

# The Struggle Against Discrimination

A Collection of  
International Instruments  
Adopted by the United Nations System

Edited by Janusz Symonides

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## **PART I**

# **UNITED NATIONS ACTIONS AGAINST DISCRIMINATION**

**THE UNITED NATIONS SYSTEM STANDARD-  
SETTING INSTRUMENTS AND PROGRAMMES  
AGAINST DISCRIMINATION : INTRODUCTORY  
REMARKS**

Janusz SYMONIDES\*

The struggle for the elimination of all forms of discrimination conducted by the United Nations system from the moment of its creation is a very important element in the efforts of the international community to assure full implementation and observance of human rights.

Discrimination, violation of rights of persons belonging to vulnerable groups, the minorities, indigenous people, immigrant workers or aliens should also be seen as the cause for serious conflicts and danger for international peace and stability. As the preamble of the Universal Declaration of Human Rights states so convincingly:

« ... recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ».

The United Nations has been successful in the elimination of such institutional forms of discrimination as colonialism and apartheid. Nevertheless the struggle against all forms of discrimination is still far from being won. In a situation where the international community is witnessing a mounting wave of racism, xenophobia and anti-semitism, the need to increase by all possible means the efforts of the United Nations system to combat all forms of discrimination is more than evident.

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## The nature and definition of discrimination

All human beings, as stipulated by Article 7 of the Universal Declaration of Human Rights:

«... are equal before the law and are entitled without any discrimination to equal protection of the law ».

Discrimination considered as any distinction, exclusion, restriction or preference aimed at the denial or refusal of equal rights and protection is the very negation of the principle of equality and an affront to human dignity.

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

«... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status »<sup>1</sup>.

Neither the Universal Declaration of Human Rights nor the International Covenants define 'discrimination'. A definition of this term can only be found in conventions and declarations dealing with specific types or forms of discrimination<sup>2</sup>.

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination defines the term 'racial discrimination' as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms, in the political, economic, social, cultural or any other field of public life.

For the purpose of the ILO Convention (N° 111) concerning Discrimination in respect of Employment and Occupation, the term 'discrimination' includes any distinction, exclusion or

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<sup>1</sup> Prohibited grounds for discrimination are mentioned by Article 7 of the International Covenant on Economic, Social and Cultural Rights.  
<sup>2</sup> These definitions are presented in the relevant parts of this article.

preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

During its thirty-seventh session in 1989, the Human Rights Committee in its general comment gave the following definition of the discrimination:

«... any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms »<sup>3</sup>.

The achievement of equality not only *de jure* but also *de facto* demands sometimes that an affirmative action be taken by States to diminish or eliminate conditions which cause discrimination of individuals or groups of the population. Such actions may involve a preferential treatment. In this respect, Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination provides that any special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requesting such protection as may be necessary in order to ensure their equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination if such measures do not lead to the maintenance of separate rights for different racial groups and are not continued after the achievement of their objectives. Similarly Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women states that the adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered as discriminatory.

The enjoyment of human rights and fundamental freedoms on an equal footing does not mean identical treatment in every instance. Human rights instruments allow in some cases differ-

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<sup>3</sup> United Nations Compilation of General Comments and General Recommendations adopted by Human Rights Bodies, HRI/GEN/1/Rev.2. of 29 March 1996, p. 27.

entiation in the enjoyment of political rights on the grounds of age or citizenship<sup>4</sup>. The UNESCO Convention Against Discrimination in Education in Article 2 specifies three situations which lead to differentiation in access to educational institutions<sup>5</sup> and which, under certain conditions, shall not be deemed to constitute discrimination.

## **The struggle against racism and racial discrimination**

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

Already on 19 November 1946, the General Assembly, during its first session, adopted resolution 103/I in which it declared:

«... that it is in the higher interests of humanity to put an immediate end to religious and so-called social persecution and discrimination ».

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

On 20 November 1963 the General Assembly adopted the United Nations Declaration on the Elimination of All Forms of

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Article 25 of the International Covenant on Civil and Political Rights. Article 6 prohibits the death sentence to be imposed on persons below eighteen years of age or on pregnant women.

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The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes; the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions; the establishment or maintenance of private educational institutions.

Racial Discrimination and, two years later, on 21 December 1965, the International Convention on the Elimination of All Forms of Racial Discrimination. These instruments are presented in length in the article by Rüdiger Wolfrum 'The implementation of international standards as prevention and elimination of racial discrimination : achievements and challenges', which follows this introduction.

The International Conference on Human Rights held in Tehran in 1968 considered various aspects of the problem of racial discrimination and declared in the Proclamation of Tehran:

« The peoples of the world must be made fully aware of the evils of racial discrimination and must join in combating them [...] All ideologies based on racial superiority and intolerance must be condemned and resisted ».

The multidimensional activities of the United Nations against racial discrimination have been intensified within the framework of three Decades for Action to Combat Racism and Racial Discrimination. The first covered the period 1973-1982 and the second 1983-1992. Speaking about the goals of the first Decade in its resolution 3051 (XXVIII) of 2 November 1973, the General Assembly stressed that it should help:

« ... to promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially by eradicating racial prejudice, racism and racial discrimination; to arrest any expression of racist policies and to eliminate the persistence of racist policies and to counteract the emergence of alliances based on mutual espousal of racism and racial discrimination ».

These goals are still valid for the Third Decade to Combat Racism and Racial Discrimination proclaimed by the General Assembly on 20 December 1993 for the period 1993-2003. The Plan of Action for the Third Decade foresees activities against racism and racial discrimination at the international, regional and national level, basic research and studies, co-ordination and reporting and regulate system-wide consultations.

The *Vienna Declaration and Programme of Action* adopted at the World Conference on Human Rights on 25 June 1993 considered the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or excess or contemporary forms and manifestations of racism, as a primary objective for the international community. It also called upon the United Nations organs and agencies to strengthen their efforts to implement the programme of action relating to the Decade. The World Conference also appealed to the international community to contribute generously to the Trust Fund for the Decade.

The Commission on Human Rights appointed in 1993 a Special Rapporteur to study both institutional and indirect forms of racism and racial discrimination against national, ethnic, linguistic and religious minorities and migrant workers throughout the world<sup>6</sup>.

In resolution 1996/21 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance<sup>7</sup>, the Commission on Human Rights expressed its deep concern that, despite efforts, racism, racial discrimination, anti-semitism, xenophobia and related intolerance, as well as acts of racist violence, continue to persist and even grow in magnitude, incessantly adopting new forms, including new tendencies to establish policies based on racial, religious, ethnic, cultural and national superiority or exclusivity. It expressed its unequivocal condemnation of all forms of racism and racial discrimination and all racist violence<sup>8</sup>. The Commission took note of the reports submitted by the Special Rapporteur and it called upon all governments, intergovernmental and non-governmental organizations, to supply information to the Special

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<sup>6</sup> The Special Rapporteur is required to report on racist acts of violence and to examine incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-semitism and related intolerance.

<sup>7</sup> Resolution adopted on 19 April 1996 at the 51st meeting of the Commission on Human Rights.

<sup>8</sup> The Commission on Human Rights, noting the final report on freedom of opinion and expression submitted to the Sub-Commission at its forty-fourth session and recalled the opinion expressed in it that « . . . racism is not an opinion but an offence ».

Rapporteur<sup>9</sup> who was also encouraged to present further recommendations concerning human rights education and actions against racism and racial discrimination, xenophobia and related intolerance.

### **UNESCO Statements and the Declaration on Race and Racial Prejudice**

The UNESCO stand against racism has already been determined by its Constitution which declares:

«... the great and terrible war which has now ended was a war made possible by the denial of the democratic principles [...] by the propagation, in their place through ignorance and prejudice, of the doctrine of the inequality of men and races ».

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

UNESCO convened several meetings of specialists to consider various manifestations and aspects of racism. In 1950, a group of eminent experts prepared a Statement on Race, followed in 1951 by a Statement on the Nature of Race and Race Differences. Both statements emphasized that biological differentiation of races is without foundation, and unequivocally rejected theories of racial superiority. Race is not a biological phenomenon but a social myth. Therefore it would be better, when speaking of humankind, to drop the term 'race' and to speak of ethnic groups. In 1964, Proposals on Biological Aspects of Race were elaborated. This text emphasized the predominance of historical, social and cultural factors over biological factors in the explanation of physical differences between populations living in different geographical areas of the world. The fourth Statement on Race and Racial Prejudice was worked

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<sup>9</sup> The Commission, whilst not changing the mandate of the Special Rapporteur, extended it for the next three years.

out in 1967 and contained the elucidation of the racist theories and racial prejudice.

In 1972, the UNESCO General Conference called for the preparation of a Declaration which would take into account the findings of the Statements and present a set of universally applicable principles which could be recommended to Member States. Consequently, the General Conference, at its twentieth session (1978), solemnly adopted, by acclamation, the Declaration on Race and Racial Prejudice which states that all human beings belong to a single species and are descended from a common stock; that they are born equal in dignity and rights and all form an integral part of humanity. Racial prejudice, historically linked with inequalities in power and reinforced by economic and social differences between individuals and groups, is qualified by this instrument as being totally without justification.

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

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

#### **The Declaration on the Role of Mass Media in the Struggle against Racial Discrimination and Apartheid**

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

Work on the Declaration started in 1970 and was continued in an atmosphere of controversy concerning, in particular, the

problem of governmental control of the media. After a number of drafts and projects elaborated by intergovernmental meetings of experts and the UNESCO Secretariat, it became possible to arrive at a text which, seen by some as ‘... the least objectionable of a series of bad alternatives’ or as ‘... an honorary compromise’ by others, was in the end unanimously adopted.

The Declaration in its preamble recalls the provisions of international conventions<sup>10</sup> which oblige States Parties to adopt immediate and positive measures assigned to eradicate all incitement to, or acts of, racial discrimination, and agree to prevent any encouragement of the crime of apartheid and similar segregational policies or their manifestations.

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

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

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<sup>10</sup> *Inter alia*, Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

### UNESCO actions against apartheid

The position taken by UNESCO on racial problems has been unequivocal and brought about the decision of the Government of the Union of South Africa to withdraw from the Organisation on 31 December 1956. In 1966, the General Conference requested the Director-General not to invite the Republic of South Africa to attend conferences or take part in other UNESCO activities, until such time as the South African Government abandoned its policy of racial discrimination. Then, in 1967, UNESCO published *Apartheid and Its Effects on Education, Science, Culture and Information*, a second, updated edition of which appeared in 1972<sup>11</sup>.

In 1970, the sixteenth session of the General Conference called for positive action to support the African liberation movements and, to that end, invited the Director-General:

«... to send a mission to the Organization of African Unity and, after examination of its report by the Executive Board, evolve concrete programmes for assistance to (a) refugees from colonial territories and (b) other people striving to liberate themselves from colonial domination and all forms of apartheid ».

Subsequently programmes of assistance for the liberation movements of Namibia and South Africa were launched. Assistance to them was primarily rendered in the field of education and comprised fellowships and school stipends. It was extended in 1975 to the African National Congress (ANC), the Pan-Africanist Congress of Azania (PAC) and the South West Africa People's Organisation (SWAPO).

In addition to studies on the theoretical and ideological basis of apartheid, training programmes for South African and

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In co-operation with the Organisation of African Unity (OAU), UNESCO published: *Race, Class and the Apartheid State* by Harold Wolpe; *Endgame in South Africa?* by Robin Cohen; and *A History of Resistance in Namibia* by Peter Katjavivi. In addition, a strip cartoon *Fighting Apartheid : A Cartoon History* was prepared in co-operation with the International Defence and Aid Fund for Southern Africa in London.

Namibian key personnel, especially to upgrade their knowledge in social sciences, were organized, Furthermore, UNESCO created working groups on women and apartheid, economics and apartheid, and culture and apartheid.

In the framework of the Special Project : *Contribution to the Elimination of Apartheid : Towards an Apartheid-Free World*, UNESCO continued promoting actions of solidarity against apartheid and improving training programmes. Several meetings, devoted to the study of various political alternatives for an apartheid-free society, including problems of promoting a culture of peace and democracy in South Africa were organized.

Since the abolishment of the system of apartheid, UNESCO has started activities in order to assist the construction of a democratic, non-racial, apartheid-free society in South Africa. As part of these efforts aimed at promoting education for human rights, democracy, peace and tolerance. UNESCO Chairs have been established at universities in Fort Hare and Durban.

### **Elimination of intolerance and discrimination based on religion and belief**

The Charter of the United Nations in its Article 1 prohibits distinction on the basis of religion. The right of everyone to freedom of thought, conscience and religion is formulated by Article 18 of the Universal Declaration of Human Rights which adds that it:

«... includes freedom to change his religion or belief, and freedom either, alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance ».

This right is further elaborated by Article 18 of the International Covenant on Civil and Political Rights which stipulates that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice and provides that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prevented by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Discrimination in the matter of religious rights and practices was discussed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1956 which instituted a study on this subject. Its final version was presented by the Special Rapporteur in 1960. The Sub-Commission and the Commission on Human Rights, as requested by the General Assembly, prepared a draft convention and a draft declaration on the elimination of all forms of religious intolerance<sup>12</sup>. In 1981, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted<sup>13</sup>.

The Preamble of the Declaration speaks about intolerance and discrimination in matters of religion and belief, and the need for their speedy elimination. Article 2, reaffirming the right of everyone to freedom of thought, conscience and religion<sup>14</sup>, defines 'intolerance and discrimination based on religion or belief as:

« ... any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis ».

The Declaration requests from States effective measures to prevent discrimination on the grounds of religion and belief, and all efforts to enact or rescind relevant legislation and, where necessary, to prohibit any such discrimination and intolerance.

It also gives an important clarification concerning the content of the right to freedom of thought, conscience, religion or belief providing that it shall include, *inter alia*, nine freedoms<sup>15</sup>.

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<sup>12</sup> The General Assembly decided (resolution 3027(XXVII) of 7 December 1962) to give priority to a draft declaration.

<sup>13</sup> General Assembly resolution 36/55 of 25 November 1981.

<sup>14</sup> The formulation in Article 18 of the International Covenant on Civil and Political Rights was repeated.

<sup>15</sup> Article 6 enumerates the following freedoms: (a) To worship or assemble in connection with a religion or belief; ... (b) To establish and maintain appropriate charitable or humanitarian institutions; (c) To make, acquire and use to an adequate extent the necessary articles and materials ...; (d) To write, issue and disseminate relevant publications ...; (e) To teach a religion or belief ...; (f) to solicit and receive

The implementation of the Declaration is included on the agenda of all subsequent sessions of the Commission on Human Rights which receives reports on this subject prepared by the Special Rapporteur. At its 1996 session, the Commission noted with grave concern the continuing instances of hatred and intolerance including acts of violence based upon religious intolerance in all its forms<sup>16</sup>. It urged States to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion or belief to all without discrimination, including the provision of effective remedies in cases where the right to freedom of religion or belief is violated. The recommendations also expressed grave concern at attacks upon religious places, sites and shrines and called upon States to exert their utmost efforts to ensure that they be fully respected and protected.

The Commission encouraged the Special Rapporteur to continue the examination of incidents and governmental actions in all parts of the world which are incompatible with the provisions of the Declaration and to recommend remedial measures.

The World Conference on Human Rights called upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including the desecration of religious sites<sup>17</sup>.

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voluntary financial and other contributions ...; (g) To train, appoint, elect or designate by succession appropriate leaders ...; (h) To observe days of rest and to celebrate holidays and ceremonies; and (i) To establish and maintain communication with individuals and communities in matters of religion and belief at the national and international levels.

<sup>16</sup>

Resolution 1996/23.

<sup>17</sup>

The *Vienna Declaration and Programme of Action*, paragraph 22.

## **United Nations declarations and conventions against discrimination of persons belonging to vulnerable groups**

### **Equality and non-discrimination of women**

The United Nations is fully committed to the equality between men and women. In the Preamble of the Charter, the peoples of the United Nations proclaim their determination:

« ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, *in the equal rights of men and women* ».

Articles 13, 55 and 75 call for the realization of human rights and fundamental freedoms for all without distinction as to sex. The principle of equality of men and women and the prohibition of discrimination against women is proclaimed by the Universal Declaration of Human Rights and the International Covenants on Human Rights.

In 1946, the Economic and Social Council established the Commission on the Status of Women to prepare recommendations and reports on promoting women's rights and recommendations on the implementation of the principle that men and women shall have equal rights.

Though all United Nations instruments dealing with the specific rights of women<sup>18</sup> promote the principle of equality and non-discrimination, four of them reproduced in this publication deserve special attention: The Convention on the Political Rights of Women; the Declaration and Convention on the Elimination of Discrimination Against Women; and the Declaration on the Elimination of Violence Against Women.

Among important instruments adopted by ILO in this field<sup>19</sup> is the Convention (N° 200) concerning Equal Remuneration for

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<sup>18</sup> The list of conventions comprises the Convention on the Nationality of Married Women (1957); the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962); the Convention for the Suppression of the Traffic of Persons and the Exploitation or the Prostitution of Others (1949); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

<sup>19</sup> Along earlier conventions, one can list the Convention (N° 45) on the Underground Work of Women (1935); the Convention (N° 89) on the

Men and Women Workers for Work of Equal Value (1951) which, in its Article 2, impose the obligation on Member States to:

« ... ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value ».

### *The Convention on the Political Rights of Women*

In 1945, when the United Nations was founded, women were only able to vote on equal terms with men in thirty of the fifty-one original Member States<sup>20</sup>. In this situation the General Assembly, during its first session in 1946, adopted resolution 51(I) which recommended that all Member States which had not done so should adopt the necessary measures to fulfil the purposes and aims of the Charter of the United Nations by granting to women the same political rights as to men.

The equality of political rights between men and women was then reinforced in 1948 by the Universal Declaration of Human Rights which in its Article 21 stated:

- « 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country . . . ».

In 1952 the General Assembly, as recommended by the Commission on the Status of Women, adopted the Convention on the Political Rights of Women<sup>21</sup>. The main objective of the Convention is to implement the principle of equality of rights for men and women in the enjoyment and exercise of political rights, in

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<sup>20</sup> Night Work of Women (1948); as well as the Recommendation (N° 123) on the Employment of Women with Family Responsibilities (1965).

<sup>21</sup> *The United Nations and Human Rights*, United Nations, New York, 1978, p. 115.

The Convention was opened for signature and ratification by General Assembly resolution 640(VII) of 20 December 1952.

accordance with the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights.

The Convention formulates important principles providing that women, without any discrimination, shall be (a) entitled to vote in all elections; (b) eligible for elections to all publicly elected bodies established by national law; (c) entitled to hold public office and exercise all public functions established by national law.

Though the Convention is limited in its scope as it deals only with discrimination of women as far as the implementation of their political rights is concerned, nevertheless it is the first universal binding instrument creating legal obligations for States Parties. It opened the way for the adoption by the United Nations of a series of instruments aimed at the elimination of discrimination against women in all areas of public and private life.

As foreseen by its Article VI, the Convention entered into force after the deposit of the sixth instrument of ratification on 7 July 1954. By 1996 the Convention was binding for 108 Member States. This means that there is still a need for future action to ensure its full universality<sup>22</sup>.

#### *Declaration on the Elimination of Discrimination Against Women*

An important step in the struggle against all forms of discrimination against women was made in 1967 when the General Assembly adopted unanimously the above Declaration<sup>23</sup>. It provides in Article 1 that discrimination against women is fundamentally unjust and constitutes an offence against human dignity, and calls, on the one hand, for the abolishment of existing laws, customs, regulations and practices which are discriminatory against women and for the establishment, on the other hand, of adequate protection for equal rights of women by the embodying of the principle of equality in constitutions and in law. Recognizing the importance of ratification or accession to international instruments adopted by the United Nations system, it stresses the need to educate public opinion and to direct

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<sup>22</sup> It should be noted that the Convention has not been ratified or acceded to by the majority of Arab States.

<sup>23</sup> General Assembly resolution 2263( XXII) was adopted on 7 November 1967 after four years of debate.

national aspirations towards the eradication of prejudice and the abolition of practices based on the supposed inferiority of women. Thus the Declaration may be recognized as a first attempt in the codification of human rights standards referring to the elimination of discrimination against women<sup>24</sup>.

The importance of the Declaration is linked with the fact that it presented in a comprehensive manner various women's rights already formulated by a number of United Nations instruments. It deals with political rights, the right to nationality, civil rights, as well as economic, social and educational rights. It demands the abolition of discriminatory provisions in penal codes and the adoption of appropriate measures to combat all forms of traffic in women and exploitation of prostitution.

The Declaration calls upon governments, non-governmental organizations and individuals to do all in their power to promote the implementation of its principles. Since 1968, governments, specialized agencies and non-governmental organizations concerned were requested by the Economic and Social Council to inform the Secretary-General of publicity given to the Declaration and of actions taken in compliance with its principles. These reports were then integrated into the reporting system foreseen for the implementation of the objectives of International Women's Year (1975).

***Convention on the Elimination of All Forms of Discrimination Against Women.***

No doubt a milestone in United Nations action aimed at the promotion of equality between men and women is the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the General Assembly in 1979<sup>25</sup>. The Con-

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<sup>24</sup> The Declaration takes into account the basic principles of the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Women (1949); the UNESCO Convention Against Discrimination in Education (1960) as well as the ILO Equal Remuneration Convention (1951) and Discrimination (Employment and Occupation) Convention (1958).

<sup>25</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, the Convention entered into force on 3 September 1981, as foreseen by its

vention, the most comprehensive binding instrument (containing 30 articles), not only confirms standards already formulated by earlier conventions and declarations and sums up the normative work done by the United Nations system but adds new important dimensions and principles. It therefore brings about a progressive development of human rights prohibiting discrimination against women.

The work on the preparation of this instrument was started in 1974 when the Commission on the Status of Women sat up a Working Group to assist it in this task. A draft of a convention was approved in 1977 by the Third Commission of the General Assembly and finally adopted by the General Assembly two years later.

Article 1 of the Convention defines the term 'discrimination against women' as being:

« ... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field ».

States Parties to the Convention agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and undertake, in particular, the following obligations:

- « (a) to embody the principle of equality of men and women in their national constitutions or other appropriate legislation;
- (b) to adopt appropriate legislative and other measures, including sanctions, prohibiting all discrimination against women;
- (c) to establish legal protection of the rights of women;

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Article 22, on the thirtieth day after the date of deposit of the twentieth instrument of ratification or accession. See, *Human Rights, Discrimination Against Women: The Convention and the Committee*, Fact Sheet N° 22, United Nations, Geneva, 1994.

- (d) to refrain from engaging in any act or practice of discrimination against women and ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) to repeal all national penal provisions which constitute discrimination against women ».

