and assured the Committee that the texts of the legislation relevant to that part of the country would be provided.

In **1983** the Committee observed (UK 7th Report):

164. ... Special concern was expressed by the Committee that the Race Relations Act had not been extended to Northern Ireland because of the absence of the racial problems there and that the legislation dealt only with discrimination on religious and political grounds. In this context, it was asked whether the Irish people were regarded as constituting a separate ethnic and racial group, and it was observed that racial and religious problems in Northern Ireland were inextricably linked; the Committee asked whether any change could be expected soon within the obligations arising under the Convention. ...

172. In reply to the questions posed by members of the Committee in relation to the Race Relations Act, the representative of the United Kingdom said that legislative measures had been enacted to ensure that the principles of the Convention applied in Northern Ireland and human rights there were more protected than in any other part of the United Kingdom. Discrimination in Northern Ireland could best be dealt with by legislative references to political or religious discrimination. So far, there had been no demand in Northern Ireland for new legislation regarding racial discrimination; if that happened, or if an immigrant population developed, the United Kingdom would seek a legislative remedy, following its interpretation of the phrase “legislation as required by circumstances” in article 2, paragraph 1(d), of the Convention. ...

In **1985** the Committee observed (UK 8th Report):

288. The report... contained Northern Ireland legislation applicable to forms of discrimination - particularly religious discrimination -, which, unfortunately, existed there. ...

290. On the question of Northern Ireland, the Committee took note of the reasons for not extending the Race Relations Act 1976 to that part of the territory. It pointed out, however, that, even if the problem that had led to violence was basically political and religious, it was complicated by problems of race relations. The scope of the relevant United Kingdom laws should therefore be extended to cover that part of the country. The

Committee hoped that the British Government would give serious consideration to the Committee's position....

293. Members of the Committee asked for detailed information on the income levels of the various groups in Northern Ireland and inquired whether Catholics had a lower income per capita than Protestants. ...

297. In connection with article 6 of the Convention, members of the Committee were interested in receiving information concerning complaints which had been brought under the Parliamentary Commissioner Act (Northern Ireland) 1969 and the Commissioner for Complaints Act (Northern Ireland) 1969 and what redress had been made. ...

300. Replying to the observations made by members of the Committee on the subject of Northern Ireland and the non-application of the Race Relations Act 1976 to that part of the territory, the representative of the United Kingdom said that he would transmit the Committee's continuing concern on the matter to his Government. He pointed out, however, that article 2, paragraph 1 (d), of the Convention required States parties to act by all appropriate means, "including legislation as required by circumstances".

In 1987 the Committee observed (UK 9th Report):

694. ... A new Public Order Act (Northern Ireland) was due to be issued shortly to incorporate the new provisions of the Public Order Act, 1986, thus strengthening the law on incitement to racial hatred in Northern Ireland. She stressed that the problem of Northern Ireland was essentially one of religion and constitutional aspirations, rather than race relations. ...

696. In relation to the implementation of article 2 in conjunction with article 5 of the Convention, members of the Committee observed that the statement that divisions in Northern Ireland were a product of religious and political aspirations did not explain the situation adequately. The report admitted that the Roman Catholic community was disadvantaged in socio-economic terms. It was observed that in 1983/84, the unemployment level for male Roman Catholics had been approximately double that for Protestants. It was asked whether that was due to discrimination by protestant employers. The hope was expressed that legislative action would be taken to counter such discrimination. Racial discrimination could not be dissociated from discrimination in the economic, social and cultural fields. Members requested further information on the measures that were being taken to narrow the socio-economic disparities between Protestants and Catholics, as well as statistical data on education and income levels of Roman Catholics and Protestants, and their relative representation in the civil service, the judiciary and the police. ...