As already mentioned, the Convention foresees the possibility of affirmative action by explaining that the adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discriminatory. These measures should be discontinued when objectives of equality of opportunity and treatment have been achieved.

The Convention formulates in detail measures to eliminate discrimination against women in political and public life, in the field of education, employment, health care and other areas of economic and social life, as well as in matters relating to marriage and family relations.

By 1996 the Convention was binding for 153 States Parties. In order to consider the progress made in the implementation of the Convention, a Committee on the Elimination of Discrimination Against Women comprising twenty-three experts was elected as foreseen in Article 17. The Committee considers reports submitted by States Parties on the legislative, practical, administrative or other measures which they have adopted to give effect to the provisions of the Convention<sup>26</sup>. It reports annually to the General Assembly through the Economic and Social Council. The Committee may make suggestions and general recommendations based on its examination of reports

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<sup>26</sup> No mechanism for the consideration of complaints from States or individuals was created by the Convention. The proposal for the adoption of an optional protocol authorizing the Committee to receive communications from individuals was formulated by the World Conference on Human Rights in 1993.

and information received from States Parties. Since 1986, the Committee has formulated twenty-two general recommendations<sup>27</sup> dealing, *inter alia*, with reporting by States Parties on temporary special measures, violence against women, equal remuneration, female circumcision, equality in marriage and family relations.

### *Declaration on the Elimination of Violence Against Women*

In its General Recommendation N° 12 of 1989, the Committee on the Elimination of Discrimination Against Women recommended States Parties to the Convention to include in their periodic reports information about the legislation in force to protect women against the incidents of all kinds of violence in everyday life (including sexual violence, abuse in the family, sexual harassment at work, etc.); about measures adopted to eradicate this violence and the existence of support services for women who are victims of aggression or abuse.

The Economic and Social Council, in May 1991, addressed comprehensively the issue of violence against women in all its forms. The Council recommended that a framework for an international instrument addressing this issue be developed in consultation with the Committee on the Elimination of Discrimination Against Women<sup>28</sup>.

The World Conference on Human Rights stressed the importance of working towards the elimination of violence against women in public and private life and the elimination of all forms of sexual harassment. It called upon the General Assembly to adopt a draft declaration on violence against women and urged States to combat violence against women<sup>29</sup>.

The Declaration on the Elimination of Violence Against Women was proclaimed by General Assembly resolution 48/104 on 20 December 1993. The Declaration underlines that violence against women is an obstacle to the achievement of equality,

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<sup>27</sup> *United Nations Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN//Rev.12 of 29 March 1996, pp. 101-129.

<sup>28</sup> The Expert Group Meeting on Violence held in Vienna in November 1991 presented to the Commission a draft for a United Nations declaration on violence against women.

<sup>29</sup> The *Vienna Declaration and Programme of Action*, paragraph 38.

development and peace, that it constitutes a violation of the rights and fundamental freedoms of women and is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women.

Article 1 defines the term ‘violence against women’ as:

«... any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life ».

The Declaration calls upon States to pursue by all appropriate means and without delay a policy of eliminating violence against women<sup>30</sup>.

In March 1994, the Commission on Human Rights decided to appoint a special Rapporteur on violence against women, its causes and consequences<sup>31</sup>. In 1996, the Commission took note of the report presented and condemned all acts of gender-based violence against women<sup>32</sup>.

*The United Nations Plans of Action and Strategies for the Promotion of Equality and Non-Discrimination of Women*

In order to raise public awareness on questions linked with equality between men and women and to encourage and reinforce concrete steps and actions aimed at the elimination of discrimination against women, the United Nations undertook various initiatives and adopted a series of plans to this effect.

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Article 4 of the Declaration foresees seventeen concrete actions to be undertaken by States from ratifying or acceding to the Convention on the Elimination of all Forms of Discrimination Against Women (where they have not yet done so), through refraining from engaging in violence against women, punishment of acts of violence against women, development of preventive approaches, sensitizing law enforcement officers and public officials, to the encouragement of intergovernmental regional organizations to include the elimination of violence against women in their programmes.

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Resolution 1994/45.

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Resolution 1996/49.

In 1972, the General Assembly proclaimed 1975 as International Women's Year, declaring that the first of its objectives is '... to promote equality between men and women'. The World Conference of the International Women's Year which gathered in 1975 in Mexico adopted the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace as well as the World Plan of Action for the Implementation of the Objectives of the International Women's Year. The Plan recommended that governments ensure both women and men equality before the law, equality of educational and training opportunities and equality in employment opportunities. It stressed that the under-development of socio-economic structures in most areas of the world is the major cause of women's inferior position. The Economic and Social Council, in order to supplement the resources available for the implementation of the programme of the International Women's Year, established a voluntary fund in 1974.

In line with the proposals formulated by the Mexico Conference, the General Assembly proclaimed the period 1976-1985 the United Nations Decade for Women : Equality, Development and Peace. The mid-term World Conference of this Decade held in Copenhagen in 1980 adopted a Programme of Action designed to promote the three objectives of the Decade.

The United Nations Decade for Women concluded with the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women which was held in Nairobi in 1985. It adopted the Nairobi Forward-Looking Strategies for the Advancement of Women based on the assumption that an essential contribution to the strengthening of international peace and security would be made by the elimination of all forms of inequality between men and women . Governments were requested to allocate resources and to establish or reinforce mechanisms to promote full integration of women in all aspects of public and civil life in their countries. The Strategies were endorsed by the General Assembly which entrusted its implementation to the Commission on the Status of Women. The Economic and Social Council established a reporting procedure within the United Nations to monitor and appraise the implementation of the Nairobi Forward-Looking Strategies.

The Commission on the Status of Women in the review and appraisal of the Nairobi Forward-Looking Strategies in relation

to the *de jure* and *de facto* inequality between men and women recommended that countries should make efforts to make women more aware of their rights, and that negative stereotypes of women should be eliminated from textbooks and education. The Commission set an objective that, by the year 2000, women should achieve equal representation in political decision-making and that gender-related differences in adult literacy should be eliminated. It also underlined the need to pay greater attention to violence against women.

The Fourth World Conference on Women took place in Beijing, China, from 4 to 15 September 1995. Its main theme was 'Action for Equality, Development and Peace'. In the Beijing Declaration adopted on 15 September 1995<sup>33</sup>, governments stressed their determination to advance the goals of equality, development and peace for all women everywhere in the interests of all humanity. Recognizing that the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between men and women have persisted and major obstacles remain, with serious consequences for the well-being of all people.

The Conference adopted, together with the Declaration, the Platform for Action which is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward-Looking Strategies and at removing all the obstacles to women's active participation in all spheres of life through a full and equal share in economic, social, cultural and political decision-making. The Platform upholds the Convention on the Elimination of All Forms of Discrimination Against Women and declares that its implementation, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms. It needs to be implemented on national, regional and international levels.

The Platform for Action should be implemented through the work of all the bodies and organizations of the United Nations system. In this context, it is worth noting that UNESCO, since its early years, has been very active in combating all forms of

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United Nations Report of the Tenth World Conference on Women, Doc.A/CONF.177/20 of 17 October 1995.

inequality based on gender and promoting equality between women and men in its fields of competence<sup>34</sup>. The Organization participated actively in the Beijing Conference and has undertaken a programme aimed at the implementation of the Beijing Declaration and Platform for Action.

Among strategic objectives specifically aimed at the elimination of discrimination against women the Platform calls, *inter alia*, for: access to education; equal development; measures to prevent and eliminate violence; elimination of trafficking in women; promotion of their economic rights; elimination of employment discrimination; access to and full participation in power structures and decision-making; integration of gender perspectives in legislation, public policies, programmes and projects, equality and non-discrimination under law and in practice; full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination Against Women. The Platform pays special attention to the elimination of all forms of discrimination against the girl child.

#### **Persons belonging to minorities**

The protection of minorities, their equal and non-discriminatory treatment became a matter of international concern after the First World War.

Treaties between the victorious Allied and Associated Powers and the Eastern European and Balkan States provided for the protection of racial, religious or linguistic minorities in these States. The emphasis was on the right to life and liberty; the free exercise of religion without discrimination; equality before the law; the freedom to organize educational programmes and an obligation to ensure elementary instruction of children in their mother tongue. The League of Nations supervised these obligations and their violations were subject to action by the League. States themselves could bring allegations of violations of the treaty provisions to the Council of the League of Nations and, in many cases, claims were taken to the Permanent Court of International Justice. The right to present petitions was also

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<sup>34</sup> See on this subject, *The Universal Declaration of Human Rights*, UNESCO, Paris, 1994, pp. 123-125.

given to individuals. The system was unequal however, as obligations were imposed only on newly independent States and fell victim to the decline of the League of Nations.

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

The United Nations General Assembly in resolution 217C(III), whilst declaring that the United Nations cannot remain indifferent to the fate of minorities, added that:

«... it is difficult to adopt a uniform solution to this complex and delicate question, which has special aspects in each State in which it arises».

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

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

In 1977, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, prepared a study on the rights of persons belonging to ethnic, religious and linguistic minorities<sup>35</sup>. The study analysed the concept of a minority; presented the international protection of persons

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<sup>35</sup> Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York, 1991.

belonging to ethnic, religious and linguistic minorities since 1919; their position in the society in which they live as well as the application of the principles set forth in Article 27 of the International Covenant on Civil and Political Rights.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to prepare a report on national experiences regarding peaceful and constructive solutions of problems involving minorities<sup>36</sup>. The Special Rapporteur presented the final report in 1993.

Though the protection of minorities was not recognized in normative instruments adopted by the United Nations system, the rights of persons belonging to minorities are mentioned by several of them. The first international convention adopted after 1945 which contains provisions *expressis verbis* relating to the rights of persons belonging to minorities is the UNESCO Convention against Discrimination in Education (1960). The States Parties to the Convention agreed in Article 5, point 1 c:

«... it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language ».

The International Covenant on Civil and Political Rights is of particular importance in this context as its Article 27 states:

« In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language ».

This provision gives, if the conditions foreseen by the Optional Protocol by the International Covenant on Civil and Political Rights are fulfilled, the possibility for individuals to present communications to the Human Rights Committee concerning

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<sup>36</sup> Resolution 1989/44.

the violation of their rights. The implementation of Article 27 is also verified through the reporting system.

Article 27, with small alterations, was incorporated in the Convention on the Rights of the Child (1989) which, in its Article 30, stipulates:

«In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language».

The implementation of this provision is subject to the verification procedure based on reports presented to the Committee on the Rights of the Child.

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

On 18 December 1992, the Declaration was adopted by the General Assembly<sup>37</sup>. Thus the work which had been started by the Commission on Human Rights in 1978 by the establishment of a working group came to a successful conclusion. The Declaration formulates the obligation of States to protect the existence and identity 'of minorities within their respective territories.

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

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<sup>37</sup> Resolution 47/135

principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

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

The *Vienna Declaration and Programme of Action*, in its paragraph 19, stressed the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live. The World Conference on Human Rights reaffirmed that States are obliged:

«... to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ».

The Commission on Human Rights authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish an inter-sessional working group to promote the rights of persons belonging to minorities. The Group held its first session in 1995. In 1996, the Commission affirmed that the effective measures and the creation of favorable conditions for the protection of persons belonging to minorities, ensuring effective non-discrimination and equality for all, con-

tribute to the prevention and peaceful solution of problems involving minorities<sup>38</sup>.

### **Indigenous people**

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

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

The General Assembly, as requested by the World Conference proclaimed an International Decade of the World's Indigenous People from January 1994<sup>39</sup> and adopted a Programme of Action for the Decade<sup>40</sup>. The General Assembly affirmed that a major objective of the Decade is the adoption of a Declaration on the Rights of Indigenous People.

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<sup>38</sup> Resolution 1996/20.

<sup>39</sup> By its resolution 45/164 of 18 December 1990, the General Assembly proclaimed 1993 as International Year for the World's Indigenous People with the aim to strengthen international co-operation for the solution of problems found by them.

<sup>40</sup> The programme is contained in the annex to the General Assembly resolution 50/157.

As the elaboration of the such a Declaration by the Commission on Human Rights and the General Assembly will take some time, the only normative instrument on this subject is ILO Convention (N° 169) concerning Indigenous and Tribal peoples in Independent Countries, adopted by the International Labour Organisation in 1989<sup>41</sup>. It provides:

« Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination . . . »

and adds that:

« Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the people concerned ».

### **Migrant workers and their families**

The question of maltreatment and discrimination of migrant workers and their families has been on the agenda of ILO<sup>42</sup> and, since the 1970s, on the agenda of the United Nations<sup>43</sup>. In 1972 the Economic and Social Council adopted resolution 1706(LIII) in which it expressed deep concern over unlawful treatment of migrant workers close to slavery or forced labour. A few months later, the General Assembly reiterated this concern and, noting discrimination of which foreign workers were the victims in certain countries of Europe, called upon the governments concerned to put an end to this discriminatory treatment. It requested the Commission on Human Rights to consider the exploitation of labour through illicit and clandestine trafficking. The question was then presented to the sub-Commission which decided to deal with the illicit and clandestine operations and the discriminatory treatment of migrant workers in host countries. A

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<sup>41</sup> The Convention (N° 169) (a revised version of the Convention (N° 107) on the Protection of Indigenous and Tribal Populations) entered into force on 5 September 1991.

<sup>42</sup> The ILO (Revised) Migration for Employment Convention N° 97 was already adopted in 1949.

<sup>43</sup> See *Human Rights, The Rights of Migrant Workers*, Fact Sheet N° 24, United Nations, Geneva, 1996.

special report on these aspects was prepared and discussed by the Sub-Commission. From 1976 to 1979, the General Assembly adopted a series of resolutions on measures to improve the situation and ensure the human rights and dignity of all migrant workers and called upon the commission on Human Rights and the Economic and Social Council to consider the question of migrant workers.

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

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

The Convention has not yet entered into force. It demands twenty ratifications to become binding. In 1996 it was only ratified by four States. The Commission on Human Rights, called upon all Member States to consider the possibility of signing and ratifying or acceding to the Convention as a matter of priority<sup>44</sup>. It also urged countries of destination to review and adopt, as appropriate, measures to prevent the excessive use of force and to ensure that their police forces and competent migration authorities comply with the basic standards relating to the decent

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<sup>44</sup> Resolution 1996/18.

treatment of migrant workers and their families, *inter alia*, throughout the organisation of training courses on human rights.

It is worth noting that the European Convention on the Legal Status of Migrant Workers, adopted by the Council of Europe in 1977, entered into force on 1 May 1983.

#### **Disabled persons and persons suffering from HIV/AIDS**

As stated in paragraph 63 of the *Vienna Declaration and Programme of Action*:

« Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights ».

The World Conference called on governments to adopt or adjust legislation to assure access to these and other rights for disabled persons.

To protect the rights of disabled persons, the General Assembly adopted two declarations and a set of principles. In 1971, it proclaimed the Declaration on the Rights of Mentally Retarded Persons<sup>45</sup>. The Declaration is based on the assumption that the mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings. Mentally retarded persons have a right to proper medical care and to such education which will enable them to develop their ability and maximum potential. They have a right to protection from exploitation, abuse and degrading treatment. In its paragraph, 7, the Declaration states that whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or should it become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse.

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<sup>45</sup> General Assembly resolution 2856(XXVI) of 20 December 1971.

In 1975, the General Assembly adopted the Declaration on the Rights of Disabled Persons<sup>46</sup> which defines, in its paragraph 1, 'disabled persons' as:

«... any person unable to ensure by himself or herself wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities ».

The Declaration states, *inter alia*, that disabled persons have the inherent right to respect for their human dignity. They have the same civil and political rights as other human beings. Any possible limitation or suppression of those rights for mentally disabled persons is mentioned specifically in paragraph 7. Disabled persons have the right to medical, psychological and functional treatment. They also have the right to economic and social security and to a decent level of living.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care<sup>47</sup> were adopted by the General Assembly in 1991 to serve as a guide to governments, specialized agencies, regional, national, international and non-governmental organizations and individuals. They define the fundamental freedoms and basic rights of persons with a mental illness or who are being treated as such. Principle 1 explains that special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory.

In order to help disabled persons, to promote efforts to provide them with proper assistance, education, care and guidance as well as to educate and inform the public of the rights of disabled persons, the General Assembly proclaimed 1981 as the International Year for Disabled Persons and the period 1983-1992 as the United Nations Decade of Disabled Persons<sup>48</sup>.

A new problem of discrimination of HIV-infected people (people with AIDS) was raised by the resolution of the World Health Assembly in 1988. The Assembly called on the World Health Organization (WHO) to take all necessary measures to

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<sup>46</sup> General Assembly resolution 3447(XXX) of 9 December 1975.  
<sup>47</sup> General Assembly resolution 46/119 of 17 December 1991.  
<sup>48</sup> General Assembly resolution 37/53 of 3 December 1982.

advocate the need to protect the human rights and dignity of people with HIV/AIDS. In its resolution of May 1992, the Assembly, declared that there is no public health rationale for any measures that limit arbitrarily the rights of the individual, notably measures establishing mandatory screening.

The Commission on Human Rights in its resolution 1996/43 on the protection of human rights in the context of human immune-deficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), expressed its concern that people living with HIV/AIDS, as well as those presumed to be infected, continue to be discriminated against in law, policy and practice.

### **Aliens**

In 1972, during its twenty-ninth Session, the Commission on Human Rights for the first time discussed violations of human rights of individuals who are not citizens of the country in which they live. A year later the Economic and Social Council requested the Commission and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider as a matter of priority the problem of the applicability of existing human rights standards to individuals who are not citizens of the country in which they live and to suggest which measures in the field of human rights, including the drafting of a declaration would be desirable.

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

A final version of the draft Declaration was elaborated by a working group established by the General Assembly. The Declaration on the Human Rights of Individuals Who are Not Nation-

als of the Country in Which They Live was adopted by the General Assembly on 13 December 1985<sup>49</sup>.

The Declaration in its Preamble proclaims that the protection of human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live. As stipulated in Article 4, aliens shall enjoy in particular the following rights: to life and security of person; to protection against arbitrary or unlawful interference with privacy, family, home or correspondence; to be equal before the courts; to chose a spouse, to marry, to found a family; to freedom of thought, opinion, conscience and religion; to retain their own language, culture and traditions; to transfer abroad earnings, savings or other personal monetary assets. Subject to such restrictions as are presented by law and which are necessary in a democratic society, aliens shall also enjoy the right to leave the country; the right to freedom of expression; the right to peaceful assembly and the right to own property alone as well as in association with others. The Declaration does not contain however any provisions concerning its implementation.

## **UNESCO standard-setting instruments against discrimination in education and for the promotion of tolerance**

### **The Convention Against Discrimination in Education**

In accordance with its mandate, UNESCO has adopted a number of normative instruments aimed at the elimination of discrimination in its fields of competence. In 1958, the General Conference decided that UNESCO should assume responsibility for drafting an international convention on various aspects of discrimination in education. Two years later, in 1960, the General Conference adopted the Convention Against Discrimination in Education, which entered into force in 1962. In its Article 1 it explains that:

«... the term «discrimination» includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other

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<sup>49</sup> Resolution 40/144.

opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
- (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man ».

The Convention is not only directed at the elimination of discrimination in education but also concerns the adoption of measures aimed at promoting equality of opportunity and treatment in this field. However, the obligations of States Parties differ in both cases. Under Article 3, they are obliged to take immediate measures to eliminate and prevent discrimination whereas, in relation to equality of opportunity, they apply a national policy by methods appropriate to the circumstances and to national usage.

At the same time, the General Conference also adopted the Recommendation Against Discrimination in 'Education, thus meeting the difficulties which some Member States may have had, for various reasons and in particular owing to their federal structures, in ratifying or adopting the Convention<sup>50</sup>.

Since the adoption of the Convention and Recommendation, five consultations of Member States on the implementation of both instruments have been conducted. The General Conference decided in 1993 to initiate a sixth consultation to measure the progress achieved and the obstacles to be overcome with a view to ensuring equal opportunity and treatment in the sphere of education for all. The consultation will be focused on the basic education for women and girls, persons belonging to minorities, refugees and indigenous people.

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<sup>50</sup> In 1996, 84 countries are bound by the Convention Against Discrimination in Education.

Member States have been requested to provide, by 20 November 1996, information on measures taken for avoiding situations which may lead to unintentional discrimination or unequal treatment, and report on specific measures to discourage women and girls from dropping out of school and to encourage them to pursue their studies in the fields of science and technology and in those fields which traditionally are occupied by men and boys. In the case of persons belonging to minorities, refugees and indigenous people, the main question to be answered is: do they benefit from equal access to education?

To supplement and strengthen the system of implementation of the Convention Against Discrimination in Education, the General Conference adopted, on 10 December 1962, the Protocol Instituting a Conciliation and Good Offices Commission (entered into force in 1968) to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention<sup>51</sup>.

This comprises eleven members of high moral standing and acknowledged impartiality elected by the General Conference for a term of six years from a list of persons nominated by the States Parties. The members serve in their personal capacity. The Commission's mandate is, after obtaining all information, to ascertain the facts and make available its good offices to the States concerned with a view to an amicable solution of the matter. In every case, it draws up a report which is sent to the States concerned and then communicated to the Director-General for publication.

### **The Declaration of Principles on Tolerance**

Discrimination and intolerance, as underlined by the UNESCO Medium-Term Strategy 1996-2001, often go hand in hand. The Organization has taken steps to organize a real 'crusade' against intolerance within the United Nations system. The General Assembly, at the initiative of UNESCO, proclaimed 1995 the United Nations Year for Tolerance and invited it to assume the role of lead organization for the Year. It called upon Member States to co-operate with UNESCO in the observance of national and international programmes and

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<sup>51</sup> In 1996 there were 31 States Parties to this Protocol.

requested it to prepare for the conclusion of the Year a declaration of principles and a programme of action as a follow-up to the Year.

In conformity with its mandate as the responsible agency of the United Nations system for the Year of Tolerance, the Organization prepared for 1995 a diverse programme of meetings, concerts, broadcasts, festivals, publications, exhibitions, and other special events in all regions of the world. The Year's calendar of events included seven regional conferences.

Research carried out throughout the world on new forms of discrimination and ways of combating them, served as a basis for UNESCO's efforts to involve an increasing number of partners in promoting the idea, and above all, the practice of 'active' tolerance, which implies the desire to get to know other people, to understand what makes others different and to show respect for those differences. Tolerance is one of the great challenges of our time, as in principle all societies are pluralistic, diverse and diversified and many of them are multi-cultural and multi-religious.

The Declaration of Principles on Tolerance, foreseen by a General Assembly resolution, was adopted by the General Conference of UNESCO at its twenty-eighth session in 1995. In Article 1, it explains that:

« Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement ».

Article 2 stresses that tolerance requires that economic and social opportunities be made available to each person without any discrimination. States should ratify existing international human rights conventions and draft new legislation where necessary to ensure equality of treatment and opportunity for all groups and individuals in society. Education, as stated in Article 4, is the most effective means of preventing intolerance.

The General Conference urged Member States to communicate to the Director-General any information that they would like to share in order to increase understanding of the phenomenon associated with intolerance and the ideologies which preach intolerance, such as racism, fascism and anti-semitism, and the most effective measures for addressing these issues.

The Plan of Action for the Follow-up to the United Nations Year for Tolerance (1995) also adopted by the General Conference presents the causes and factors contributing to manifestations of intolerance around the world. It states that the aim of the follow-up programme is to transpose the most successful components of the United Nations Year for Tolerance into more enduring strategies and structures by which promotion and sensitisation of tolerance may be improved in every region of the world. The Plan of Action speaks about the mobilization of the United Nations system and underlines that the rights and responsibilities regarding tolerance and the right to be different are firmly established in human rights law.

### **The prohibition of all forms of discrimination - a fundamental principle of the international law of human rights**

The prohibition of discrimination, as shown in this introduction, is formulated at present not only in the Charter of the United Nations and the International Bill of Human Rights but also in the impressive number of instruments dealing with discrimination on specific grounds or directed against persons belonging to vulnerable groups, adopted by the United Nations, the International Labour Organisation (ILO) and UNESCO. Standards concerning non-discrimination can also be found in a series of instruments adopted by regional organizations which, due to the limited size of this publication have not been reproduced<sup>52</sup>.

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It does not comprise, *inter alia*, the American Convention on Human Rights (1969); the Convention on the Status of Aliens (1928); the Inter-American Convention on the Granting of Political Rights to Women (1948); the Inter-American Convention on the Granting of Civil Rights to Women (1948); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994); the African Charter on Human and People's Rights (1950); the European Convention on Human Rights (1950); the European Convention on the Legal Status of Migrant Workers (1977).

Implementation of conventional provisions imposing obligations on States is subject to control and verification procedures based on periodic State reports and also providing, as in the case of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial discrimination the possibility of individual communications<sup>53</sup>. The treaty bodies, that is the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women, are authorized not only to consider States reports but also to formulate general recommendations.

The unquestionable progress achieved by the United Nations and the specialized agencies in the development of the international system of protection against discrimination does not mean that this system as a whole can now be recognized as fully satisfactory. The advancement of standards prohibiting discrimination of persons belonging to various vulnerable groups is uneven. In some cases the prohibition is established by conventions, in others by non-binding declarations. There are also vulnerable groups such as people with AIDS who are not protected by any specific instruments. The effectiveness of even the most advanced protection based on conventions is diminished by the fact that they are not ratified by all States, and that, at the moment of ratification or accession, many States Parties have deposited reservations. Therefore, in the light of these remarks, a call for further development of anti-discriminatory law seems to be fully justified.

Since 1946 all the United Nations organs dealing with human rights are actively involved in the struggle against discrimination. Questions linked with the elimination of discrimination are permanently dealt with by the General Assembly, the Economic and Social Council, and the Commission on Human Rights which, in 1947, created the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission carries out studies whose aim was to ban discrimination. These studies are related amongst others to the right to education, the exercise of political rights, discrimination based

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<sup>53</sup> This possibility exists for citizens of States which accepted the competence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

on religion or beliefs, the elimination of racial discrimination, the rights of minorities and indigenous peoples. A number of these studies have led to the adoption of standard-setting instruments by the United Nations and UNESCO.

The legal and administrative means against discrimination including penal sanctions, though no doubt very important for the elimination and prevention of discrimination, are not sufficient. Therefore standard-setting instruments adopted by the United Nations and the specialized agencies also call for a change in traditional practices, the elimination of stereotypes and the use of education and the mass media in the struggle against discrimination. Although the duty to combat all forms of discrimination is first of all imposed on and undertaken by States, the importance of participation of national and international non-governmental organizations and individuals in the struggle against discrimination cannot be overlooked.

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The human rights standards prohibiting discrimination can be effective and can determine individual behaviour only when they are known, when a public awareness and conviction are created. The dissemination of these standards is an obligation of the United Nations system. This publication has been prepared in the hope that it may in a modest way contribute to the struggle against discrimination and to the promotion of tolerance.

## THE IMPLEMENTATION OF INTERNATIONAL STANDARDS ON PREVENTION AND ELIMINATION OF RACIAL DISCRIMINATION: ACHIEVEMENTS AND CHALLENGES

Rüdiger WOLFRUM\*

### The prohibition of racial discrimination in international law

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

All international human rights instruments dealing with the protection of human rights, either on the universal or the regional level, contain a provision prohibiting racial discrimination. Compared to the International Convention on the

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The International Court of Justice has stated that «... to establish ... and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race; colour, decent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter» (Opinion on the presence of South Africa in Namibia, *ICJ Reports 1971*, paragraph 131).

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In Article 1, paragraph 3, Article 13, paragraph 2(b), Article 55, sub-paragraph c and Article 76, sub-paragraph c.

Elimination of All Forms of Racial Discrimination (ICERD), they either cover specific aspects only or are of a general nature. The first international treaty to deal with one particular aspect of racial discrimination was the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. According to its Article II, genocide means specific acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. However, there are very few occasions in which the Genocide Convention has been invoked on the international or national level. This may change when the International Criminal Court, which will deal with violations of humanitarian law, has resumed its functions. Since discrimination in respect of employment and occupation is common, the International Labour Organisation (ILO), already in its Declaration of Philadelphia of 1944, affirmed that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. This principle was transformed into an international treaty by ILO Convention (N<sup>o</sup> 111 ) Concerning Discrimination in Respect of Employment and Occupation of 1960. It prohibits any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The Convention against Discrimination in Education, adopted on 14 December 1960 by the UNESCO General Conference, follows the approach adopted by the ILO Convention N<sup>o</sup> 111 and prohibits any discrimination based on race, colour, sex, language, economic condition or birth which has the purpose or effect of nullifying or impairing equality of treatment in education. Further specific aspects of racial discrimination are dealt with in the International Convention on the Suppression and Punishment of the Crime of Apartheid, and in the International Convention against Apartheid in Sports. Finally, the prohibition of racial discrimination is enshrined in: Article 3 of the Convention relating to the Status of Stateless Persons, 1954; Article 3 of the Convention relating to the Status of Refugees, 1951; Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1984; Article 2 of the

Convention on the Rights of the Child, 1989; and in Article 85, paragraph 4 of the Additional Protocol (Protocol I) to the Geneva Conventions of 12 August 1949 on the Protection of Victims of International Armed Conflicts, 1977.

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

On 12 December 1960, the General Assembly in reacting to acts of antisemitism, particularly in Germany, condemned all forms of racial, religious and national hatred in political, economic, social, educational and cultural affairs as a violation of the United Nations Charter and the Universal Declaration of Human Rights<sup>3</sup>. In the subsequent Declaration on the Elimination of All Forms of Racial Discrimination<sup>4</sup>, the General Assembly stated that discrimination between human beings on the grounds of race, colour or ethnic origin is a offence to human dignity and shall be condemned as a denial of the principles of the United Nations Charter and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. The Declaration of 1963 formed the basis of the International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature by the General Assembly only two years later. According to Article 2, States Parties to ICERD are under an obligation to pursue a policy of eliminating racial discrimination in all its forms. States Parties are obliged not to engage in acts or practices of racial discrimination, not to sponsor or support racial discrimination by any persons or organizations and to review governmental, national and local policies with a view to eliminating any laws, regulations or practices of a discriminatory nature or effect. In accordance with this fundamental obligation, States Parties guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and in the enjoyment of civil, political, economic, social and cultural rights as referred to in Article 5 of

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<sup>3</sup> A/Res./1510(XV).

<sup>4</sup> A/Res./1904(XVIII), 20 November 1963.

ICERD. Further, States Parties have undertaken to bring to an end, by all appropriate means, racial discrimination by any persons, groups or organizations. Certain offences have to be declared as an offence punishable by law<sup>5</sup>; organizations which promote and incite racial discrimination are to be prohibited and the participation therein is to be punished. States Parties have further undertaken to adopt measures in the field of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination. Finally, ICERD opens the possibility of affirmative actions vis-à-vis ethnic groups.

### **The implementation system in general**

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

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<sup>5</sup> See Article 4, paragraph (a) of ICERD.

<sup>6</sup> For a description of the earlier system, see: *Proceedings of the Nobel Symposium on International Protection of Human Rights*, 1967; K.J. Partsch, *Racial Discrimination : The United Nations Convention and its Functioning*, United Nations, 1971, pp. 1-8 and 46-53; Schwelb, « Civil and political rights: the international measures of implementation », *American Journal of International Law*, 62, 1968, pp. 827 et seq.; E. Schwelb, « Some aspects of the measures of implementation of the International Covenant on Economic, Social and Cultural Rights, *Human Rights*, 1-3, 1968, pp. 377 et seq.; the most recent detailed analysis is to be found in K.J. Partsch, « The Committee on the Elimination of Racial Discrimination » in P. Alston (ed.) *The United Nations and Human Rights, 1992*, pp. 339-368; a detailed analysis of the implementation system of all human rights treaties is contained in the report of P. Alston, « Effective implementation of international instruments on human rights, including reporting obligations under international instruments of human rights: interim report on updated study ». A/Conf.157/PC/62 Add.11/Rev.1.

However, the implementation system is less effective than those enshrined in the European Convention on Human Rights or in the ILO system<sup>7</sup>. Specifications to the implementation system are contained in the Rules of Procedure of the Committee on the Elimination of Racial Discrimination<sup>8</sup>, (CERD), namely Rules 63-96. These Rules of Procedure have been changed considerably over time with a view to increasing the effectiveness of the Committee and keeping the implementation procedure in line with comparable developments in other human rights treaty bodies. Generally speaking, the developments within the human rights treaty bodies concerning implementation procedures have stimulated each other and have gained momentum since the chairpersons of the human rights treaty bodies meet on a regular basis<sup>9</sup>.

The implementation system created by ICERD consists essentially of three procedures: a reporting procedure<sup>10</sup>

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<sup>7</sup> N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Alphen aan den Rijn, Sijthoff and Noordhoff, 1980, p. 74.

<sup>8</sup> CERD/C/35/Rev.3; between 1970 and 1984 the Committee worked on the basis of « Provisional Rules of Procedure».

<sup>9</sup> Pursuant to General Assembly Resolution 38/1 17 of 16 December 1983, the Secretary-General convened a first meeting of the persons chairing the bodies entrusted with the consideration of State Party reports in August 1984. The report of the meeting was presented to the General Assembly at its thirty-ninth session (A/39/484, Annex). A second meeting was convened by the Secretary-General in October 1988, pursuant to General Assembly resolution 42/105 of 7 December 1987 and the report of that meeting was presented to the General Assembly (A/44/98, Annex). In its resolution 44/135 of 15 December 1989, the General Assembly invited the chairpersons to maintain communication and dialogue with each other on common issues and problems; a third and a fourth meeting were convened, pursuant to resolution 44/135 of 15 December 1989 (report A/45/636); resolution 45/85 of 14 December 1990 (report A/47/628, Annex, respectively).

<sup>10</sup> On the reporting procedure in general, see C. Tomuschat, «Human Rights, Reports of States», R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 559-566; L. Sohn, « Human rights: their implementation and supervision », Th. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, Vol. II, Oxford, Oxford University Press, 1984, pp. 369-40 I; J. Gomez del Prado, « United Nations conventions on human rights: the practice of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in dealing with reporting obligations of States Parties », *Human Rights Quarterly*, 7, 1985, pp. 492-513.

obligatory for all States Parties (Article 9, Rules 63-68); a procedure of State-to-State complaints<sup>11</sup> which is open to all States Parties (Articles 11, 12, 13 and 16, Rules 69-79)<sup>12</sup> and the right of petition - communications in the language of Article 14 - by individuals or groups of individuals within the jurisdiction of States Parties claiming to be victims of a violation by that State of any of their rights set forth in the Convention (Article 14, Rules 80-97). In addition, Part II of the Convention assigns to the Committee certain advisory responsibilities relating to the attainment of the principles and objectives of the Convention in Trust and Non-Self-Governing Territories and all other territories to which Article 15 of General Assembly resolution 1514 (XV)<sup>13</sup> of 14 December 1960 applies as well as the duty to report on all its activities, including its opinions, suggestions and general recommendations, to the General Assembly of the United Nations. Until now, the Committee has devoted the majority of its work to examining States' reports received under Article 9 which focuses on the reporting system and its development. As of the end of 1993, the Committee has received no formal inter-State and only four individual communications.

In general, the system of receiving and examining reports as applied by the other treaty bodies is quite similar to that described for CERD. The same is true with respect to individual communications, although the Human Rights Committee

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<sup>11</sup> On this procedure in general, see K.J. Partsch, «Human Rights, Complaints of States», R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 567-572; S. Leckie, « The inter-State complaint procedure in international human rights law: hopeful prospects or wishful « thinking? » *Human Rights Quarterly*, 10, 1988, 249-303.

<sup>12</sup> Lerner (Note 7) Page 75 speaks of an implementation machinery in the form of a Good Offices and Conciliation Committee. Although Article 12 of the Convention uses the word «*Ad Hoc* Conciliation Commission», its functions as well as those of the Committee surpass the functions traditionally entrusted to bodies on conciliation. On this procedure in general see C. Tomuschat, « Human Rights, Individual Complaints », R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 551 -558; M. Tardu, « Human rights complaint procedures of the United Nations: assessment and prospects », J. Jejewitz, H., Klein, J. Kühne, H. Petersmann and R. Wolfrum (eds), *Des Menschen Recht zwischen Freiheit und Verantwortung, Festschrift für K.J. Partsch* (The right of man between freedom and responsibility. For K.J. Partsch), 1989, pp. 287-314.

<sup>13</sup> Concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples.

established under Article 28, paragraph 1 of the International Covenant on Civil and Political Rights, was more successful in establishing a practice in dealing with and examining individual communications<sup>14</sup>.

### **The Committee on the Elimination of Racial Discrimination (CERD)**

The monitoring functions concerning the implementation of the Convention are entrusted to the Committee on the Elimination of Racial Discrimination (hereinafter the Committee) which comprises eighteen experts of «high moral standing and acknowledged impartiality» elected by the States Parties from amongst their nationals (Article 8). The word «experts» is used in a broad sense as referring to expertise in racial discrimination and related fields<sup>15</sup>. Thus it is of consequence when Article 8, paragraph 1, states that they serve in their personal capacity only, meaning that they are not agents or representatives of any government. They may not seek instructions nor must governments attempt to influence them<sup>16</sup>. However, States Parties wield some influence upon the composition of the Committee since its members may only be elected from a list of persons nominated by States Parties (Article 8, paragraph 2). Nevertheless, the Committee is, according to the letter and spirit of the Convention, to act as an expert body detached from the

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<sup>14</sup> For details, see especially Tomuschat (Note 10) at pp. 555 et seq.; on the Human Rights Committee; see especially T. Opsahl, « The Human Rights Committee » in P. Alston (ed.), *The United Nations and Human Rights*, 1992, pp. 369-443.

<sup>15</sup> No specific professional qualifications are required; in this respect the composition of the Committee differs from that of the Human Rights Committee.

<sup>16</sup> The impartiality of the experts may not only be endangered by the States Parties having nominated a given expert (for details in this respect, see Partsch (Note 6) at pp. 340 et seq.) but by other States Parties, too. The Committee at one point felt it mandatory to strongly object to the tendency «... to put pressure upon experts, especially those serving as country-rapporteur» and to remind States Parties «... to respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity.» (Recommendation IX, 38th Session, 1990).

political interests of the States Parties having nominated them<sup>17</sup>. In their election, consideration is given to equitable geographical distribution and to «... the representation of the different forms of civilization as well as of the principal legal systems». The intention of this paragraph, as of similar provisions in other international instruments<sup>18</sup>, is that the experts should represent as many geographical regions and as many legal systems and cultures as possible<sup>19</sup>. In fact, the criterion of equitable geographical distribution prevails. As of August 1993, the geographical distribution of experts was as follows: Africa 3; Asia 4; Latin America 4; Eastern Europe 3; Western Europe and others 4. The principle of equitable geographical distribution also applies to the composition of the Bureau (a chairperson, three vice-chairpersons and a Rapporteur)<sup>20</sup>.

### Reporting system

Under Article 9, paragraph 1, of the Convention:

«States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other

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<sup>17</sup> According to Rule 14, each expert, in assuming his or her duties, makes a solemn declaration similar to the one of the judges to the International Court of Justice: «I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honorably, faithfully, impartially and conscientiously».

<sup>18</sup> As to the Human Rights Committee and the Committee for Economic, Social and Cultural Rights see C. Tomuschat, «Human Rights Covenants and their executive organs» in R. Wolfrum (ed.), *United Nations Yearbook*, 2nd ed., 1992, pp. 583-591 (pp. 589 et seq.); Opsahl (Note 14) at pp. 372 et seq.

<sup>19</sup> Partsch (Note 6) p. 340 emphasizes the specific reference to the «principal legal systems», in contrast to Lemer (Note 7) p. 76 who concludes that the experts should represent «as many political systems and cultures as possible».

<sup>20</sup> The chairperson is elected in accordance with the following regional sequence which was established at an early stage to reflect the number of ratifications from each region: Asia, Latin America, Africa, Western Europe, and Eastern Europe. However, this rotation scheme has been set aside several times for different reasons; for details, see Partsch (Note 6), pp. 340 et seq. In general, the chairperson is first agreed upon in the regional group and elected by consensus.

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».

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

Article 9, paragraph 1, of ICERD declares the responsibility of States Parties towards the Convention, whereas Article 9, paragraph 2, states the Committee's subsequent reporting duties vis-à-vis the General Assembly. By separating these sets of obligations into two paragraphs, the Convention indicates that the Committee's work is to proceed through two stages: first, fact-finding; and, secondly, making suggestions or general recommendations.

As far as the expected content of the reports is concerned, ICERD provides little guidance to the States Parties. According to Article 9, paragraph 1, of ICERD, States Parties have to report on «... legislative, judicial, administrative and other measures which they have adopted and which give effect to the provisions of this Convention». Unfortunately, ICERD does not authorize the Committee to issue a questionnaire as a basis on which States could prepare their reports<sup>21</sup>. It has instead

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<sup>21</sup> Article 88 of the UN Charter authorizes the Trusteeship Council to use such an approach.

produced guidelines describing the desired content of the reports. While the original guidelines did not follow the system of ICERD<sup>22</sup>, they have since been rewritten so as to refer systematically to the various articles<sup>23</sup>. In addition, the revised guidelines<sup>24</sup> request or invite information on, *inter alia*, the

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<sup>22</sup> CERD/C/R/12 and A/8027(1970), Annex IIIA. These guidelines were issued as a 'Communication to States Parties' on the basis of the Committee's authority to request further information; for details, see

<sup>23</sup> Partsch (Note 6), p. 350.

<sup>24</sup> For the revised guidelines adopted on 9 April 1980, see A/35/18(1980), Annex IV.

<sup>24</sup> See the consolidated guidelines for the initial part of the reports of States Parties, as suggested by the chairpersons of the treaty bodies (A/45/636, at p. 18):

«Land and people

1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65 years of age, percentage of population in rural areas and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex.
2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.  
General legal framework within which human rights are protected
3. This section should contain information on:
  - (a) which judicial, administrative or other competent authorities have jurisdiction affecting human rights;
  - (b) What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation and rehabilitation exist for victims;
  - (c) Whether any of the rights referred to in the various human rights instruments are protected either in the constitution or by a separate bill of rights and, if so, what provisions are made in the constitution or bill of rights for derogations and in what circumstances;
  - (d) How human rights instruments are made part of the national legal system;
  - (e) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be

demographic composition of the population (in connection with the general scope of the Convention); the existence of diplomatic, economic or other relations with racist regimes (Article 3); the implementation of the provision prohibiting activities that incite racial hatred (Article 4); and the documentation requested by the Committee (such as the texts of relevant laws and judicial decisions).

As far as the demographic composition is concerned, the Guidelines also refer to General Recommendation IV in requesting «States Parties to endeavour to include in their reports . . . information on the demographic composition of the population ...»<sup>25</sup>. However, the Committee quite often faces opposition regarding this information. Some States Parties do not recognize the concept of «national» or «ethnic» groups. Others consider an investigation into ethnicity to be inherently discriminatory and thus do not request such details in national censuses. The Committee has, however, insisted in obtaining such information<sup>26</sup> and on various occasions has had to be satisfied with estimates. It has countered the objections raised by the States Parties by arguing that it would be impossible for them to fulfil the obligations under Article 1, paragraph 4, Article 2, paragraph 1(e) and especially Article 2, paragraph 2 of ICERD if no information existed as to the demographic composition of the population.

Equally unsatisfactory are in practice the reports on Article 4 of ICERD. According to this provision, States Parties are under an obligation

«... to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also

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

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

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A/9018(1973).

As to the earlier discussion in the Committee, see Partsch (Note 6), p. 351.

the provision of any assistance to racist activities, including the financing thereof».

Further, under sub-paragraph (b) of this provision, States Parties:

«... shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law».

Several of the States Parties have not enacted relevant legislation, arguing that no such activity existed and, hence, legislation was unnecessary. Most of the reports contain little if any reference to court rulings concerning the prosecution of persons in accordance with Article 4 of ICERD. Those reports which provide such information often lack details concerning the facts of the cases and the sentences rendered. Thus the Committee felt it necessary to remind States Parties of their obligations under Article 4 of ICERD and to ask for more detailed information<sup>27</sup>. Such a move is of particular relevance taking into account the emergence of new forms of racism and xenophobia in Europe. It remains to be seen whether the Committee will increasingly focus its attention upon the implementation of this provision of ICERD.

Finally, Article 7 which obliges States Parties to undertake measures in the fields of education and teaching with a view to combating racial prejudice, presents particular reporting difficulties. The Committee has complained that the reporting on these obligations has been unsatisfactory<sup>28</sup>. To remedy this situation, the Committee asked UNESCO to help draft reporting guidelines. The response consisted of an extensive list of more than 90 questions<sup>29</sup>. On the basis of UNESCO's draft and other proposals, the Committee issued a short text which defines (with examples) the State's reporting duties with respect to each of the

<sup>27</sup>

General Recommendation VII (1985),

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A/32/1 8(1977), Annex; General Recommendation V (1977).

<sup>29</sup>

For details, see Partsch (Note 6), 350 et seq.

distinct topics of Article 7: education and teaching, culture and information<sup>30</sup>. However, this had little effect on the reporting.