707. In reply to the questions raised and observations made by the members of the Committee, the representative of the United Kingdom said that the mingling of races that had characterized Northern Ireland for centuries currently made any racial distinctions between the religious majority and minority very blurred. The most recent figures on unemployment were disappointing and the persistent differences between the Roman Catholics and Protestants had led the Secretary of State for Northern Ireland to propose new measures and other institutional arrangements to eliminate discrimination on grounds of religious or political belief. At the same time, the independent Standing Commission on Human Rights was conducting a major review of the effectiveness of the law on discrimination based on religious belief, but at the present stage it was too soon to say what shape the ensuing legislation would take.

In 1991 the Committee observed (UK 10th and 11th Report):

186. ... Members also questioned the absence of legislation prohibiting discrimination on racial grounds in Northern Ireland and wished to know whether the Fair Employment (Northern Ireland) Act of 1989, which also prohibited indirect discrimination, contained a limitation provision similar to that found in the Race Relations Act. ...

193. Regarding article 7, members of the Committee emphasized the appropriateness of introducing education and information campaigns as measures to combat racial prejudice and promote racial understanding. ... Separate schools for Catholics and Protestants in Northern Ireland had not helped community relations. ...

196. Responding to various questions raised by members of the Committee... the representative stated that... [the] views of members concerning the desirability of adopting legislation relating to protection against racial discrimination in Northern Ireland would be conveyed to the appropriate authorities.

In 1993 the Committee observed (UK 12th Report):

388. As to the situation in Northern Ireland, the information provided in the report was considered too general. The members of the Committee expressed their concern at the fact that the Race Relations Act was

not implemented in Northern Ireland and that the Commission for Racial Equality did not have competence there. Information was sought on the ethnic composition of the minorities in Northern Ireland, and further details were requested on travellers and their situation in relation to other ethnic minority groups and on persons of Chinese origin, who had reportedly been victims of acts of racism. Considering that, with regard to Northern Ireland, the Government of the United Kingdom was not fulfilling its obligation to enact legislation prohibiting racial discrimination, the members of the Committee asked whether there was not at least the intention to apply the Race Relations Act of 1976 to that part of the Kingdom. They wished to know what the Government's reaction had been to the publication in 1992 of the document entitled "Racism in Northern Ireland". They requested details on government assistance to the ethnic minority communities in Northern Ireland. They asked what remedies were available to victims of racial discrimination in Northern Ireland, and what measures had been taken to enable all inhabitants, without distinction, to enjoy their fundamental rights. Referring to allegations that Irish people living in the United Kingdom had been victims of acts of racial discrimination, they inquired about measures taken by the Government to combat that phenomenon. ...

398-399. Replying to questions and comments by members of the Committee, the representative of the [UK said that the] census questionnaire in Northern Ireland had not contained any question about ethnic groups for it had emerged, in the course of prior consultations, that such information was not required. On the other hand, the questionnaire had included a question about religion. ...

401. As to the questions on the situation of the ethnic minorities in Northern Ireland, the Government accepted the principle of protection for persons in Northern Ireland who suffered from discrimination on the grounds of race. The Government recognized the importance of the question of the travelling people, and the consultative document published by the Secretary of State for Northern Ireland indicated that proposals had been made to consider such persons as belonging to an ethnic group and to take them into account in any bill on racial discrimination in Northern Ireland. ...

414. The Committee regretted the lack of information concerning the implementation of the Convention in Northern Ireland. The Committee was further concerned about the absence of legislation prohibiting discrimination on racial grounds in Northern Ireland and the ensuing lack of adequate protection available to ethnic minorities including, in particular, travellers and persons of Chinese origin. ...

419. The Committee recommended that... the State party either adopt legislation relating to protection against racial discrimination in Northern Ireland or extend the scope of the Race Relations Act to Northern Ireland.

In 1996 the Committee observed (UK 13th Report):

227. The commitment to enact a race relations law for Northern Ireland, although much belated, is also welcome. ...

229. ... In addition, concern is expressed that the laws relevant to the implementation of the Convention do not appear to be uniformly applied throughout the territory of the United Kingdom; specifically, the Race Relations Act does not extend to Northern Ireland and some provisions of the Criminal Justice Act do not apply to Scotland. ...