ICERD and the Rules of Procedure give little indication about the procedure to be followed by the Committee in examining reports. Over the years, the Committee has developed the following practice. The examination of reports usually begins with an introductory statement by the representative of the reporting State. This statement need only consist of general remarks, although, in practice new substantive information is often provided. This introduction is followed by the presentation of the country-Rapporteur and the questions asked or suggestions and opinions voiced by the experts. After the Committee members have completed their observations and questioning, the State's representative is once again invited to take the floor. This is followed by another round of questions and remarks from the experts and a reply from the representative of the State Party concerned. The examination of each report is now concluded by the «Concluding Observations» which are formulated in the absence of the representative of the reporting State, although in public meeting. The development of this procedure was undertaken gradually. Some of its important elements met with resistance and it was only possible to introduce them after considerable debate.

The decision to allow representatives of States Parties to be present when their reports are discussed was only taken upon recommendation of the General Assembly<sup>31</sup>. Only this decision has made it possible to establish a constructive dialogue between the experts and the representatives of States Parties. Hence it has to be regarded as one of the most important innovations concerning the working methods of the Committee. In drafting its Rules of Procedure, the Human Rights Committee included a similar provision for having representatives of States Parties attend its meetings<sup>32</sup>.

The introduction of the system of country-rapporteurs, which was decided upon in 1988, represents another major change in the procedure of the Committee. Such a system has

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<sup>30</sup> A/37/18(1982), Chapter 9; Decision 2(XXV) (1982); incorporated into the Revised General Guidelines (CERD/C/70/Ref.1(1983/2)).

<sup>31</sup> A/Res.2783(XXVI) of 6 December 1971; Rule 64; for details, see Partsch (Note 6), pp. 354 et seq.

<sup>32</sup> Tomuschat (Note 10), p. 562; Opsahl (Note 14) p. 403.

been used by the ILO for decades and has influenced the decision of the Committee. Proposals for appointing country-rapporteurs were first advanced in 1974 and repeated at a closed meeting in 1986<sup>33</sup>. In 1988, the Committee was confronted with a substantial backlog of reports awaiting consideration. It was proposed that the Committee divide into smaller working groups to speed up consideration<sup>34</sup>. A working group was appointed which recommended the appointment of rapporteurs<sup>35</sup>. This was adopted on a trial basis<sup>36</sup>. Six members volunteered to serve in this capacity and were allocated reports by the Bureau<sup>37</sup>. ICERD's annual report for 1988 in paragraphs 21 and 24(b) described the responsibilities of a country-Rapporteur as being to prepare «a thorough study and evaluation of each State report, to prepare a comprehensive list of questions to put to the representatives of the reporting State and to lead the discussion in the Committee».

Later, the Chairpersons' meeting<sup>38</sup> recommended that treaty bodies consider the appointment of rapporteurs. ICERD reviewed its country-Rapporteur system, as it stood in 1989. Its annual report, in paragraphs 24 and 26(d), indicated that the introduction of the system had been successful in terms that have been recapitulated in the 1990 report (paragraph 34), the 1991 report (paragraph 37) and the 1992 report (paragraph 41)<sup>39</sup>.

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CERD/SR771 .

CERD/SR823, paragraph 29; this idea was rejected.

CERD/SR827, paragraph 40.

CERD/SR paragraph 74.

CERD/SR829, paragraph 1-7.

A/44/98, 17 paragraph 57 and 24 paragraph 91.

Since 1988, country-rapporteurs have not had reports allocated to them by the Bureau. A list of reports has been circulated and members volunteering to serve have so indicated to the Committee's Rapporteur. The members volunteering have increased so that, by 1992, 16 out of 18 members had volunteered. In that year, the Committee briefly considered its method of allocation; it was agreed that no member should be responsible for serving as country-Rapporteur for two successive reports from the same State, or be called upon to evaluate the report of his or her own country. It was also thought inappropriate for someone to volunteer if there was tension between the State of which the member was a national and the reporting State. Annexes have been included in the annual report indicating which members served as country-rapporteurs for which reports, and which country-rapporteurs have been appointed for the next session.

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

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

First of all, ICERD does not specify which information the experts may use to assess the reports. Some experts have argued that the Committee should make suggestions and general recommendations in accordance with Article 9, paragraph 2 of ICERD solely on the basis of information submitted by that State Party.<sup>40</sup> Eventually the Committee decided that Article 9, paragraph 2 permits the consideration of any official documents of the reporting State, including legislation, government declarations and parliamentary papers (which might include speeches by the government's opponents) - whether or not these are quoted in the State's report<sup>41</sup>. Over a long period, the Committee did not accept information provided by non-governmental organizations or by the mass media<sup>42</sup>. This policy, however, has been changed following the example of other human rights treaty bodies.<sup>43</sup>

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<sup>40</sup> For the early practice of the Committee, see Partsch (Note 6), pp. 351 et seq. The limitations of this interpretation, however, led to its early rejection. During a discussion on co-operation with the ILO and UNESCO, differing views were expressed on the use of information provided by these organizations. The UN Office of Legal Affairs issued an opinion on the use of information in which it was stated that nothing in CERD indicated that the Committee was limited to the data received by States Parties in its primary consideration of reports and in particular in formulating requests for further information (*United Nations Juridical Yearbook 1972*, p. 164, paragraph 4(a)).

<sup>41</sup> Confirmed by the chairman, CERD C/SR.296 (1976), paragraph 57.

<sup>42</sup> In 1977, the Committee discussed and rejected a suggestion made in the Third Committee that CERD might benefit from the knowledge and experience of non-governmental organizations (Report, paragraph 29).

<sup>43</sup> See *Manual on Human Rights Reporting*, 1991, p. 121 regarding the Human Rights Committee; p. 174, the Committee on the Elimination of Discrimination of Women; p. 188 the Committee against Torture.

The chairpersons of the human rights treaty bodies have focused on the need for the committees to have at their disposal a wide range of information if they are to function effectively. Accordingly, they have recommended on sources of information:

«To assist it in the fulfilment of its responsibilities, each of the treaty bodies should have access to all of the sources of information that it feels it needs in order to be effective. In this regard, information provided by non-governmental organizations can be of major importance. The treaty bodies should also take full advantage of the expertise and experience of the specialized agencies and other United Nations bodies whenever appropriate»<sup>44</sup>.

The Committee has adopted this recommendation<sup>45</sup>. It was felt that it was incompatible with the status of an independent expert to be restricted in the use of whatever information he or she felt appropriate. This change of procedure has considerably deepened the level of consideration of reports in the Committee and has moved the reporting system more in the direction of fact-finding.

As to the reaction to reports following its examination, the Convention does not provide the Committee with the power to reject a report. It may only «request further information» (Article 9, paragraph 1) and may make «suggestions and general recommendations» (Article 9, paragraph 2). Theoretically two different decisions may be taken by the Committee: first, that the information provided for was not sufficient to enable the Committee to carry out its function and, second, that the State Party concerned has failed to fully implement the obligations assumed under the Convention. The Committee has paraphrased these two possible reactions to a report in procedural terms. Rule 67, paragraph 1, of its Rules of Procedure states in part that:

«When considering a report submitted by a State Party under Article 9, the Committee shall first determine whether the report provides the information referred to in

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<sup>44</sup>

A/45/636, p. 16, paragraph 68.

<sup>45</sup>

See Decision 1 (XL), A/46/18, p. 104.

the relevant communications of the Committee. If a report of the State Party to the Convention, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish additional information».

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

During its early years the Committee did not fully distinguish between these two possible decisions. It would conclude its examination of reports by qualifying them as satisfactory or unsatisfactory, without indicating whether unsatisfactory reports lacked sufficient information or whether the reporting State had failed to comply with its substantive obligations under the Convention<sup>46</sup>. In 1972, the Committee amended its Rules of Procedure (now Rule 67), in order to distinguish more clearly the two phases of its evaluation. In addition to paragraphs 1 and 2 of Rule 67, it introduced Rule 67, paragraph 3 which provides that

«... if, on the basis of its examination, the reports and information supplied by the State Party, the Committee determines that some of the obligations of that State under the Convention have not been discharged, it may make suggestions and general recommendations in accordance with Article 9, paragraph 2 of the Convention»).

However, in its most recent practice, the Committee has asked for additional information also in cases where it felt that a State Party had not fully discharged the obligations under the

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<sup>46</sup> See, for example, the report of 1971 (A/8418), paragraph 30; this practice was abandoned by the Committee in 1974, A/9618 (1974), paragraph 23.

Convention, thus closing again the distinction between the two stages of examining reports. In this respect, requesting further information was regarded as a kind of verdict concerning the situation in the given State Party.

Another means for the Committee to express its opinion upon the situation in a given State Party are «concluding observations»). At its 891st meeting, the Committee discussed possible improvements in the style and content of its report to the General Assembly, following upon the criticism in the Alston report<sup>47</sup> and upon the argument in that report for «concluding observations» to be made by individual experts. The discussion took up a desire voiced earlier<sup>48</sup> for the Committee to agree a collective assessment of a report rather than list a set of individual assessments. The outcome was described in the annual report for 1991 in paragraph 31<sup>49</sup>, which stated that the relevant section of the report would contain:

«... concluding observations on the report and the comments made by the State Party concerning the situation regarding racial discrimination in the country concerned».

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

The Committee adopted concluding observations in 1991 regarding sixteen reporting and thirteen non-reporting States and, in 1992, regarding nine reporting and nine non-reporting States. The procedure for drafting these observations since 1992

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<sup>47</sup> A/44/668, paragraphs 134 and 124

<sup>48</sup> CERD/SR.805, paragraph 65.

<sup>49</sup> A/46/18.

is that the country-Rapporteur is asked to circulate a draft within the Committee, to take account of the comments of colleagues and then to present at a later session a draft which could be adopted by consensus. Some of the observations adopted in that year made reference to particular general recommendations of the Committee.

The Human Rights Committee concludes its examination of reports by «concluding observations of individual members»<sup>2</sup>. These contain an assessment of the human rights situation prevailing in the respective State Party on which concern on specific issues may be expressed<sup>50</sup>. At its 43rd and 44th sessions, the Committee reviewed its methods of work as far as reports are concerned<sup>51</sup>. It decided that comments would be adopted reflecting the views of the Committee as a whole at the end of each State Party report. These comments are not meant to replace comments made by members; they are more detailed than the concluding observations of the Committee on the Elimination of all Forms of Racial Discrimination and, in general, cover the following points: positive aspects; factors and difficulties impeding the application of the Covenant; principal subjects of concern; and suggestions and recommendations. In adopting this procedure the Human Rights Committee has emphasized its monitoring functions.

In recent years, all human rights treaty bodies and particularly the Committee on the Elimination of Racial Discrimination have encountered the problem that States parties do not meet their reporting requirements<sup>52</sup>. This endangers the monitoring functions of the human rights treaty bodies. By 15 March 1993, 1,009 reports were overdue from 499 States Parties. As for the Committee on the Elimination of Racial Discrimination, according to a note by the Secretary-General<sup>53</sup>, 309 reports from as many as 109 States Parties were due up to the closing date of the 43rd session of the Committee (20 August 1993).

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<sup>50</sup> See, for example, the report of the Human Rights Committee to the General Assembly at its 43rd, 44th and 45th session 1992 (A/47/40), p. 18 et seq.

<sup>51</sup> Report (Note 52) p. 18, paragraph 45.

<sup>52</sup> For further details, see the report of the fourth meeting of chairpersons (A/47/628) and Alston's study (Note 6) at pp. 44 et seq.

<sup>53</sup> CERD/C/245.

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

The General Assembly first decided to include on its agenda an item on the reporting obligations of States Parties under United Nations human rights instruments in its resolution 37/44 of 3 December 1982. At the General Assembly's request<sup>54</sup>, the Secretary-General prepared an analysis of the reporting system based on observations made by States Parties. The report proposed an extension of the periodicity from two to four years, the convening of periodic meetings of the chairpersons of the major human rights supervisory bodies and the intensification of technical assistance provided for States Parties in the form of seminars, training programmes and expert advice<sup>55</sup>. In March 1984, the Committee supported the latter suggestion but opposed the first. The Committee noted that the extension of the required periodicity would only have a negative effect, since it would weaken the obligations assumed by States. It also noted that internal rules of procedure provided for a degree of flexibility which could readily be used to ease the burden on States experiencing temporary difficulties with their reporting<sup>56</sup>. The General Assembly has continued to consider and express its concern at problems relating to the reporting obligations under the various human rights instruments, as well as their effective monitoring by the bodies created under those instruments, at each of its sessions and has adopted relevant resolutions<sup>57</sup>. In making its procedural recommendations, the General Assembly has based itself upon the suggestions voiced in the meetings of the chairpersons of the treaty bodies<sup>58</sup>. Equally the Commission

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<sup>54</sup> A/Res.37/44 of 3 December 1982.

<sup>55</sup> A/38/393(1983); see also A/37/18(1982), Annex IV and A/38/18(1983), Annex VI.

<sup>56</sup> A/39/18(1984), pp. 127-128, Decision I (XXIX) 1984.

<sup>57</sup> A/Res.38/117 of 18 December 1983; A/Res.39/138 of 14 December 1984; A/Res.40/116 of 13 December 1985; A/Res.41/121 of 4 December 1986; A/Res.42/105 of 7 December 1987; A/Res.43/115 of 8 December 1988; A/Res.44/135 of 15 December 1989; A/Res.45/85 of 14 December 1990; A/Res.46/111 of 17 December 1991; A/Res.47/111 of 16 December 1992.

<sup>58</sup> See the reports thereon: A/44/98; A/45/636; HRI/MC/1992/2.

on Human Rights has adopted resolutions reflecting its concerns and recommendations<sup>59</sup>.

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

The Committee has taken various steps in respect of States Parties whose reports are overdue. When reports are late the Committee sends reminders to governments through the Secretary-General and a list of these reminders appears in its annual report to the General Assembly. If such reminders are ignored, letters are written to heads of governments, direct contacts undertaken with the State delegations at UN Headquarters and Secretariat advice is offered to the State concerned<sup>60</sup>.

The Committee decided at its 39th session (March 1991) to review the implementation of the Convention in those States Parties whose periodic reports were excessively overdue. The annual report for that year states that, in the case of reports excessively overdue, the Committee «... agreed that this review would be based upon the last reports submitted by the State Party concerned and their consideration by the Committee»<sup>61</sup>. In 1991, the Committee wrote in these terms to thirteen States<sup>62</sup>. This action has been taken in respect of States whose periodic reports are six years overdue. Several of the States Parties addressed requests for postponements. The Committee, however, agreed only to postpone until its following session the consideration of reports of those States which undertook to submit their overdue reports in the interim. Since then identical letters have been sent to these States inviting them to designate a representative to participate and to furnish relevant information.

The Committee felt such practice to be in conformity with Article 9, paragraph 2, of the Convention which entrusts the Committee «... to make suggestions and general

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<sup>59</sup> See resolutions 1989/46, 1990/25, 1991/20, 1992/15.

<sup>60</sup> See report of the Chairman of the Committee at the first meeting of chairpersons of human rights treaty bodies (A/44/98).

<sup>61</sup> A/46/18, p. 17, paragraph 27.

<sup>62</sup> The text of the letter is contained in the report of the Committee to the General Assembly (A/46/18), p. 123.

recommendations based on the examination of the reports and information received from States Parties ...». These words do not restrict the Committee to only review the most up-to-date information. However, this practice will fail vis-à-vis States Parties which have not even submitted an initial report. The respective practice of the Committee on Economic, Social and Cultural Rights in this respect is somewhat more forthcoming.

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

At its 47th session, the General Assembly recommended that other treaty bodies adopt measures similar to the practice of the Committee on the Elimination of Racial Discrimination to proceed with the examination of the situation in States Parties whose reports were long overdue, on the basis of existing information.<sup>63</sup> It was further recommended that each treaty body follow, as a last resort and to the extent appropriate, the practice of scheduling for consideration the situation in States Parties which have consistently failed to report or whose reports are long overdue. This recommendation was based upon the consideration that a persistent and long-term failure to report should not result in the State Party concerned being immune from supervision, while others which have reported are subject to careful monitoring.

Taking into account that the delay in reporting may result from the States Parties being overburdened by increasing reporting obligations, the Committee has attempted to facilitate this procedure. In 1988 the Committee agreed that after submission of an initial comprehensive report, States Parties might on the next occasion submit a brief updated report<sup>64</sup>. Comprehensive reports shall be submitted every four years with updated reports on the intervening occasion. Further, the

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<sup>63</sup> A/Res.47/111 which refers to the recommendation of the 4th meeting of chairpersons of the human rights treaty bodies. A/47/628 paras. 70 and 71; see also resolution 1993/14, paragraph 4 of the Commission on Human Rights.

<sup>64</sup> See A/43/18, paragraph 24(c).

Committee has agreed to permit States Parties to submit several overdue reports in one comprehensive document and, where a government has explained the reason for the delay in its report, the Committee will abstain from sending reminders. Finally, the chairpersons recommended that the States Parties elaborate a «core document» containing background information on the political, factual and legal situation relevant for the consideration of reports of States Parties in the human rights treaty bodies. It was suggested that particular attention be paid in such a document to information concerning the political system, the main features of the legal order, the legal status of international instruments within the national legal system, the recourse procedures for the protection of human rights, demographic data and other relevant economic, social and cultural data. This procedure has been increasingly accepted in practice. Apart from facilitating the task of the States Parties, such a procedure helps to ensure that all treaty bodies receive the same information. This may harmonize the assessment of the human rights situation prevailing in the States Parties through the treaty bodies.

Finally, the Committee has suggested that advisory services be provided to States Parties whose reports are overdue<sup>65</sup>. The Committee suggested organizing a series of workshops and seminars at the national level for the purpose of training those involved in the preparation of State reports<sup>66</sup>.

When assessing the reporting system, it has to be stated that it has undergone significant changes. In introducing such changes, the Committee has altered the objective of the reporting system. At the beginning when representatives of States Parties were not allowed to present orally the reports, the Committee was not in a position to engage in a dialogue with the respective State Party. It could only collect information and, on this basis, make general recommendations to the General Assembly concerning the elimination of racial discrimination. Hence, in this early period, the reporting system only provided rudimentary means to monitor the implementation of the

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<sup>65</sup> Recommendation X (1991) which is based upon the recommendation of the third meeting of chairpersons of treaty bodies (A/46/18).

<sup>66</sup> Alston is in this respect (Note 6) on p. 48 and suggests to appoint one or more individuals whose sole responsibility would be to assist States Parties to fulfil their reporting obligations.

Convention, greater emphasis being placed upon the Committee as an expert body which provided the General Assembly with information which would enable the latter to discuss the elimination of racial discrimination. This element of the reporting system has receded into the background, as reflected by the fact that the topic «elimination of racial discrimination» no longer plays a prominent role in the deliberations of the General Assembly. Instead, by involving representatives of the reporting States, by allowing the Committee to use information other than that provided by the reporting State Party and by formulating «concluding observations», the Committee focuses more heavily upon the monitoring of the situation in the States Parties. Nevertheless, the Committee does not work and is not intended to work as a court. Quite frequently experts point out that they are primarily interested in establishing and upholding a dialogue with the States Parties. This is why there is considerable effort to convince States Parties whose reports are overdue to resume co-operation with the Committee.

There exists one further facet to the reporting system, which was emphasized by the General Assembly in its resolution 43/115:

«The effective implementation of instruments of human rights, involving periodic reporting by States Parties to the relevant treaty bodies . . . not only enhances international accountability in relation to the protection and promotion of human rights but also provides States Parties with a valuable opportunity to review policies and programmes affecting the protection and promotion of human rights and to make any appropriate adjustments».

This point, namely that the reporting should be used to initiate an evolutionary process with a view to fostering the implementation of the Convention, is further emphasized by Alston<sup>67</sup>. He states:

«It is all too often forgotten (or ignored) that the monitoring role played by the “international treaty bodies is, for the most part, only a secondary or catalytic one. The primary

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<sup>67</sup> Note 6 at pp. 39 et seq.

role in the procedure should, and indeed must, if the process is to be truly effective, be that played by all of the relevant actors at the national level».

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

Equally, the Committee could work in that direction. In spite of the fact that ICERD is silent as to the publicity of the work of the Committee, improvements have been suggested by the chairpersons of treaty bodies:

«Particular importance should be attached to the dissemination at the national level of the report of the relevant State Party and details of its examination by the Committee, especially to those sectors which have direct responsibility for the implementation of human rights, such as the judiciary, the legal profession, appropriate ministries and national human rights bodies. For that reason, each United Nations information office should, on a routine basis, make available all reports submitted to the treaty bodies by the State in whose territory it is located, along with the summary records relating to the examination of the reports. The Secretary-General should be requested to report on the implementation of this recommendation in due course».

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

## Inter-State Complaints

Articles 11-13 of the Convention authorize the Committee to deal with complaints submitted by States alleging discriminatory practices on the part of other States Parties. Article 11, paragraph 1 provides:

«If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State».

Although the International Covenant on Civil and Political Rights also provides for inter-State complaints, these procedures apply only between States which have specifically recognized the relevant competence of the Human Rights Committee<sup>68</sup>. In contrast, the procedure of the ICERD applies automatically to all States Parties.

As it reads now, Article 11 permits informal procedures: it does not even require, as does Article 41, paragraph 1(a), of the International Covenant on Civil and Political Rights, that inter-State communications be written<sup>69</sup>. Some Committee members have argued that such informality leads to the conclusion that, when States include inter-State information in their Article 9 reports, they automatically initiate Article 11 proceedings. In such a case, the Committee is required to transmit the communication to the State Party concerned.

Past Article 9 reports have contained various forms of disguised inter-State disputes<sup>70</sup>. Several States have reported that part of their territory has been occupied by another State Party and that the latter is not giving effect to the provisions of the

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<sup>68</sup> See Article 41, paragraph 1 of the International Covenant on Civil and Political Rights.

<sup>69</sup> See Partsch, (Note 6) at p. 362.

<sup>70</sup> Buergenthal, *Implementing the UN-Racial Convention*, pp. 211-218; *Texas International Law Journal*, Band 12, (1977), p. 202.

Convention. A series of reports by the Syrian Arab Republic have made such claims with respect to Israel's occupation of the Golan Heights. When Israel became a Party to the Convention, some Committee members refused to accept Syria's claim under Article 9<sup>71</sup>. However, Syria clearly was unwilling to initiate an Article 11 proceeding<sup>72</sup>. Though several of ICERD's members considered the serious information regarding Israeli racial discrimination acceptable under Article 9, on the basis of political, moral or ethical concerns, the Committee in this case did not table a draft decision to condemn Israel for its practices in the occupied territory. Recently, the Committee has slightly altered its policy as far as the occupied territories are concerned. In dealing with the report of Iraq, the Committee expressed its grave concern on the situation of citizens in the occupied territory of Kuwait. It was stated that Iraq was under an obligation to respect and to ensure to all individuals under its jurisdiction or control the rights recognized in ICERD<sup>73</sup>. The same approach was then taken in respect of the territories occupied by Israel<sup>74</sup>.

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

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<sup>71</sup> See Syria's sixth periodic report (CERD/C/66,Add.22) and discussion in A/36/18 of 1981, paras. 169-173 and CERD C/SR/507 and C/SR/508 (1981). As regards the seventh periodic report (CERD/C/91, Add. 39, see CERD/C/SR/CERD/661 and CERD/C/SR/662 (1984).

<sup>72</sup> CERD/C/SR/507 (1981), paragraph 37 and CERD/C/SR/661 (1984), paragraph 3.

<sup>73</sup> Report of the Committee A/46/18, p. 65, paragraph 258 (concluding observations).

<sup>74</sup> Ibid., p.90, paragraph 386.

## Individual complaints

Within the United Nations human rights system three treaty-based procedures exist providing for the possibility for individuals to submit petitions directly to the respective supervisory committees. These are the optional Article 14 of ICERD, the Optional Protocol to the International Covenant on Civil and Political Rights and optional Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The two former procedures require the specific acceptance of ten States and the latter of five States to become effective. Receiving these acceptances took much longer for Article 14 of ICERD than for the Protocol<sup>75</sup> Although the three procedures are similar, they are not fully identical.

Article 14 of ICERD differs from the Protocol and the Convention against Torture in that it provides that groups of individuals as well as individuals may present communications to the Committee. All the three procedures require the alleged victim to present to the Committee *prima facie* evidence of personal involvement, which excludes the procedure being used as *actio popularis*. However, the Human Rights Committee did agree to consider communications submitted «on behalf» of alleged victims by others, even without formal mandate or power of attorney, when it appeared that the victim was «unable to submit the communication himself»<sup>76</sup>. In practice, the Human Rights Committee has accepted communications only from persons showing a close family connection with the alleged victim. According to Rule 91 of the Rules of Procedure, the Committee on the Elimination of Racial Discrimination is satisfied with communications submitted by the individual

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<sup>75</sup> Tardu (Note 17) at p. 291 distinguishes between «complaint-procedure» and «complaint-information»; among the former belong those which require the competent organ to take a decision on admissibility (Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee Against Torture); among the latter, all those procedures which regard the complaint as information to identify human rights problems in general. UNESCO has created a complaint system of its own in 104 EX/Decision 3.3. of the Executive Board (1978).

<sup>76</sup> A/42/44, paragraphs 64 to 67; Rule 90 paragraph 1(b) of the Rules of Procedure.

himself or by his relatives or designated representatives and, in exceptional cases, submitted by others when it appears that the victim is unable to submit the communication himself. The procedures under the Protocol and under the ICERD require as a condition of admissibility that all available domestic remedies be exhausted. Some case law exists in this respect from the Human Rights Committee indicating that extraordinary and ineffective remedies need not be employed<sup>77</sup>. According to Article 14, paragraph 7(a), of ICERD, the principle does not apply where the application of remedies is unreasonably prolonged. Article 22, paragraph 5(b), of the Convention against Torture is even more liberal. All instruments contain clauses empowering the respective treaty bodies to reject complaints which are an abuse of the right to submit communications. In the case law of the Human Rights Committee, this verdict applies, for example, to repetitive complaints<sup>78</sup>. Furthermore a communication may be declared inadmissible when it is not compatible with the provisions of the Convention<sup>79</sup>. This clause is meant to exclude petitions invoking rights not granted by the relevant human rights instrument. However, this clause has been used in the Human Rights Committee to blur the distinction between the consideration of communications concerning their admissibility and their merits, thus introducing the concept of inadmissibility of a communication for being manifestly ill-founded<sup>80</sup>.

The limited practice of the Committee on the Elimination of Racial Discrimination, however, has upheld this two-stage procedure and has objected to declaring a communication to be manifestly ill-founded and therefore inadmissible. After having found a communication admissible, the Human Rights Committee may consider the matter in the light of written information made available to it by the individual and by the State Party concerned, which excludes oral examination and cross-examination on written evidence. Under ICERD and under the Convention against Torture the respective Committees may

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<sup>77</sup> For details, see Tardu (Note 12) at p. 298.

<sup>78</sup> See Tardu (Note 12), p. 301.

<sup>79</sup> See Rule 91(c) of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination.

<sup>80</sup> Critical in this respect, Tardu (Note 12), p.302; more positive Opsahl (Note 14), p. 425.

request oral statements. Furthermore, these two Committees may request, through the Secretary-General, further information from United Nations bodies or the specialized agencies which may assist in the case<sup>81</sup>. The application of this rule may lead to a considerable enlargement of the evidence. The procedures in all the three cases conclude with a non-binding decision. Nevertheless the respective decisions have so far been very specific, leaving no doubt about the reasoning of the treaty body and how, in its view, the violation of the individual rights was most appropriately remedied.

Up to date the Committee on the Elimination of Racial Discrimination has received only four individual communications. A decision on the merits of the first was taken in 1988 and of the second in 1993.

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

As a consequence of the above modifications in its methods, the Committee adopted at its 977th meeting, on 16 March 1993, several changes in its Rules of Procedure<sup>82</sup>. The role of the Special Rapporteur is to review new communications, with a view to giving the necessary instructions to the Secretariat as to whether such communications should be forwarded to States Parties under Rule 92. Until a Special

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<sup>81</sup> Rule 95 of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination.

<sup>82</sup> A new paragraph 3 was added to Rule 87: «The Committee may designate a Special Rapporteur from among its members to assist it in the handling of new communications>>; a new sentence was added to Rule 92, paragraph 1: «A request for information may also emanate from a Special Rapporteur designated under Rule 87, paragraph 3»; a new paragraph 7 was added to Rule 94: «The Committee may, in appropriate cases and with the consent of the parties concerned, decide to deal jointly with the question of admissibility and the merits of a communication».

Rapporteur is appointed, the Chairman of the Committee will exercise this function.

## Conclusions

The system of implementing international standards on prevention and elimination of racial discrimination has been considerably improved by the human rights treaty bodies over the years. However, it is doubtful whether further improvements are possible without completely altering the existing approach. This is especially true for the reporting system, the progressive development of which may have reached its inherent limits. Under this system, as it stands at present, the human rights treaty bodies have some possibility for fact-finding; however, they have no means of effectively reacting to established violations of international standards to match their fact-finding functions. It is even doubtful whether the establishment of such fictions, *de lege ferenda* transforming the human rights treaty bodies more into court-like institutions, would enhance the implementation of international standards” on prevention and elimination of racial discrimination. Such a transformation might curtail the willingness of States Parties to enter into a constructive dialogue with the human rights treaty bodies which are at the moment regarded as the prime means of the implementation system. The only option still open for consideration is the further development of the fact-finding capabilities of the human rights treaty bodies. This could be achieved by further pooling their information basis. The ultimate solution might be to merge the human rights treaty bodies into one or two institutions while at the same time transforming them into bodies which meet more often and for expanded periods.<sup>83</sup> This would, as a side effect, reduce the multiple and overlapping reporting obligations<sup>84</sup> of States Parties which are one of the reasons why the obligation to report is not met. Apart from this, the fact-finding capabilities of human rights treaty bodies could be enhanced if they had the right to send experts or a working group to a country. Such fact-

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<sup>83</sup>

Alston is sceptical (Note 6) paras. 171 et seq.

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The Commission of Human Rights is critical in this respect, see Resolution 1993/58; report of the Nordic Seminar on Human Rights, A/Conf. 157/Pc/7, paragraph 56.

finding could be co-ordinated with similar measures such as the «advisory services»<sup>85</sup>.

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

It is doubtful whether the inter-State communication will ever play a significant role in implementing international human rights standards. There seems to exist a deep-rooted reluctance on the side of the States Parties to make use of that instrument. Hence it does not seem very productive to discuss possible improvements of this procedure<sup>86</sup>.

All the three procedures mentioned so far suffer from one decisive shortcoming. They open the possibility for action of the respective treaty body only after human rights violations have occurred. However, and this is especially true for racial discrimination, violation of the international standards is often preceded by a build-up of tensions or prejudices. Although this is reflected in Article 7 of ICERD, it is possible to enhance the effectiveness of the human rights treaty bodies by providing them with or strengthening their existing preventive functions<sup>87</sup>.

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<sup>85</sup> See also Opsahl (Note 14), p. 440.

<sup>86</sup> Opsahl is equally sceptical (Note 14), p. 420.

<sup>87</sup> A/Res. 47/120 of 18 December 1992 emphasized the need for all organs and bodies of the United Nations to intensify their efforts to strengthen the Organization's role in preventive diplomacy. At their

That is where the major challenges lie for the future work of the human rights treaty bodies,

The Committee on the Elimination of Racial Discrimination at its 42nd session adopted a paper on preventive action, including early warning and urgent procedures<sup>88</sup>. Similar steps have been taken and even implemented by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

Preventive actions of the Committee on the Elimination of Racial Discrimination shall include early warning measures to address existing structural problems which might escalate into conflicts. Such a situation calling for early warning, in the view of the Committee, exists, *inter alia*, when the national implementation procedures are inadequate or when there exists a pattern of escalating racial hatred and violence or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials. To formulate such early warning, the Committee must make full use of its sources of information and of its expert capacity to assess them. A further prerequisite for exercising such a function is that some members of the Committee overcome their aversion to involving themselves in matters which they still believe to belong to the internal affairs of the States Parties concerned. This is to accept that such actions be undertaken.

The criterion for initiating an urgent procedure, according to the decision of the Committee, is the presence of a pattern of massive or persistent racial discrimination.

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fourth meeting, the chairpersons considered a suggestion by a member of the Committee on the Elimination of Racial Discrimination and a member of the Committee against Torture that they examine the possibility of undertaking preventive action against human rights violations, within the scope of the activities of the human rights treaty bodies. As a result of their consideration of this issue, the chairpersons concluded that, «... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States Parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible.» (A/47/628, paragraph 44).

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CERD/C/1993/Misc.1/Rev.2.

The reactions in its preventive function and in response to problems requiring immediate attention are similar, although under the early warning procedure the Committee will first exhaust its advisory functions vis-à-vis the respective State Party. The Committee may address its concern, along with recommendations for action, to all or any of the following: the State Party concerned; the Special Rapporteur established under Commission on Human Rights resolution 1993/20; the Secretary-General; and all other human rights bodies. The information addressed to the Secretary-General may in the case of urgent procedures include a recommendation to bring the matter to the attention of the Security Council. In the case of urgent procedures, the Committee may designate a Special Rapporteur.

This attempt to improve the functions of the Committee, as far as its response to serious, massive or persistent patterns of racial discrimination is concerned or the threat thereof, is very much influenced by the situation in the former Yugoslavia. It still remains to be seen whether it is possible to restructure the functions of the human rights treaty bodies in a way which will enable them to effectively respond to such or similar situations. If neither the human rights treaty bodies nor the Commission on Human Rights are vested with the power to exercise such functions effectively, the necessary measures will have to be taken by the Security Council.

## **PART II**

# **THE INTERNATIONAL BILL OF HUMAN RIGHTS**

## 1. Universal Declaration of Human Rights

*Adopted and proclaimed by the United Nation General Assembly resolution 217 A (III) of 10 December 1948*

### PREAMBLE

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now therefore*

*The General Assembly*

*Proclaims this Universal Declaration of Human Rights* as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international,

to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

*Article 1*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2*

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3*

Everyone has the right to life, liberty and security of person,

*Article 4*

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

*Article 5*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 6*

Everyone has the right to recognition everywhere as a person before the law.

*Article 7*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,

*Article 9*

*No one* shall be subjected to arbitrary arrest, detention or exile.

*Article 10*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11*

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12*

*No one* shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13*

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14*

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15*

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16*

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17*

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

*Article 18*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

#### *Article 21*

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### *Article 22*

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### *Article 23*

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work,
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### *Article 24*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### *Article 25*

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

*Article 26*

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

*Article 27*

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*Article 28*

Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

*Article 29*

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

*Article 30*

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth again.  
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## **2. International Covenant on Economic, Social and Cultural Rights**

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966*

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27

### **PREAMBLE**

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

### **PART I**

#### *Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual

benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### *Article 2*

1. Each State Party to the present Covenant undertakes to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### *Article 4*

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### *Article 5*

1. Nothing in the present Covenant maybe interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized

herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing, in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### *Article 6*

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### *Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

### *Article 8*

1. The States Parties to the present Covenant undertake to ensure:
  - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
  - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### *Article 9*

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### *Article 10*

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### *Article 11*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### *Article 12*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

*Article 13*

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### *Article 14*

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### *Article 15*

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

### **PART IV**

#### *Article 16*

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant:

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

#### *Article 17*

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

#### *Article 18*

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

#### *Article 19*

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

*Article 20*

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

*Article 21*

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

*Article 22*

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

*Article 23*

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

*Article 24*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

*Article 25*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

## **PART V**

### *Article 26*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

### *Article 27*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

### *Article 28*

The provisions of the present Covenant shall extend to all parts of federal states without any limitations or exceptions.

### *Article 29*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third

of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### *Article 30*

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

#### *Article 31*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

### 3. International Covenant on Civil and Political Rights

*Adopted and opened for signature, ratification and Accession by General Assembly resolution 2200A (XXI) of 16 December 1966*

ENTRY INTO FORCE: 23 March 1976. in accordance with article 49

#### PREAMBLE

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

#### PART I

##### *Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### *Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### *Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the

situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 maybe made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

#### *Article 5*

1. Nothing in the present Covenant maybe interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### *Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law, No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### *Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### *Article 8*

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour:
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
  - (c) For the purpose of this paragraph the term «forced or compulsory labour» shall not include:
    - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention
    - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
    - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
    - (iv) Any work or service which forms part of normal civil obligations.

#### *Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### *Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconnected persons;  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### *Article 11*

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own,
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### *Article 15*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### *Article 16*

Everyone shall have the right to recognition everywhere as a person before the law.

#### *Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### *Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### *Article 19*

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### *Article 24*

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

#### *Article 25*

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

#### *Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART IV**

*Article 28*

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

*Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

*Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States

Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### *Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### *Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### *Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### *Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six

months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### *Article 35*

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### *Article 36*

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### *Article 37*

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva

#### *Article 38*

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### *Article 39*

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

#### *Article 40*

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### *Article 41*

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a

declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of

the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### *Article 42*

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter:

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached:

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by" the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article,

#### *Article 43*

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United

Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

*Article 44*

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

*Article 45*

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

**PART V**

*Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

*Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART VI**

*Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 51*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

*Article 52*

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

*Article 53*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

#### **4. Optional Protocol to the International Covenant on Civil and Political Rights**

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966*

ENTRY INTO FORCE: 23 March 1976. in accordance with article 9

*The States Parties to the present Protocol,*

*Considering* that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

*Have agreed* as follows:

##### *Article 1*

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol,

##### *Article 2*

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

##### *Article 3*

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

##### *Article 4*

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of

the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

#### *Article 5*

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

#### *Article 6*

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

#### *Article 7*

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

#### *Article 8*

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 9*

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 10*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 11*

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

#### *Article 12*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

#### *Article 13*

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

#### *Article 14*

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

## **PART III**

# **INSTRUMENTS AGAINST DISCRIMINATION**

## **A. United Nations**

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

*Proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963*

*The General Assembly,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

*Considering* that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

*Taking into account* the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

*Taking into account* the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in

that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues none the less to give cause for serious concern,

*Alarmed* by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, *inter alia*, of *apartheid*, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

*Convinced* that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

*Convinced also* that racial discrimination harms not only those who are its objects but also those who practise it.

*Convinced further* that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. *Solemnly affirms* the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;

2. *Solemnly affirms* the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;

3. *Proclaims* this Declaration:

#### *Article 1*

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

#### *Article 2*

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the

treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.

2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

#### *Article 3*

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

#### *Article 4*

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

#### *Article 5*

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of *apartheid*, as well as all forms of racial discrimination and separation resulting from such policies.

#### *Article 6*

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

#### *Article 7*

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

#### *Article 8*

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

#### *Article 9*

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.
2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.
3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

#### *Article 10*

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

*Article 11*

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

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

*Adopted and opened for signature and ratification by General Assembly resolution 2106A (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 I*

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 rights 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;  
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 favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;
- (ii) The right to form and join trade unions;
- (iii) The right to housing;
- (iv) The right to public health, medical care, social security and social services;
- (v) The right to education and training;
- (vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

#### *Article 6*

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### *Article 7*

States Parties undertake to adopt immediate and effective measures particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of

the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

## **PART II**

### *Article 8*

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(b) For the tilling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

*Article 9*

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

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

*Article 10*

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

*Article 11*

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

#### *Article 12*

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

#### *Article 13*

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### *Article 14*

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 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 Secre-

tary-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 form, 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.

### 3. International Convention on the Suppression and Punishment of the Crime of *Apartheid*

*Adopted and opened for signature and ratification by General Assembly resolution 3068 (XXVIII) of 30 November 1973*

ENTRY INTO FORCE: 18 July 1976. in accordance with article XV

*The States Parties to the present Convention,*

*Recalling* the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Considering* the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

*Considering* the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly stated that the process of liberation is irresistible and irreversible and that, in the interests of human dignity, progress and justice, an end must be put to colonialism and all practices of segregation and discrimination associated therewith.

*Observing* that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction,

*Observing* that, in the Convention on the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of *apartheid* constitute a crime under international law,

*Observing* that, in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, «inhuman acts resulting from the policy of *apartheid*» are qualified as crimes against humanity,

*Observing* that the General Assembly of the United Nations has adopted a number of resolutions in which the policies and practices of *apartheid* are condemned as a crime against humanity,

*Observing* that the Security Council has emphasized that *apartheid* and its continued intensification and expansion seriously disturb and threaten international peace and security,

*Convinced* that an International Convention on the Suppression and Punishment of the Crime of *Apartheid* would make it possible to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of *apartheid*,

*Have agreed* as follows:

#### *Article I*

1. The States Parties to the present Convention declare that *apartheid* is a crime against humanity and that inhuman acts resulting from the policies and practices of *apartheid* and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.
2. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of *apartheid*.

#### *Article II*

For the purpose of the present Convention, the term «the crime of *apartheid*» which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

- (i) By murder of members of a racial group or groups;
- (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
- (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic

and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour:

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose *apartheid*.

#### Article III

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;

(b) Directly abet, encourage or co-operate in the commission of the crime of *apartheid*.

#### Article IV

The States Parties to the present Convention undertake:

(a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of *apartheid* and similar segregationist policies or their manifestations and to punish persons guilty of that crime;

(b) To adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article 11 of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

*Article V*

Persons charged with the acts enumerated in article 11 of the present Convention may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

*Article VI*

The States Parties to the present Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of *apartheid*, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.

*Article VII*

1. The States Parties to the present Convention undertake to submit periodic reports to the group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.
2. Copies of the reports shall be transmitted through the Secretary-General of the United Nations to the Special Committee on *Apartheid*.

*Article VIII*

Any State Party to the present Convention may call upon any competent organ of the United Nations to take such action under the Charter of the United Nations as it considers appropriate for the prevention and suppression of the crime of *apartheid*,

*Article IX*

1. The Chairman of the Commission on Human Rights shall appoint a group consisting of three members of the Commission on Human Rights, who are also representatives of States Parties to the present Convention, to consider reports submitted by States Parties in accordance with article VII.
2. If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article, until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.

3. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII.

#### *Article X*

1. The States Parties to the present Convention empower the Commission on Human Rights:

(a) To request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints concerning acts which are enumerated in article II of the present Convention;

(b) To prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States Parties to the present Convention, a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by States Parties to the Convention;

(c) To request information from the competent United Nations organs concerning measures taken by the authorities responsible for the administration of Trust and Non-Self-Governing Territories, and all other Territories to which General Assembly resolution 1514 (XV) of 14 December 1960<sup>7</sup> applies, with regard to such individuals alleged to be responsible for crimes under article II of the Convention who are believed to be under their territorial and administrative jurisdiction.

2. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), the provisions of the present Convention shall in no way limit the right of petition granted to those peoples by other international instruments or by the United Nations and its specialised agencies.

#### *Article XI*

1. Acts enumerated in article 11 of the present Convention shall not be considered political crimes for the purpose of extradition.

2. The States Parties to the present Convention undertake in such cases to grant extradition in accordance with their legislation and with the treaties in force.

*Article XII*

Disputes between States Parties arising out of the interpretation, application or implementation of the present Convention which have not been settled by negotiation shall, at the request of the States parties to the dispute, be brought before the International Court of Justice, save where the parties to the dispute have agreed on some other form of settlement.

*Article XIII*

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

*Article XIV*

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article XV*

1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after "the date of the deposit of its own instrument of ratification or instrument of accession.

*Article XVI*

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

*Article XVII*

1. A request for the revision of the present Convention may be, made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps if any, to be taken in respect of such request.

*Article XVIII*

The Secretary-General of the United Nations shall inform all States of the following particulars:

(a) Signatures, ratifications and accessions under articles XIII and XIV:

(b) The date of entry into force of the present Convention under article XV:

(c) Denunciations under article XVI;

(d) Notifications under article XVII.

*Article XIX*

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

#### **4. International Convention against *Apartheid* in Sports**

*Adopted and opened for signature and ratification by General Assembly  
resolution 40/64 of 10 December 1985*

*The States Parties to the present Convention,*

*Recalling* the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, particularly in regard to race, colour or national origin,

*Observing* that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties to that Convention particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in all fields,

*Observing* that the General Assembly of the United Nations has adopted a number of resolutions condemning the practice of *apartheid* in sports and has affirmed its unqualified support for the Olympic principle that no discrimination be allowed on the grounds of race, religion or political affiliation and that merit should be the sole criterion for participation in sports activities.

*Considering* that the International Declaration against *Apartheid* in Sports, which was adopted by the General Assembly on 14 December 1977, solemnly affirms the necessity for the speedy elimination of *apartheid* in sports,

*Recalling* the provisions of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* and recognizing, in particular, that participation in sports exchanges with teams selected on the basis of *apartheid* directly abets and encourages the commission of the crime of *apartheid*, as defined in that Convention.