233. Special concern is also expressed for the Irish Traveller community, whose situation affects their right to public health care and social services under article 5 (e). It is noted that the policy of designating land for the use of Travellers has contributed to their lower standard of living and has curtailed their freedom of movement by limiting the places which they might inhabit.

234. Serious concern is expressed at the absence of comprehensive race relations legislation in Northern Ireland. Equally, concern is expressed at the lack of positive efforts to bridge the cultural gaps in Northern Ireland between mainstream society and minority groups, particularly the Chinese and Irish Traveller communities. This has resulted in a disturbing reluctance by many members of these groups to make use of health and other social services. ...

246. The Committee recommends that effective programmes be established to care for the health and educational needs of the Irish Traveller community in Great Britain and Northern Ireland. ...

249. The Committee recommends that the provisions of the Convention be taken into full account in the drafting of comprehensive race relations legislation for Northern Ireland. The Committee recommends that an effort be made to make available in the principal minority languages important public information, particularly concerning basic health care. ...

251. Noting with concern the absence of legislation in Northern Ireland to outlaw racial discrimination and the Government's statement that close consideration is being given to this issue, the Committee recommends that a bill be promulgated as soon as possible.

In 1997 the Committee observed (UK 14th Report):

28. The adoption of the Race Relations (Northern Ireland) Order of 1997 is noted, all the more so since it contains special provisions relating to the Irish Traveller communities. The fact that direct access to the courts and industrial tribunals is granted for violations of the provisions of the Order outlawing racial discrimination in the fields of employment, training, education and housing and in the provision of goods and services is also welcomed by the Committee. ...

35. Concern is expressed that the race relations legislation concerning Northern Ireland tabled in Parliament contains two grounds for exemption, namely, public order and public safety, which are additional to the ones already enshrined in the Race Relations Act of 1976, and that bodies working in the field of health, education, social services, planning and housing do not have the same positive legal duty to eliminate discrimination as that which applies to local authorities in Britain.

36. Concern is expressed by the Committee with respect to the continuing failure to incorporate questions relating to the racial or ethnic origin of persons in the Northern Ireland population census questionnaires. The Committee is of the view that the identification of minority groups and the analysis of their civil, political, economic and social status are a precondition for identifying the difficulties that they may be facing and for assessing whether and how such difficulties may be due to racial discrimination, and thus for evaluating the need to adopt specific measures, laws and regulations to overcome those difficulties. ...

44. The Committee recommends that questions relating to the racial or ethnic origin of persons be incorporated in the questionnaires established within the framework of the population census in all the territories under the jurisdiction of the United Kingdom. In this regard, the Committee stresses that such information is useful for the effective assessment of progress achieved towards the full implementation of the provisions of the Convention for the benefit of all groups of the population.

In 2000 the Committee observed (UK 15th Report):

349. The Committee welcomes the recent legislative measures taken, including: ... the 1998 Northern Ireland Act, establishing a new independent Human Rights Commission for Northern Ireland; and the 1998 Human Rights Act, giving further effect to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and due to be implemented as of October 2000. ...

352. The Committee welcomes that British courts have established that the Roma minority is considered a racial group covered by the 1976 Race Relations Act; the identification of Irish Travellers as a racial group for the purposes of the 1997 Race Relations (Northern Ireland) Order; and the initiatives taken to promote the socio-economic situation of Roma Travellers, such as the establishment of Traveller Education Services at the local level.

Other UN bodies, such as the Committee on the Rights of the Child, have occasionally commented on race matters in Northern Ireland.

APPENDIX V

Text of the Convention

Like most human rights instruments, CERD begins with a preamble setting out the moral basis and practical purpose of the treaty, and recalling earlier measures addressing the same problems. Part I then sets out the obligations that states who become party to the treaty must accept, and Part II deals with the supervisory system – the CERD Committee. Part III sets out the process for states to accede to the treaty, or to withdraw from all or part of it, and some other technical matters.