*Resolved* to adopt all necessary measures to eradicate the practice of *apartheid* in sports and to promote international sports contacts based on the Olympic principle,

*Recognizing that* sports contact with any country practicing *apartheid* in sports condones and strengthens *apartheid* in violation of the Olympic principle and thereby becomes the legitimate concern of all Governments,

*Desiring* to implement the principles embodied in the International Declaration against *Apartheid* in Sports and to secure the earliest adoption of practical measures to that end,

*Convinced* that the adoption of an International Convention against *Apartheid* in Sports would result in more effective measures at the international and national levels, with a view to eliminating *apartheid* in sports,

*Have agreed* as follows:

#### *Article I*

For the purposes of the present Convention:

(a) The expression «*apartheid*» shall mean a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them, such as that pursued by South Africa, and «*apartheid* in sports» shall mean the application of the policies and practices of such a system in sports activities, whether organized on a professional or an amateur basis;

(b) The expression «national sports facilities» shall mean any sports facility operated within the framework of a sports programme conducted under the auspices of a national government;

(c) The expression «Olympic principle» shall mean the principle that no discrimination be allowed on the grounds of race, religion or political affiliation;

(d) The expression «sports contracts» shall mean any contract concluded for the organization, promotion, performance or derivative rights, including servicing, of any sports activity;

(e) The expression «sports bodies» shall mean any organization constituted to organize sports activities at the national level, including national Olympic committees, national sports federations or national governing sports committees;

(f) The expression «team» shall mean a group of sportsmen organized for the purpose of participating in sports activities in competition with other such organized groups;

(g) The expression «sportsmen» shall mean men and women who participate in sports activities on an individual or team basis, as well as man-

agers, coaches, trainers and other officials whose functions are essential for the operation of a team.

#### Article 2

States Parties strongly condemn *apartheid* and undertake to pursue immediately by all appropriate means the policy of eliminating the practice of *apartheid* in all its forms from sports.

#### Article 3

States Parties shall not permit sports contact with a country practicing *apartheid* and shall take appropriate action to ensure that their sports bodies, teams, and individual sportsmen do not have such contact.

#### Article 4

States Parties shall take all possible measures to prevent sports contact with a country practicing *apartheid* and shall ensure that effective means exist for bringing about compliance with such measures.

#### Article 5

States Parties shall refuse to provide financial or other assistance to enable their sports bodies, teams and individual sportsmen to participate in sports activities in a country practicing *apartheid* or with teams or individual sportsmen selected on the basis of *apartheid*.

#### Article 6

Each State Party shall take appropriate action against its sports bodies, teams and individual sportsmen that participate in sports activities in a country practicing *apartheid* or with teams representing a country practicing *apartheid*, which in particular shall include:

- (a) Refusal to provide financial or other assistance for any purpose to such sports bodies, teams and individual sportsmen;
- (b) Restriction of access to national sports facilities by such sports bodies, teams and individual sportsmen;
- (c) Non-enforceability of all sports contracts which involve sports activities in a country practicing *apartheid* or with teams or individual sportsmen selected on the basis of *apartheid*;
- (d) Denial and withdrawal of national honours or awards in sports to such teams and individual sportsmen;
- (e) Denial of official receptions in honour of such teams or sportsmen.

*Article 7*

States Parties shall deny visas and/or entry to representatives of sports bodies, teams and individual sportsmen representing a country practicing *apartheid*,

*Article 8*

States Parties shall take all appropriate action to secure the expulsion of a country practicing *apartheid* from international and regional sports bodies.

*Article 9*

States Parties shall take all appropriate measures to prevent international sports bodies from imposing financial or other penalties on affiliated bodies which, in accordance with United Nations resolutions, the provisions of the present Convention and the spirit of the Olympic principle, refuse to participate in sports with a country practicing *apartheid*

*Article 10*

1. States Parties shall use their best endeavors to ensure universal compliance with the Olympic principles of non-discrimination and the provisions of the present Convention.
2. Towards this end, States Parties shall prohibit entry into their countries of members of teams and individual sportsmen participating or who have participated in sports competitions in South Africa and shall prohibit entry into their countries of representatives of sports bodies, members of teams and individual sportsmen who invite on their own initiative sports bodies, teams and sportsmen officially representing a country practicing *apartheid* and participating under its flag. States Parties may also prohibit entry of representatives of sports bodies, members of teams or individual sportsmen who maintain sports contacts with sports bodies, teams or sportsmen representing a country practicing *apartheid* and participating under its flag. Prohibition of entry should not violate the regulations of the relevant sports federations which support the elimination of *apartheid* in sports and shall apply only to participation in sports activities.
3. States Parties shall advise their national representatives to international sports federations to take all possible and practical steps to prevent the participation of the sports bodies, teams and sportsmen referred to in paragraph 2 above in international sports competitions and shall, through their representatives in international sports organizations, take every possible measure:

(a) To ensure the expulsion of South Africa from all federations in which it still holds membership as well as to deny South Africa reinstatement to membership in any federation from which it has been expelled;

(b) In case of national federations condoning sports exchanges with a country practicing *apartheid*, to impose sanctions against such national federations including, if necessary, expulsion from the relevant international sports organization and exclusion of their representatives from participation in international sports competitions.

4. In cases of flagrant violations of the provisions of the present Convention, States Parties shall take appropriate action as they deem fit, including, where necessary, steps aimed at the exclusion of the responsible national sports governing bodies, national sports federations or sportsmen of the countries concerned from international sports competition,

5. The provisions of the present article relating specifically to South Africa shall cease to apply when the system of *apartheid* is abolished in that country.

#### Article 11

There shall be established a Commission against *Apartheid* in sports hereinafter referred to as «the Commission» consisting of fifteen members of high moral character and committed to the struggle against *apartheid*, particular attention being paid to participation of persons having experience in sports administration, elected by the States Parties from among their nationals, having regard to the most equitable geographical distribution and the representation of the principal legal systems.

2. The members of the Commission shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Commission shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the

names of these nine members shall be chosen by lot by the Chairman of the Commission.

6. For the filling of casual vacancies, the State Party whose national has ceased to function as a member of the Commission shall appoint another person from among its nationals, subject to the approval of the Commission.

7. States Parties shall be responsible for the expenses of the members of the Commission while they are in performance of Commission duties.

#### *Article 12*

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Commission, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention within one year of its entry into force and thereafter every two years. The Commission may request further information from the States Parties.

2. The Commission shall report annually through the Secretary-General to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and recommendations shall be reported to the General Assembly together with comments, if any, from States Parties concerned.

3. The Commission shall examine, in particular, the implementation of the provisions of article 10 of the present Convention and make recommendations on action to be undertaken.

4. A meeting of States Parties shall be convened by the Secretary-General at the request of a majority of the States Parties to consider further action with respect to the implementation of the provisions of article 10 of the present Convention. In cases of flagrant violation of the provisions of the present Convention, a meeting of States Parties shall be convened by the Secretary-General at the request of the Commission.

#### *Article 13*

1. Any State Party may at any time declare that it recognizes the competence of the Commission to receive and examine complaints concerning breaches of the provisions of the present Convention submitted by States Parties which have also made such a declaration. The Commission may decide on the appropriate measures to be taken in respect of breaches.

2. States Parties against which a complaint has been made, in accordance with paragraph 1 of the present article, shall be entitled to be represented and take part in the proceedings of the Commission.

*Article 14*

1. The Commission shall meet at least once a year.
2. The Commission shall adopt its own rules of procedure.
3. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Commission shall normally be held at United Nations Headquarters.
5. The Secretary-General shall convene the initial meeting of the Commission.

*Article 15*

The Secretary-General of the United Nations shall be the depositary of the present Convention.

*Article 16*

1. The present Convention shall be open for signature at United Nations Headquarters by all States until its entry into force.
2. The present Convention shall be subject to ratification, acceptance or approval by the signatory States.

*Article 17*

The present Convention shall be open for accession by all States.

*Article 18*

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the present Convention after its entry into force, the Convention shall enter into force on the thirtieth day after the date of deposit of the relevant instrument.

*Article 19*

Any dispute between States Parties arising out of the interpretation, application or implementation of the present Convention which is not settled by negotiation shall be brought before the International Court of Justice at the request and with the mutual consent of the States Parties to the dispute,

save where the Parties to the dispute have agreed on some other form of settlement.

*Article 20*

1. Any State Party may propose an amendment or revision to the present Convention and file it with the depository. The Secretary-General of the United Nations shall thereupon communicate the proposed amendment or revision to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment or revision adopted by the majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments or revisions shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties, in accordance with their respective constitutional processes.

3. When amendments or revisions come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment or revision which they have accepted.

*.Article21*

A State Party may withdraw from the present Convention by written notification to the depository. Such withdrawal shall take effect one year after the date of receipt of the notification by the depository.

*Article 22*

The present Convention has been concluded in Arabic, Chinese, English, French, Russian and Spanish, all texts being equally authentic.

5. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

*Proclaimed by General Assembly resolution 36/55 of 25 November 1981*

*The General Assembly,*

*Considering* that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

*Considering* that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

*Considering* that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

*Considering* that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

*Convinced* that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

*Noting with satisfaction* the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

*Concerned* by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

*Resolved* to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

*Proclaims* this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

#### *Article 1*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice,
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### *Article 2*

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression «intolerance and discrimination based on religion or belief» means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

#### *Article 3*

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

#### *Article 4*

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition,

exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

#### Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

#### Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas:

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels

#### *Article 7*

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

#### *Article 8*

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

6. Convention on the Political Rights of Women

*Opened for signature and ratification by General Assembly resolution 640 (VII)  
of 20 December 1952*

ENTRY INTO FORCE: 7 JULY 1954, in accordance with article VI

*The Contracting Parties,*

*Desiring* to implement the principle of equality of rights for men and women contained in the Charter of the United Nations,

*Recognizing* that everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights,

*Having resolved* to conclude a Convention for this purpose,

*Hereby agree* as hereinafter provided:

*Article I*

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

*Article II*

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination,

*Article III*

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

*Article IV*

1. This Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the General Assembly.
2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article V*

1. This Convention shall be open for accession to all States referred to in paragraph I of article IV.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations,

*Article VI*

1. This Convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

*Article VII*

In the event that any State submits a reservation to any of the articles of this Convention at the time of signature, ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are or may become Parties to this Convention. Any State which objects to the reservation may, within a period of ninety days from the date of the said communication (or upon the date of its becoming a Party to the Convention), notify the Secretary-General that it does not accept it. In such case, the Convention shall not enter into force as between such State and the State making the reservation.

*Article VIII*

1. Any State 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.
2. This Convention shall cease to be in force as from the date when the denunciation which reduces the number of Parties to less than six becomes effective.

*Article IX*

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

*Article X*

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in paragraph 1 of article IV of this Convention of the following:

- (a) Signatures and instruments of ratification received in accordance with article IV:
- (b) Instruments of accession received in accordance with article V;
- (c) The date upon which this Convention enters into force in accordance with article VI;
- (d) Communications and notifications received in accordance with article VII:
- (e) Notifications of denunciation received in accordance with paragraph I of article VIII:
- (f) Abrogation in accordance with paragraph 2 of article VIII.

*Article XI*

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy to all Members of the United Nations and to the non-member States contemplated in paragraph 1 of article IV.

7. Declaration on the Elimination of Discrimination against Women

*Proclaimed by General Assembly resolution 2263 (XXII) of 7 November 1967*

*The General Assembly,*

*Considering* that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Considering* that the Universal Declaration on Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, including any distinction as to sex,

*Taking into account* the resolutions, declarations, conventions and recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women

*Concerned* that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women,

*Considering* that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity,

*Bearing in mind* the great contribution made by women to social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children,

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields,

*Considering* that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women,

*Solemnly proclaims* this Declaration:

#### *Article 1*

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

#### *Article 2*

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

#### *Article 3*

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

#### *Article 4*

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

(a) The right to vote in all elections and be eligible for election to all publicly elected bodies;

(b) The right to vote in all public referenda;

(c) The right to hold public office and to exercise all public functions.

Such rights shall be guaranteed by legislation.

#### *Article 5*

Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

#### *Article 6*

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:

(a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

(b) The right to equality in legal capacity and the exercise thereof;

(c) The same rights as men with regard to the law on the movement of persons.

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

(a) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

(b) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;

(c) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### *Article 7*

All provisions of penal codes which constitute discrimination against women shall be repealed.

#### *Article 8*

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women,

#### *Article 9*

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

(a) Equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools;

(b) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;

(c) Equal opportunities to benefit from scholarships and other study grants;

(d) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;

(e) Access to educational information to help in ensuring the health and well-being of families.

#### *Article 10*

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(d) The right to receive family allowances on equal terms with men

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

*Article 11*

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.
2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

8. Convention on the Elimination of All Forms of Discrimination against Women

*Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979*

ENTRY INTO FORCE: 3 September 1981, in accordance with article 27 (1)

*The States Parties to the present Convention,*

*Noting* that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Noting* that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

*Noting* that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

*Considering* the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

*Noting also* the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

*Concerned*, however, that despite these various instruments extensive discrimination against women continues to exist,

*Recalling* that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

*Concerned* that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

*Emphasizing* that the eradication of *apartheid*, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

*Affirming* that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women.

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Bearing in mind* the great contribution of women to the welfare of the family and to the development of society; so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

*Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

*Determined* to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

*Having agreed* on the following:

## PART I

### *Article 1*

For the purposes of the present Convention, the term «discrimination against women» shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### *Article 2*

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination:

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

### *Article 3*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose

of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Article 4*

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

*Article 5*

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

*Article 6*

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

**PART II**

*Article 7*

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country,

#### *Article 8*

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations,

#### *Article 9*

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### **PART III**

#### *Article 10*

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning,

### *Article 11*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work. States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### *Article 12*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### *Article 13*

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

### PART IV

#### Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

#### *Article 16*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent:

(c) The same rights and responsibilities during marriage and at its dissolution:

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **PART V**

### *Article 17*

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties, Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters, At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two

years, the names of these two members having been chosen by lot by the Chairman of the Committee,

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention,

#### *Article 18*

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

#### *Article 19*

1. The Committee shall adopt its own rules of procedure

2. The Committee shall elect its officers for a term of two years

#### *Article 20*

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

*Article 21*

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

*Article 22*

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

**PART VI**

*Article 23*

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

*Article 24*

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

*Article 25*

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### *Article 26*

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations,

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

#### *Article 27*

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### *Article 28*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

#### *Article 29*

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those

Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 30*

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

## 9. Declaration on the Elimination of Violence against Women

*Proclaimed by General Assembly resolution 48/104 of 20 December 1993*

*The General Assembly,*

*Recognizing* the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

*Noting* that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Recognizing* that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process.

*Concerned* that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

*Affirming* that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

*Recognizing* that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

*Concerned* that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly

women and women in situations of armed conflict, are especially vulnerable to violence.

*Recalling* the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

*Recalling also* Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women.

*Welcoming* the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

*Alarmed* that opportunities for women to achieve legal, social, political and economic equality in society are limited, *inter alia*, by continuing and endemic violence,

*Convinced* that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

*Solemnly proclaims* the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

#### *Article 1*

For the purposes of this Declaration, the term «violence against women» means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

#### *Article 2*

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and

other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State wherever it occurs.

### *Article 3*

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*.

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favorable conditions of work;
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

### *Article 4*

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;

- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such co-operation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions:
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international co-operation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation:
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- (j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

- (k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- (n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- (p) Facilitate and enhance the work of the women's movement and non-governmental organizations and co-operate with them at local, national and regional levels;
- (q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

#### *Article 5*

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, *inter alia*:

- (a) Foster international and regional co-operation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;
- (b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;
- (c) Foster co-ordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;

- (d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;
- (e) Encourage co-ordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;
- (f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;
- (g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;
- (h) Co-operate with non-governmental organizations in addressing the issue of violence against women,

#### *Article 6*

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State

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

*Adopted by General Assembly resolution 47/135 of 18 December 1992*

*The General Assembly,*

*Reaffirming* that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Reaffirming* faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

*Desiring* to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations.

*Inspired* by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

*Considering* that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

*Emphasizing* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and co-operation among peoples and States,

*Considering* that the United Nations has an important role to play regarding the protection of minorities,

*Bearing in mind* the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies

established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Taking into account* the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Recognizing* the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

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

#### *Article 1*

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### *Article 2*

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

### *Article 3*

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

### *Article 4*

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

### *Article 5*

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of co-operation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

*Article 6*

States should co-operate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

*Article 7*

States should co-operate in order to promote respect for the rights set forth in the present Declaration.

*Article 8*

1. Nothing in the present Declaration shall prevent the fulfillment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

*Article 9*

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

## **11. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live**

*Adopted by General Assembly resolution 40/144 of 13 December 1985*

*The General Assembly,*

*Considering* that the Charter of the United Nations encourages universal respect for and observance of the human rights and fundamental freedoms of all human beings, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in that Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Considering* that the Universal Declaration of Human Rights proclaims further that everyone has the right to recognition everywhere as a person before the law, that all are equal before the law and entitled without any discrimination to equal protection of the law, and that all are entitled to equal protection against any discrimination in violation of that Declaration and against any incitement to such discrimination,

*Being aware* that the States Parties to the International Covenants on Human Rights undertake to guarantee that the rights enunciated in these Covenants will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Conscious* that, with improving communications and the development of peaceful and friendly relations among countries, individuals increasingly live in countries of which they are not nationals,

*Reaffirming* the purposes and principles of the Charter of the United Nations.

*Recognizing* that the protection of human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live,

*Proclaims* this Declaration,

*Article 1*

For the purposes of this Declaration, the term "alien" shall apply, with due regard to qualifications made in subsequent articles, to any individual who is not a national of the State in which he or she is present.

*Article 2*

1. Nothing in this Declaration shall be interpreted as legitimizing the illegal entry into and presence in a State of any alien, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.

2. This Declaration shall not prejudice the enjoyment of the rights accorded by domestic law and of the rights which under international law a State is obliged to accord to aliens, even where this Declaration does not recognize such rights or recognizes them to a lesser extent.

*Article 3*

Every State shall make public its national legislation or regulations affecting aliens.

*Article 4*

Aliens shall observe the laws of the State in which they reside or are present and regard with respect the customs and traditions of the people of that State.

*Article 5*

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:

(a) The right to life and security of person; no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law;

(b) The right to protection against arbitrary or unlawful interference with privacy, family home or correspondence;

(c) The right to be equal before the courts, tribunals and all other organs and authorities administering justice and, when necessary, to free assistance of an interpreter in criminal proceedings and, when prescribed by law, other proceedings;

(d) The right to choose a spouse, to marry, to found a family;

(e) The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others;

(f) The right to retain their own language, culture and tradition;

(g) The right to transfer abroad earnings, savings or other personal monetary assets, subject to domestic currency regulations,

2. Subject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens shall enjoy the following rights:

(a) The right to leave the country;

(b) The right to freedom of expression;

(c) The right to peaceful assembly;

(d) The right to own property alone as well as in association with others, subject to domestic law.

3. Subject to the provisions referred to in paragraph 2, aliens lawfully in the territory of a State shall enjoy the right to liberty of movement and freedom to choose their residence within the borders of the State.

4. Subject to national legislation and due authorization, the spouse and minor or dependent children of an alien lawfully residing in the territory of a State shall be admitted to accompany, join and stay with the alien.

#### *Article 6*

No alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular, no alien shall be subjected without his or her free consent to medical or scientific experimentation.

#### *Article 7*

An alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the

competent authority or a person or persons specially designated by the competent authority. Individual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited.

#### *Article 8*

1. Aliens lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the following rights, subject to their obligations under article 4:

(a) The right to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(b) The right to join trade unions and other organizations or associations of their choice and to participate in their activities. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary, in a democratic society, in the interests of national security or public order or for the protection of the rights and freedoms of others;

(c) The right to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.

2. With a view to protecting the rights of aliens carrying on lawful paid activities in the country in which they are present, such rights may be specified by the Governments concerned in multilateral or bilateral conventions,

#### *Article 9*

No alien shall be arbitrarily deprived of his or her lawfully acquired assets.

#### *Article 10*

Any alien shall be free at any time to communicate with the consulate or diplomatic mission of the State of which he or she is a national or, in the absence thereof, with the consulate or diplomatic mission of any other State entrusted with the protection of the interests of the State of which he or she is a national in the State where he or she resides.

## **12. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

*Adopted by General Assembly resolution 45/158 of 18 December 1990 (not in force)*

### **PREAMBLE**

*The States Parties to the present Convention,*

*Taking into account* the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

*Taking into account also* the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (N° 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (N° 143), the Recommendation concerning Migration for Employment (N° 86), the Recommendation concerning Migrant Workers (N° 151), the Convention concerning Forced or Compulsory Labour (N° 29) and the Convention concerning Abolition of Forced Labour (N° 105),

*Reaffirming* the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

*Recalling* the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

*Recalling* that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

*Recognizing* the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cul-

tural Organization and the World Health Organization, as well as in other international organizations,

*Recognizing also* the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

*Realizing* the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

*Aware* of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

*Considering* the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

*Convinced* that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

*Taking into account* the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

*Bearing in mind* that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

*Considering* that workers who are non-documented or in an irregular situation are frequently employed under less favorable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

*Considering also* that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned.

*Convinced* therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

*Have agreed as follows:*

## PART 1

### SCOPE AND DEFINITIONS

#### *Article 1*

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

#### *Article 2*

For the purposes of the present Convention:

1. The term «migrant worker» refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2. (a) The term «frontier worker» refers to a migrant worker who retains his or her habitual residence in a neighboring State to which he or she normally returns every day or at least once a week:

(b) The term «seasonal worker» refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term «seafarer», which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term «worker on an offshore installation» refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term «itinerant worker» refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term «project-tied worker» refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term «specified-employment worker» refers to a migrant worker:

- (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
- (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
- (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term «self-employed worker» refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

### *Article 3*

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions:

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

#### *Article 4*

For the purposes of the present Convention the term «members of the family» refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

#### *Article 5*

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

#### *Article 6*

For the purposes of the present Convention:

(a) The term «State of origin» means the State of which the person concerned is a national;

(b) The term «State of employment» means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term «State of transit» means any State through which the person concerned passes on any journey to the State of employment or from

the State of employment to the State of origin or the State of habitual residence.

## **PART II**

### **NON-DISCRIMINATION WITH RESPECT TO RIGHTS**

#### *Article 7*

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within the territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## **PART III**

### **HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

#### *Article 8*

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*era're public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention,
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

#### *Article 9*

The right to life of migrant workers and members of their families shall be protected by law.

#### *Article 10*

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### *Article 11*

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term «forced or compulsory labour» shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

### *Article 12*

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities, It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputation of others;
  - (b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;
  - (c) For the purpose of preventing any propaganda for war;
  - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,

### Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

### Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

### Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor:

(b) The person concerned shall have the right to communicate with the said authorities, Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay:

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of the families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a

court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

#### *Article 17*

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

*Article 18*

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
  - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
  - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
  - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
  - (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law,

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

#### *Article 19*

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

#### *Article 20*

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfillment of that obligation constitutes a condition for such authorization or permit.

#### *Article 21*

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

## *Article 22*

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually,
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from recentering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities,
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

## *Article 23*

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic

authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

*Article 24*

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law,

*Article 25*

1. Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

*Article 26*

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as foresaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others,

*Article 27*

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multi-lateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances,

*Article 28*

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

*Article 29*

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

*Article 30*

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment,

#### *Article 31*

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.
2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

#### *Article 32*

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

#### *Article 33*

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
  - (a) Their rights arising out of the present Convention;
  - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.
3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

#### *Article 34*

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

#### *Article 35*

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any

right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

#### **PART IV**

##### **OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION**

###### *Article 36*

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

###### *Article 37*

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

###### *Article 38*

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

###### *Article 39*

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are nec-

essary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

*Article 40*

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others,

*Article 41*

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

*Article 42*

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

*Article 43*

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
  - (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions;
- (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
- (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
- (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
- (g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

#### *Article 44*

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favorably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

*Article 45*

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

*Article 46*

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence:

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

*Article 47*

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements,
2. States concerned shall take appropriate measures to facilitate such transfers.

*Article 48*

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families

*Article 49*

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by them ere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

*Article 50*

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favorably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.
2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.
3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

*Article 51*

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

*Article 52*

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.
2. For any migrant worker a State of employment may:
  - (a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;
  - (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.
3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment,

#### *Article 53*

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favorably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

#### *Article 54*

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

(a) Protection against dismissal;

(b) Unemployment benefits;

(c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

*Article 55*

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

*Article 56*

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part II.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

**PART V**

**PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF  
MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

*Article 57*

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part III and, except as modified below, the rights set forth in part IV.

*Article 58*

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favorably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers,

#### *Article 59*

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph I of the present article, consider, granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

#### *Article 60*

Itinerant workers, as defined in article 2, paragraph 2 (e), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

#### *Article 61*

1. Project-tied workers, as defined in article 2, paragraph 2 (f), of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph 1 (b), and articles 52 to 55.

1. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

*Article 62*

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).
2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

*Article 63*

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.
2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

**PART VI**

**PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL  
CONDITIONS IN CONNECTION WITH INTERNATIONAL  
MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES**

*Article 64*

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.
2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of

migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

#### *Article 65*

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, *inter alia*.

(a) The formulation and implementation of policies regarding such migration;

(b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

#### *Article 66*

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers

or persons acting on their behalf may also be permitted to undertake the said operations.

*Article 67*

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers and members of their families in regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

*Article 68*

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:
  - (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
  - (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
  - (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.
2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers *vis-à-vis* their employer arising from employment shall not be impaired by these measures.

*Article 69*

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable na-

tional legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

#### *Article 70*

States Parties shall take measures not less favorable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

#### *Article 71*

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

### **PART VII**

#### **APPLICATION OF THE CONVENTION**

#### *Article 72*

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as «the Committee»);

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### *Article 73*

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

#### *Article 74*

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

#### *Article 75*

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### *Article 76*

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if

submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party, The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine

its report to a brief statement of the facts and of the solution reached;

- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### *Article 77*

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### *Article 78*

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

## PART VIII

### GENERAL PROVISIONS

#### *Article 79*

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

#### *Article 80*

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

#### *Article 81*

1. Nothing in the present Convention shall affect more favorable rights or freedoms granted to migrant workers and members of their families by virtue of:

(a) The law or practice of a State Party; or

(b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

#### *Article 82*

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

#### *Article 83*

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### *Article 84*

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

### **PART IX**

#### **FINAL PROVISIONS**

#### *Article 85*

The Secretary-General of the United Nations is designated as the depositary of the present Convention,

#### *Article 86*

1. The present Convention shall be open for signature by all States. It is subject to ratification,
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 87*

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

*Article 88*

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

*Article 89*

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

*Article 90*

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound

by the provisions of the present Convention and any earlier amendment that they have accepted.

#### *Article 91*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date which it is received.

#### *Article 92*

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

#### *Article 93*

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

### **13. Declaration on the Rights of Mentally Retarded Persons**

*Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971*

*The General Assembly,*

*Mindful* of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

*Reaffirming* faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

*Recalling* the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

*Emphasizing* that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

*Bearing in mind* the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

*Aware* that certain countries, at their present stage of development, can devote only limited efforts to this end,

*Proclaims* this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to

engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

#### **14. Declaration on the Rights of Disabled Persons**

*Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975*

*The General Assembly,*

*Mindful* of the pledge made by Member States, under the Charter of the United Nations to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

*Reaffirming* its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

*Recalling* the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

*Recalling also* Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons,

*Emphasizing* that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

*Bearing in mind* the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,

*Aware* that certain countries, at their present stage of development, can devote only limited efforts to this end.

*Proclaims* this Declaration on the Rights of Disabled Persons and calls for national and international action- to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency. either congenital or not, in his or her physical or mental capabilities.

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons,

5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counseling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

12. Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons,

13. Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

## **15. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care**

*Adopted by General Assembly resolution 46/119 of 17 December 1991*

### *Application*

These Principles shall be applied without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

### *Definitions*

In these Principles:

« Counsel » means a legal or other qualified representative;

« Independent authority » means a competent and independent authority prescribed by domestic law;

« Mental health care » includes analysis and diagnosis of a person's mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness;

« Mental health facility » means any establishment, or any unit of an establishment, which as its primary function provides mental health care;

« Mental health practitioner » means a medical doctor, clinical psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care;

« Patient » means a person receiving mental health care and includes all persons who are admitted to a mental health facility;

« Personal representative » means a person charged by law with the duty of representing a patient's interests in any specified respect or of exercising specified rights on the patient's behalf, and includes the parent or legal guardian of a minor unless otherwise provided by domestic law;

« The review body » means the body established in accordance with Principle 17 to review the involuntary admission or retention of a patient in a mental health facility.

### *General limitation clause*

The exercise of the rights set forth in these Principles may be subject only to such limitations as are prescribed by law and are necessary to protect

the health or safety of the person concerned or of others, or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

### *Principle 1*

#### *Fundamental freedoms and basic rights*

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.
2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person
3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.
4. There shall be no discrimination on the grounds of mental illness.. «Discrimination» means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.
5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is at issue shall be entitled to be represented by a counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is at issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law, The person whose capacity is at issue, his

or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

7. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interest

### *Principle 2*

#### *Protection of minors*

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

### *Principle 3*

#### *Life in the community*

Every person with a mental illness shall have the right to live and work, as far as possible, in the community.

### *Principle 4*

#### *Determination of mental illness*

1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.
2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status.
3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.
4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness
5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

*Principle 5*

*Medical examination*

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

*Principle 6*

*Confidentiality*

The right of confidentiality of information concerning all persons to whom these Principles apply shall be respected.

*Principle 7*

*Role of community and culture*

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.
2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.
3. Every patient shall have the right to treatment suited to his or her cultural background.

*Principle 8*

*Standards of care*

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.
2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

*Principle 9*

*Treatment*

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy,

*Principle 10*

*Medication*

1. Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others. Subject to the provisions of paragraph 15 of Principle 11, mental health practitioners shall only administer medication of known or demonstrated efficacy.
2. All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records.

*Principle 11*

*Consent to treatment*

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15 below.
2. Informed consent is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:
  - (a) The diagnostic assessment;
  - (b) The purpose, method, likely duration and expected benefit of the proposed treatment;
  - (c) Alternative modes of treatment, including those less intrusive: and
  - (d) Possible pain or discomfort, risks and side-effects of the proposed treatments.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.
4. A patient has the right to refuse or stop treatment, except as provided for in paragraphs 6, 7, 8, 13 and 15 below, The consequences of refusing or stopping treatment must be explained to the patient.
5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.
6. Except as provided in paragraphs 7, 8, 12, 13, 14 and 15 below, a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:
  - (a) The patient is, at the relevant time, held as an involuntary patient:
  - (b) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2 above, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent; and
  - (c) The independent authority is satisfied that the proposed plan of treatment is in the best interest of the patient's health needs.
7. Paragraph 6 above does not apply to a patient with a personal representative empowered by law to consent to treatment for the patient; but, except as provided in paragraphs 12, 13, 14 and 15 below, treatment may be given to such a patient without his or her informed consent if the personal representative, having been given the information described in paragraph 2 above, consents on the patient's behalf.
8. Except as provided in paragraphs 12, 13, 14 and 15 below, treatment may also be given to any patient without the patient's informed consent if a qualified mental health practitioner authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period that is strictly necessary for this purpose.
9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives and to involve the patient as far as practicable in the development of the treatment plan.
10. All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary.

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient brothers. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness,

13. A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law, where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that, where the patient is unable to give informed consent, the procedure shall be authorized only after independent review.

14. Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility and, to the extent that domestic law permits them to be carried out, they may be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment, but only with the approval of a competent, independent review body specifically constituted for this purpose.

16. In the cases specified in paragraphs 6, 7, 8, 13, 14 and 15 above, the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her.

### *Principle 12*

#### *Notice of rights*

1. A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights in accordance with these Principles and under domestic law, which information shall include an explanation of those rights and how to exercise them.

2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the personal representative, if any and if appropriate, and to the person or persons best able to represent the patient's interests and willing to do so.

3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf, as well as a person to represent his or her interests to the authorities of the facility.

### *Principle 13*

#### *Rights and conditions in mental health facilities*

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:

(a) Recognition everywhere as a person before the law;

(b) Privacy;

(c) Freedom of communication, which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a counsel or personal representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;

(d) Freedom of religion or belief.

2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

(a) Facilities for recreational and leisure activities;

(b) Facilities for education;

(c) Facilities to purchase or receive items for daily living, recreation and communication;

(d) Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community. These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

3. In no circumstances shall a patient be subject to forced labour. Within the limits compatible with the needs of the patient and with the requirements

of institutional administration, a patient shall be able to choose the type of work he or she wishes to perform.

4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall, in any event, have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

#### *Principle 14*

##### *Resources for mental health facilities*

1. A mental health facility shall have access to the same level of resources as any other health establishment, and in particular:

(a) Qualified medical and other appropriate professional staff in sufficient numbers and with adequate space to provide each patient with privacy and a programme of appropriate and active therapy;

(b) Diagnostic and therapeutic equipment for the patient;

(c) Appropriate professional care; and

(d) Adequate, regular and comprehensive treatment, including supplies of medication.

2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with these Principles.

#### *Principle 15*

##### *Admission principles*

1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.

2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in Principle 16, apply, and he or she shall be informed of that right.

## *Principle 16*

### *Involuntary admission*

1. A person may (a) be admitted involuntarily to a mental health facility as a patient; or (b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family.

3. A mental health facility may receive involuntarily admitted patients only if the facility has been designated to do so by a competent authority prescribed by domestic law.

## *Principle 17*

### *Review body*

1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions have the assistance of one or more qualified and independent mental health practitioners and take their advice into account.

2. The review body's initial review, as required by paragraph 2 of Principle 16, of a decision to admit or retain a person as an involuntary pa-

tient shall take place as soon as possible after that decision arid shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of Principle 16 are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

### *Principle 18*

#### *Procedural safeguards*

1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

2. The patient shall also be entitled to the assistance, if necessary, of the services of an interpreter. Where such services are necessary and the patient does not secure them, they shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

3. The patient and the patient's counsel may request and produce at any hearing an independent mental health report and any other reports and oral, written and other evidence that are relevant and admissible.

4. Copies of the patient's records and any reports and documents to be submitted shall be given to the patient and to the patient's counsel, except in special cases where it is determined that a specific disclosure to the patient would cause serious harm to the patient's health or put at risk the safety of others. As domestic law may provide, any document not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any part of a document is withheld from a patient, the patient or the patient's counsel, if any, shall receive

notice of the withholding and the reasons for it and shall be subject to judicial review,

5. The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing.

6. If the patient or the patient's personal representative or counsel requests that a particular person be present at a hearing, that person shall be admitted unless it is determined that the person's presence could cause serious harm to the patient's health or put at risk the safety of others.

7. Any decision whether the hearing or any part of it shall be in public or in private and may be publicly reported shall give full consideration to the patient's own wishes, to the need to respect the privacy of the patient and of other persons and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel. In deciding whether the decision shall be published in whole or in part, full consideration shall be given to the patient's own wishes, to the need to respect his or her privacy and that of other persons, to the public interest in the open administration of justice and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

#### *Principle 19*

##### *Access to information*

1. A patient (which term in this Principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility. This right may be subject to restrictions in order to prevent serious harm to the patient's health and avoid putting at risk the safety of others. As domestic law may provide, any such information not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any of the information is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

2. Any written comments by the patient or the patient's personal representative or counsel shall, on request, be inserted in the patient's file.

#### *Principle 20*

##### *Criminal offenders*

1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal

proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.

2. All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in paragraph 5 of Principle I.

3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility

4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 1 I.

#### *Principle 21*

##### *Complaints*

Every patient and former patient shall have the right to make a complaint through procedures as specified by domestic law.

#### *Principle 22*

##### *Monitoring and remedies*

States shall ensure that appropriate mechanisms are in force to promote compliance with these Principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

#### *Principle 23*

##### *[implementation]*

1. States should implement these Principles through appropriate legislative, judicial, administrative, educational and other measures, which they shall review periodically.

2. States shall make these Principles widely known by appropriate and active means.

*Principle 24*

*Scope of principles relating to mental health facilities*

These Principles apply to all persons who are admitted to a mental health facility.

*Principle 25*

*Saving of existing rights*

There shall be no restriction upon or derogation from any existing rights of patients, including rights recognized in applicable international or domestic law, on the pretext that these Principles do not recognize such rights or that they recognize them to a lesser extent.

## ***B. International Labour Organisation (ILO)***

### **1. Equal Remuneration Convention**

#### **CONVENTION (N° 100) CONCERNING EQUAL REMUNERATION FOR MEN AND WOMEN WORKERS FOR WORK OF EQUAL VALUE**

*Adopted on 29 June 1951 by the General Conference of the International Labour Organisation at its thirty-fourth session*

ENTRY INTO FORCE: 23 May 1953, in accordance with article 6

*The General Conference of the International Labour Organisation,*

*Having been convened* at Geneva by the Governing Body of the International Labour Office, and having met in its thirty-fourth session on 6 June 1951, and

*Having decided* upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

*Having determined* that these proposals shall take the form of an international Convention,

*Adopts* this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

#### *Article 1*

For the purpose of this Convention:

(a) The term «remuneration» includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) The term «equal remuneration for men and women workers for work of equal value» refers to rates of remuneration established without discrimination based on sex.

#### *Article 2*

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of
  - (a) National laws or regulations;
  - (b) Legally established or recognised machinery for wage determination;
  - (c) Collective agreements between employers and workers; or
  - (d) A combination of these various means,

*Article 3*

1. Where such action will assist in giving effect to the provisions of this Convention, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.
3. Differential rates between workers, which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed, shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

*Article 4*

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

*Article 5*

The formal ratification of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 6*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

#### *Article 7*

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate:

(a) The territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) The territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) The territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) The territories in respect of which it reserves its decisions pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this article shall be deemed to be an integral part of the ratification and shall have the force of ratification,

3. Any member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration by virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

#### *Article 8*

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 and 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modification; when the declaration indicates that the provisions of the Convention will be applied subject to modification, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance

with the provisions of article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention,

#### *Article 9*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

#### *Article 10*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### *Article 11*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

#### *Article 12*

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part,

### Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) The ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 9 above, if and when the new revising Convention shall have come into force;

(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members,

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

### Article 14

The English and French versions of the text of this Convention are equally authoritative,

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its thirty-fourth session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

## 2. Discrimination (Employment and Occupation) Convention

### CONVENTION (N° 111) CONCERNING DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION

*Adopted on 25 June 1958 by the General Conference of the International Labour Organisation at its forty-second session*

ENTRY INTO FORCE; 15 June 1960, in accordance with article 8

*The General Conference of the International Labour Organisation,*

*Having been convened* at Geneva by the Governing Body of the International Labour Office, and having met in its forty-second session on 4 June 1958, and

*Having decided* upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

*Having determined* that these proposals shall take the form of an international Convention. and

*Considering* that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

*Considering further* that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

*Adopts* this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

#### *Article 1*

1. For the purpose of this Convention the term «discrimination» includes:
  - (a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
  - (b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned

after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms «employment» and «occupation» include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

#### *Article 2*

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

#### *Article 3*

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice:

(a) To seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) To enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) To repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) To pursue the policy in respect of employment under the direct control of a national authority;

(e) To ensure observance of the policy in activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) To indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action

#### *Article 4*

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be

deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

#### *Article 5*

1. Special measures of protection or assistance provided in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination,

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

#### *Article 6*

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

#### *Article 7*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

#### *Article 8*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

#### *Article 9*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned

in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period often years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

#### *Article 10*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### *Article 11*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

#### *Article 12*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### *Article 13*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) The ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 9 above, if and when the new revising Convention shall have come into force;
  - (b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 14*

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its forty-second session which was held at Geneva and declared closed the twenty-sixth day of June 1958.

IN FAITH WHEREOF we have appended our signatures this fifth day of July 1958.

### **3. Convention (N° 169) concerning Indigenous and Tribal Peoples in Independent Countries**

*Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session*

ENTRY INTO FORCE: 5 September 1991

*The General Conference of the International Labour Organisation,*

*Having been convened* at Geneva by the Governing Body of the International Labour Office, and having met in its seventy-sixth session on 7 June 1989. and

*Noting* the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

*Recalling* the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

*Considering* that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

*Recognizing* the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

*Noting* that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

*Calling* attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

*Noting* that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields,

and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

*Having decided* upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

*Having determined* that these proposals shall take the form of an international Convention revising the indigenous and Tribal Populations Convention, 1957;

*Adopts* this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

## **PART I. GENERAL POLICY**

### *Article 1*

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term «peoples» in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

### *Article 2*

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions:

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

#### *Article 3*

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

#### *Article 4*

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

#### *Article 5*

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

#### *Article 6*

1. In applying the provisions of this Convention, Governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### *Article 7*

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### *Article 8*

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

#### *Article 9*

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### *Article 10*

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

#### *Article 11*

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

#### *Article 12*

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can

understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## PART II. LAND

### *Article 13*

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term « lands » in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### *Article 14*

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### *Article 15*

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmed for the exploration or exploitation of such resources pertaining to their lands, The peoples concerned shall wherever possible participate in

the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### *Article 16*

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy,

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the kinds previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

#### *Article 17*

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

#### *Article 18*

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

#### *Article 19*

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

### **PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT**

#### *Article 20*

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude:

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

#### **PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES**

##### *Article 21*

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

##### *Article 22*

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

##### *Article 23*

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting,

fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

## **PART V. SOCIAL SECURITY AND HEALTH**

### *Article 24*

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

### *Article 25*

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## **PART VI. EDUCATION AND MEANS OF COMMUNICATION**

### *Article 26*

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

*Article 27*

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

*Article 28*

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

*Article 29*

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

*Article 30*

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

*Article 31*

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

**PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS**

*Article 32*

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

**PART VIII. ADMINISTRATION**

*Article 33*

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfillment of the functions assigned to them.

2. These programmes shall include:

- (a) The planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

- (b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

## **PART IX. GENERAL PROVISIONS**

### *Article 34*

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

### *Article 35*

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

## **PART X. FINAL PROVISIONS**

### *Article 36*

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

### *Article 37*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### *Article 38*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

### *Article 39*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which do not, within the year following the expiration of the period of ten years mentioned

in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and thereafter, may denounce this Convention at the expiration of each period ten years under the terms provided for in this Article.

#### Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Member of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date up which the Convention will come into force.

#### Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### Article 42

At such times as it may consider necessary the Governing Body of International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) The ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force:
  - (b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 44*

The English and French versions of the text of this Convention are equally authoritative.

## ***C. United Nations Educational Scientific and Cultural Organization (UNESCO)***

### 1. Convention against Discrimination in Education

*Adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization*

ENTRY INTO FORCE: 22 May 1962, in accordance with article 14

*The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session,*

*Recalling* that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education,

*Considering* that discrimination in education is a violation of rights enunciated in that Declaration,

*Considering* that, under the terms of its Constitution, the United Nations Educational, Scientific and Cultural Organization has the purpose of instituting collaboration among the nations with a view to furthering for all universal respect for human rights and equality of educational opportunity,

*Recognizing* that, consequently, the United Nations Educational, Scientific and Cultural Organization, while respecting the diversity of national educational systems, has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education,

*Having before it* proposals concerning the different aspects of discrimination in education, constituting item 17.1.4 of the agenda of the session,

*Having decided* at its tenth session that this question should be made the subject of an international convention as well as of recommendations to Member States.

*Adopts* this Convention on the fourteenth day of December 1960

#### *Article 1*

1. For the purpose of this Convention, the term «discrimination» includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or

social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term «education» refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

### *Article 2*

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

### *Article 3*

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

### *Article 4*

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(d) To provide training for the teaching profession without discrimination.

### *Article 5*

1. The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

### *Article 6*

In the application of this Convention, the States Parties to it undertake to pay the greatest attention to any recommendations hereafter adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and treatment in education.

*Article 7*

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and the development of the national policy defined in article 4 as well as the results achieved and the obstacles encountered in the application of that policy.

*Article 8*

Any dispute which may arise between any two or more States Parties to this Convention concerning the interpretation or application of this Convention which is not settled by negotiations shall at the request of the parties to the dispute be referred, failing other means of settling the dispute, to the International Court of Justice for decision.

*Article 9*

Reservations to this Convention shall not be permitted.

*Article 10*

This Convention shall not have the effect of diminishing the rights which individuals or groups may enjoy by virtue of agreements concluded between two or more States, where such rights are not contrary to the letter or spirit of this Convention.

*Article 11*

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

*Article 12*

1. This Convention shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

#### *Article 13*

1. This Convention shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are invited to do so by the Executive Board of the Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

#### *Article 14*

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

#### *Article 15*

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territory but also to all non-self-governing, trust, colonial and other territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is accordingly applied, the notification to take effect three months after the date of its receipt.

#### *Article 16*

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

#### *Article 17*

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States Members of the Organization, the States not members of the Organization which are referred to in article

13, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 12 and 13, and of notifications and denunciations provided for in articles 15 and 16 respectively.

#### *Article 18*

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession as from the date on which the new revising convention enters into force.

#### *Article 19*

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

DONE in Paris, this fifteenth day of December 1960, in two authentic copies bearing the signatures of the President of the eleventh session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in articles 12 and 13 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its eleventh session, which was held in Paris and declared closed the fifteenth day of December 1960.

IN FAITH WHEREOF we have appended our signatures this fifteenth day of December 1960.