It is unusual (and difficult) to amend the text of a treaty once it comes into force, but the text below incorporates one amendment to Article 8 made by a resolution of the General Assembly in 1992 (relating to payment of CERD Committee expenses). The amendment has not yet come into force because only 37 states parties have formally accepted it, and it needs the support of two-thirds of the states (112). The amendment is intended to protect the independence of Committee members and to improve the efficiency of the monitoring system.

The full official text, including links to General Recommendations of the Committee on how particular provisions should, in its view, be implemented, can be found on the UN website at http://www.unhchr.ch/html/menu3/b/d_icerd.htm. Links are also provided to the latest information on ratifications, derogations and reservations and to the Periodic Reports by the various states parties to the Convention and the CERD Committee's Concluding Observations on the Reports.

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**

entry into force 4 January 1969, in accordance with Article 19

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 All 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 ensure 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 entail as a consequence 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 ethnic 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. [amendment – see above]

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 1 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.

APPENDIX VI

Reservations and declarations

Both the United Kingdom and Ireland have, either at the time of signature or subsequently, recorded reservations to CERD or made declarations on how they propose to interpret the Convention. The relevant texts are as follows:

Statements by Ireland

Reservation/interpretative declaration:

“Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland therefore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5(d)(viii) and (ix) of the present Convention.”

Declaration:

“With reference to article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966, Ireland recognizes the competence of the Committee on the Elimination of Racial Discrimination, established by the afore-mentioned Convention to receive and consider communications from individuals or groups of individuals within Ireland claiming to be victims of a violation by Ireland of any of the rights set forth in the Convention.

“Ireland recognizes that competence on the understanding that the said Committee shall not consider any communication without ascertaining that the same matter is not being considered or has not already been considered by another international body of investigation or settlement.”

Statements by the United Kingdom

Reservation and interpretative statements upon signature:

The UK first indicated that it reserved the right not to apply the Convention to what was then Rhodesia, which in 1969 was formally a British colony but which was ruled by the illegal régime representing the white minority population. (Zimbabwe later became independent and acceded to CERD without reservations.)

“Secondly, the United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to

freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. Further, the United Kingdom interprets the requirement in article 6 concerning 'reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets 'satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a reservation is not accepted the State making the reservation does not become a Party to the Convention.

"Lastly, the United Kingdom maintains its position in regard to article 15. In its view this article is discriminatory in that it establishes a procedure for the receipt of petitions relating to dependent territories while making no comparable provision for States without such territories. Moreover, the article purports to establish a procedure applicable to the dependent territories of States whether or not those States have become parties to the Convention. Her Majesty's Government have decided that the United Kingdom should sign the Convention, these objections notwithstanding, because of the importance they attach to the Convention as a whole."

Upon ratification:

"First, the reservation and interpretative statements made by the United Kingdom at the time of signature of the Convention are maintained.

"Secondly, the United Kingdom does not regard the Commonwealth Immigrants Acts, 1962 and 1968, or their application, as involving any racial discrimination within the meaning of paragraph 1 of article 1, or any other provision of the Convention, and fully reserves its right to continue to apply those Acts."

The UK also reserved the right not to apply the Convention to Fiji, then a British colony, in respect of land law, electoral law and the education system, all of which reflected ethnic difference in that territory. (After Fiji became independent it modified that reservation.) However the ratification extended CERD to certain Associated States (Antigua, Dominica, Grenada, St Kitts Nevis Anguilla and St Lucia) and Territories under the territorial sovereignty of the United Kingdom, and to the State of Brunei, the Kingdom of Tonga and the British Solomon Islands Protectorate.

Irish Human Rights Commission
17-19 Lower Hatch Street
Dublin 2
Tel: +353 (0) 1 647 2562
Fax: +353 (0) 1 647 2515
Email: ihrc@eircom.net
Website: <http://homepage.eircom.net/~ihrc>

Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast BT1 1NA
Tel: +44 (0) 28 9024 4987
Fax: +44 (0) 28 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org