**2. Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education**

*Adopted on 10 December 1962 by the General Conference of the United Nations Educational, Scientific and Cultural Organization*

ENTRY INTO FORCE: 24 October 1968. in accordance with article 24

*The General Conference of the United Nations Educational, Scientific and Cultural organization, meeting in Paris from 9 November to 12 December 1962, at its twelfth session,*

*Having adopted, at its eleventh session, the Convention against Discrimination in Education.*

*Desirous of facilitating the implementation of that Convention, and*

*Considering that it is important, for this purpose, to institute a Conciliation and Good Offices Commission to be responsible for seeking the amicable settlement of any disputes which may arise between States Parties to the Convention concerning its application or interpretation,*

*Adopts this Protocol on the tenth day of December 1962*

*Article 1*

There shall be established under the auspices of the United Nations Educational, Scientific and Cultural Organization a Conciliation and Good Offices Commission, hereinafter referred to as the Commission, to be responsible for seeking the amicable settlement of disputes between States Parties to the Convention against Discrimination in Education, hereinafter referred to as the Convention, concerning the application or interpretation of the Convention.

*Article 2*

1. The Commission shall consist of eleven members who shall be persons of high moral standing and acknowledged impartiality and shall be elected by the General Conference of the United Nations Educational, Scientific and Cultural Organization
2. The members of the Commission shall serve in their personal capacity.

*Article 3*

1. The members of the Commission shall be elected from a list of persons nominated for the purpose by the States Parties to this Protocol. Each State

shall, after consulting its National Commission for UNESCO, nominate not more than four persons. These persons must be nationals of States Parties to this Protocol.

2. At least four months before the date of each election to the Commission, the Director-General of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Director-General, shall invite the States Parties to the present Protocol to send within two months, their nominations of the persons referred to in paragraph 1 of this article. He shall prepare a list in alphabetical order of the persons thus nominated and shall submit it, at least one month before the election, to the Executive Board of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Executive Board, and to the States Parties to the Convention. The Executive Board shall transmit the aforementioned list, with such suggestions as it may consider useful, to the General Conference, which shall carry out the election of members of the Commission in conformity with the procedure it normally follows in elections of two or more persons.

#### *Article 4*

1. The Commission may not include more than one national of the same State.

2. In the election of members of the Commission, the General Conference shall endeavour to include persons of recognized competence in the field of education and persons having judicial experience or legal experience particularly of an international character. It shall also give consideration to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

#### *Article 5*

The members of the Commission shall be elected for a term of six years. They shall be eligible for re-election if renominated. The terms of four of the members elected at the first election shall, however, expire at the end of two years, and the terms of three other members at the end of four years. Immediately after the first election, the names of these members shall be chosen by lot by the President of the General Conference.

#### *Article 6*

1. In the event of the death or resignation of a member of the Commission, the Chairman shall immediately notify the Director-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

2. If, in the unanimous opinion of the other members, a member of the Commission has ceased to carry out his functions for any cause other than absence of a temporary character or is unable to continue the discharge of his

duties, the Chairman of the Commission shall notify the Director-General and shall thereupon declare the seat of such member to be vacant.

3. The Director-General shall inform the Member States of the United Nations Educational, Scientific and Cultural Organization, and any States not members of the Organization which have become Parties to this Protocol under the provisions of article 23, of any vacancies which have occurred in accordance with paragraphs 1 and 2 of this article.

4. In each of the cases provided for by paragraphs 1 and 2 of this article, the General Conference shall arrange for the replacement of the member whose seat has fallen vacant, for the unexpired portion of his term of office.

#### Article 7

Subject to the provisions of article 6, a member of the Commission shall remain in office until his successor takes up his duties.

#### Article 8

1. If the Commission does not include a member of the nationality of a State which is party to a dispute referred to it under the provisions of article 12 or article 13, that State, or if there is more than one, each of those States, may choose a person to sit on the Commission as a member *ad hoc*.

2. The States thus choosing a member *ad hoc* shall have regard to the qualities required of members of the Commission by virtue of article 2, paragraph 1, and article 4, paragraphs 1 and 2. Any member *ad hoc* thus chosen shall be of the nationality of the State which chooses him or of a State Party to the Protocol, and shall serve in a personal capacity.

3. Should there be several States Parties to the dispute having the same interest they shall, for the purpose of choosing members *ad hoc*, be reckoned as one party only. The manner in which this provision shall be applied shall be determined by the Rules of Procedure of the Commission referred to in article I 1.

#### Article 9

Members of the Commission and members *ad hoc* chosen under the provisions of article 8 shall receive travel and *per diem* allowances in respect of the periods during which they are engaged on the work of the Commission from the resources of the United Nations Educational, Scientific and Cultural Organization on terms laid down by the Executive Board.

#### Article 10

The secretariat of the Commission shall be provided by the Director-General.

### Article 11

1. The Commission shall elect its Chairman and Vice-Chairman for a period of two years. They may be re-elected.
2. The Commission shall establish its own Rules of Procedure, but these rules shall provide, *inter alia*, that:
  - (a) Two thirds of the members, including the members *ad hoc*, if any, shall constitute a quorum;
  - (b) Decisions of the Commission shall be made by a majority vote of the members and members *ad hoc* present; if the votes are equally divided, the Chairman shall have a casting vote;
  - (c) If a State refers a matter to the Commission under article 12 or article 13:
    - (i) Such State, the State complained against, and any State Party to this Protocol whose national is concerned in such matter may make submissions in writing to the Commission;
    - (ii) Such State and the State complained against shall have the right to be represented at the hearings of the matter and to make submissions orally.
3. The Commission, on the occasion when it first proposes to establish its Rules of Procedure, shall send them in draft form to the States then Parties to the Protocol who may communicate any observation and suggestion they may wish to make within three months. The Commission shall re-examine its Rules of Procedure if at any time so requested by any State Party to the Protocol.

### Article 12

1. If a State Party to this Protocol considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to procedures and remedies taken, or pending, or available in the matter.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Commission, by notice given to the Director-General and to the other State.

3. The provision of the preceding paragraphs shall not affect the rights of States Parties to have recourse, in accordance with general or special international agreements in force between them, to other procedures for settling disputes including that of referring disputes by mutual consent to the Permanent Court of Arbitration at The Hague.

*Article 13*

From the beginning of the sixth year after the entry into force of this Protocol, the Commission may also be made responsible for seeking the settlement of any dispute concerning the application or interpretation of the Convention arising between States which are Parties to the Convention but are not, or are not all, Parties to this Protocol, if the said States agree to submit such dispute to the Commission. The conditions to be fulfilled by the said States in reaching agreement shall be laid down by the Commission's Rules of Procedure.

*Article 14*

The Commission shall deal with a matter referred to it under article 12 or article 13 of this Protocol only after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law.

*Article 15*

Except in cases where new elements have been submitted to it, the Commission shall not consider matters it has already dealt with.

*Article 16*

In any matter referred to it, the Commission may call upon the States concerned to supply any relevant information.

*Article 17*

1. Subject to the provisions of article 14, the Commission, after obtaining all the information it thinks necessary, shall ascertain the facts, and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention.
2. The Commission shall in every case, and in no event later than eighteen months after the date of receipt by the Director-General of the notice under article 12, paragraph 2, draw up a report in accordance with the provisions of paragraph 3 below which will be sent to the States concerned and then communicated to the Director-General for publication. When an advisory opinion is requested of the International Court of Justice, in accordance with article 18, the time-limit shall be extended appropriately.

3. If a solution within the terms of paragraph I of this article is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Commission shall draw up a report on the facts and indicate the recommendations which it made with a view to conciliation. [f the report does not represent in whole or in part the unanimous opinion of the members of the Commission, any member of the Commission shall be entitled to attach to it a separate opinion. The written and oral submissions made by the parties to the case in accordance with article 11, paragraph 2 (c), shall be attached to the report.

#### *Article 18*

The Commission may recommend to the Executive Board, or to the General Conference if the recommendation is made within two months before the opening of one of its sessions, that the International Court of Justice be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission,

#### *Article 19*

The Commission shall submit to the General Conference at each of its regular sessions a report on its activities, which shall be transmitted to the General Conference by the Executive Board.

#### *Article 20*

1. The Director-General shall convene the first meeting of the Commission at the Headquarters of the United Nations Educational, Scientific and Cultural Organization within three months after its nomination by the General Conference.

2. Subsequent meetings of the Commission shall be convened when necessary by the Chairman of the Commission to whom, as well as to all other members of the Commission, the Director-General shall transmit all matters referred to the Commission in accordance with the provisions of this Protocol.

3. Notwithstanding paragraph 2 of this article, when at least one third of the members of the Commission consider that the Commission should examine a matter in accordance with the provisions of this Protocol, the Chairman shall on their so requiring convene a meeting of the Commission for that purpose.

#### *Article 21*

The present Protocol is drawn up in English, French, Russian and Spanish, all four texts being equally authentic.

*Article 22*

1. This Protocol shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. The instruments of ratification or acceptance shall be deposited with the Director-General.

*Article 23*

1. This Protocol shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

*Article 24*

This Protocol shall enter into force three months after the date of the deposit of the fifteenth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

*Article 25*

Any State may, at the time of ratification, acceptance or accession or at any subsequent date, declare, by notification to the Director-General, that it agrees, with respect to any other State assuming the same obligation, to refer to the International Court of Justice, after the drafting of the report provided for in article 17, paragraph 3, any dispute covered by this Protocol on which no amicable solution has been reached in accordance with article 17, paragraph 1,

*Article 26*

1. Each State Party to this Protocol may denounce it.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.
3. Denunciation of the Convention shall automatically entail denunciation of this Protocol.
4. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. The State denouncing the Protocol shall, however, remain bound by its provisions in respect of any cases concerning it

which have been referred to the Commission before the end of the time-limit stipulated in this paragraph.

*Article 27*

The Director-General shall inform the States Members of the United Nations Educational, Scientific and Cultural Organization, the States not Members of the organization which are referred to in article 23, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 22 and 23, and of the notifications and denunciations provided for in articles 25 and 26 respectively.

*Article 28*

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

DONE in Paris, this eighteenth day of December 1962, in two authentic copies bearing the signatures of the President of the twelfth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in articles 12 and 13 of the Convention against Discrimination in Education as well as to the United Nations.

The foregoing is the authentic text of the Protocol duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its twelfth session, which was held in Paris and declared closed the twelfth day of December 1962.

IN FAITH WHEREOF we have appended our signatures this eighteenth day of December 1962.

### 3. Declaration on Race and Racial Prejudice

*Adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978*

#### PREAMBLE

*The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting at Paris at its twentieth session, from 24 October to 28 November 1978,*

*Whereas* it is stated in the Preamble to the Constitution of UNESCO, adopted on 16 November 1945, that “the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races”, and whereas, according to Article I of the said Constitution, the purpose of UNESCO “is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”,

*Recognizing* that, more than three decades after the founding of UNESCO, these principles are just as significant as they were when they were embodied in its Constitution,

*Mindful* of the process of decolonization and other historical changes which have led most of the peoples formerly under foreign rule to recover their sovereignty, making the international community a universal and diversified whole and creating new opportunities of eradicating the scourge of racism and of putting an end to its odious manifestations in all aspects of social and political life, both nationally and internationally,

*Convinced* that the essential unity of the human race and consequently the fundamental equality of all human beings and all peoples, recognized in the loftiest expressions of philosophy, morality and religion, reflect an ideal towards which ethics and science are converging today,

*Convinced* that all peoples and all human groups, whatever their composition or ethnic origin, contribute according to their own genius to the progress of the civilizations and cultures which, in their plurality and as a result of their interpenetration, constitute the common heritage of mankind,

*Confirming* its attachment to the principles proclaimed in the United Nations Charter and the Universal Declaration of Human Rights and its determination to promote the implementation of the International Covenants

on Human Rights as well as the Declaration on the Establishment of a New International Economic Order,

*Determined also* to promote the implementation of the United Nations Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination,

*Noting* the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of *Apartheid* and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

*Recalling also* the international instruments already adopted by UNESCO, including in particular the Convention and Recommendation against Discrimination in Education, the Recommendation concerning the Status of Teachers, the Declaration of the Principles of International Cultural Co-operation, the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, the Recommendations on the Status of Scientific Researchers, and the Recommendation on participation by the people at large in cultural life and their contribution to it,

*Bearing in mind* the four statements on the race question adopted by experts convened by UNESCO,

*Reaffirming* its desire to play a vigorous and constructive part in the implementation of the programme of the Decade for Action to Combat Racism and Racial Discrimination, as defined by the General Assembly of the United Nations at its twenty-eighth session,

*Noting* with the gravest concern that racism, racial discrimination, colonialism and *apartheid* continue to afflict the world in ever-changing forms, as a result both of the continuation of legislative provisions and government and administrative practices contrary to the principles of human rights and also of the continued existence of political and social structures, and of relationships and attitudes, characterized by injustice and contempt for human beings and leading to the exclusion, humiliation and exploitation, or to the forced assimilation, of the members of disadvantaged groups,

*Expressing its indignation* at these offences against human dignity, *deploring* the obstacles they place in the way of mutual understanding between peoples and *alarmed* at the danger of their seriously disturbing international peace and security,

*Adopts and solemnly proclaims* this Declaration on Race and Racial Prejudice:

### Article 1

1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.
2. All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of *apartheid*, which is the extreme form of racism.
3. Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural identity.
4. All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.
5. The differences between the achievements of the different peoples are entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of nations or peoples.

### Article 2

1. Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgments on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.
2. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practise it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.
3. Racial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification.

### *Article 3*

Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide.

### *Article 4*

1. Any restriction on the complete self-fulfilment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted.
2. One of the most serious violations of this principle is represented by *apartheid*, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security.
3. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

### *Article 5*

1. Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international contexts, it being understood that it rests with each group to decide in complete freedom on the maintenance, and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity.
2. States, in accordance with their constitutional principles and procedures, as well as all other competent authorities and the entire teaching profession, have a responsibility to see that the educational resources of all countries are used to combat racism, more especially by ensuring that curricula and textbooks include scientific and ethical considerations concerning human unity and diversity and that no invidious distinctions are made with regard to any people; by training teachers to achieve these ends; by making

the resources of the educational system available to all groups of the population without racial restriction or discrimination; and by taking appropriate steps to remedy the handicaps from which certain racial or ethnic groups suffer with regard to their level of education and standard of living and in particular to prevent such handicaps from being passed on to children.

3. The mass media and those who control or serve them, as well as all organized groups within national communities, are urged - with due regard to the principles embodied in the Universal Declaration of Human Rights, particularly the principle of freedom of expression - to promote understanding, tolerance and friendship among individuals and groups and to contribute to the eradication of racism, racial discrimination and racial prejudice, in particular by refraining from presenting a stereotyped, partial, unilateral or tendencious picture of individuals and of various human groups. Communication between racial and ethnic groups must be a reciprocal process, enabling them to express themselves and to be fully heard without let or hindrance, The mass media should therefore be freely receptive to ideas of individuals and groups which facilitate such communication,

#### Article 6

1. The State has prime responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals and all groups.

2. So far as its competence extends and in accordance with its constitutional principles and procedures, the State should take all appropriate steps, *inter alia* by legislation, particularly in the spheres of education, culture and communication, to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and *apartheid* and to encourage the dissemination of knowledge and the findings of appropriate research in natural and social sciences on the causes and prevention of racial prejudice and racist attitudes, with due regard to the principles embodied in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

3. Since laws proscribing racial discrimination are not in themselves sufficient, it is also incumbent on States to supplement them by administrative machinery for the systematic investigation of instances of racial discrimination, by a comprehensive framework of legal remedies against acts of racial discrimination, by broadly based education and research programmes designed to combat racial prejudice and racial discrimination and by programmed of positive political, social, educational and cultural measures calculated to promote genuine mutual respect among groups. Where circumstances warrant, special programmes should be undertaken to promote the advancement of disadvantaged groups and, in the case of nationals, to ensure their effective participation in the decision-making processes of the community.

#### *Article 7*

In addition to political, economic and social measures, law is one of the principal means of ensuring equality in dignity and rights among individuals, and of curbing any propaganda, any form of organization or any practice which is based on ideas or theories referring to the alleged superiority of racial or ethnic groups or which seeks to justify or encourage racial hatred and discrimination in any form. States should adopt such legislation as is appropriate to this end and see that it is given effect and applied by all their services, with due regard to the principles embodied in the Universal Declaration of Human Rights. Such legislation should form part of a political, economic and social framework conducive to its implementation. Individuals and other legal entities, both public and private, must conform with such legislation and use all appropriate means to help the population as a whole to understand and apply it.

#### *Article 8*

1. Individuals, being entitled to an economic, social, cultural and legal order, on the national and international planes, such as to allow them to exercise all their capabilities on a basis of entire equality of rights and opportunities, have corresponding duties towards their fellows, towards the society in which they live and towards the international community. They are accordingly under an obligation to promote harmony among the peoples, to combat racism and racial prejudice and to assist by every means available to them in eradicating racial discrimination in all its forms.

2. In the field of racial prejudice and racist attitudes and practices, specialists in natural and social sciences and cultural studies, as well as scientific organizations and associations, are called upon to undertake objective research on a wide interdisciplinary basis; all States should encourage them to this end.

3. It is, in particular, incumbent upon such specialists to ensure, by all means available to them, that their research findings are not misinterpreted, and also that they assist the public in understanding such findings.

#### *Article 9*

1. The principle of the equality in dignity and rights of all human beings and all peoples, irrespective of race, colour and origin, is a generally accepted and recognized principle of international law. Consequently any form of racial discrimination practised by a State constitutes a violation of international law giving rise to its international responsibility.

2. Special measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary, while ensuring that they are not such as to appear racially discriminatory. In this respect, particular attention should be paid to racial or ethnic groups which are socially or economically disadvantaged, so as to afford them, on a completely equal

footing and without discrimination or restriction, the protection of the laws and regulations and the advantages of the social measures in force, in particular in regard to housing, employment and health; to respect the authenticity of their culture and values; and to facilitate their social, and occupational advancement, especially through education.

3. Population groups of foreign origin, particularly migrant workers and their families who contribute to the development of the host country, should benefit from appropriate measures designed to afford them security and respect for their dignity and cultural values and to facilitate their adaptation to the host environment and their professional advancement with a view to their subsequent reintegration in their country of origin and their contribution to its development; steps should be taken to make it possible for their children to be taught their mother tongue.

4. Existing disequilibria in international economic relations contribute to the exacerbation of racism and racial prejudice; all States should consequently endeavour to contribute to the restructuring of the international economy on a more equitable basis.

#### Article 10

International organizations, whether universal or regional, governmental or non-governmental, are called upon to co-operate and assist, so far as their respective fields of competence and means allow, in the full and complete implementation of the principles set out in this Declaration, thus contributing to the legitimate struggle of all men, born equal in dignity and rights, against the tyranny and oppression of racism, racial segregation, *apartheid* and genocide, so that all the peoples of the world may be forever delivered from these scourges.

#### **4. Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, *Apartheid* and Incitement to War**

*Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session in Paris, on 28 November 1978*

##### **PREAMBLE**

*The General Conference,*

*Recalling* that by virtue of its Constitution the purpose of UNESCO **is** to <<contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms)) (Art. I, 1), and that to realize this purpose the Organization will strive «to promote the free flow of ideas by word and image» (Art. 1, 2),

*Further recalling* that under the Constitution the Member States of UNESCO, «believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives» (sixth preambular paragraph),

*Recalling* the purposes and principles of the United Nations, as specified in its Charter,

*Recalling* the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and particularly article 19 thereof. which provides that «everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers»; and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966, article 19 of which proclaims the same principles and article 20 of which condemns incitement to war, the advocacy of national, racial or religious hatred and any form of discrimination, hostility or violence,

*Recalling* article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in 1965, and the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, adopted by the General Assembly of the United Nations in 1973, whereby the States acceding to these Conventions undertook to adopt immediate and positive measures

designed to eradicate all incitement to, or acts of, racial discrimination, and agreed to prevent any encouragement of the crime of *apartheid* and similar segregationist policies or their manifestations,

*Recalling* the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, adopted by the General Assembly of the United Nations in 1965,

*Recalling* the declarations and resolutions adopted by the various organs of the United Nations concerning the establishment of a new international economic order and the role UNESCO is called upon to play in this respect,

*Recalling* the Declaration of the Principles of International Cultural Cooperation, adopted by the General Conference of UNESCO in 1966,

*Recalling* resolution 59(I) of the General Assembly of the United Nations, adopted in 1946 and declaring:

Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.

[...]

Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent;

[...]

*Recalling* resolution 110(II) of the General Assembly of the United Nations, adopted in 1947, condemning all forms of propaganda which are designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

*Recalling* resolution 127(II), also adopted by the General Assembly in 1947, which invites Member States to take measures, within the limits of constitutional procedures, to combat the diffusion of false or distorted reports likely to injure friendly relations between States, as well as the other resolutions of the General Assembly concerning the mass media and their contribution to strengthening peace, trust and friendly relations among States,

*Recalling* resolution 9.12 adopted by the General Conference of UNESCO in 1968, reiterating UNESCO's objective to help to eradicate colonialism and racialism, and resolution 12. I adopted by the General Conference in 1976, which proclaims that colonialism, neo-colonialism and racialism in all its forms and manifestations are incompatible with the fundamental aims of UNESCO,

*Recalling* resolution 4.30! adopted in 1970 by the General Conference of UNESCO on the contribution of the information media to furthering inter-

national understanding and co-operation in the interests of peace and human welfare, and to countering propaganda on behalf of war, racialism, *apartheid* and hatred among nations, and *aware* of the fundamental contribution that mass media can make to the realizations of these objectives.

*Recalling* the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO at its twentieth session.

*Conscious* of the complexity of the problems of information in modern society, of the diversity of solutions which have been offered to them, as evidenced in particular by the consideration given to them within UNESCO, and of the legitimate desire of all parties concerned that their aspirations, points of view and cultural identity be taken into due consideration,

*Conscious* of the aspirations of the developing countries for the establishment of a new, more just and more effective world information and communication order,

*Proclaims* on this twenty-eighth day of November 1978 this Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, *Apartheid* and Incitement to War.

#### *Article I*

The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, *apartheid* and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading contribution to make. This contribution will be the more effective to the extent that the information reflects the different aspects of the subject dealt with.

#### *Article II*

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.
2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.
3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, *apartheid*

and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

### *Article III*

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, *apartheid* and incitement to war.

2. In countering aggressive war, racialism, *apartheid* and other violations of human rights which are *inter alia* spawned by prejudice and ignorance, the mass media, by disseminating information on the aims, aspirations, cultures and needs of all peoples, contribute to eliminate ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

### *Article IV*

The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings and all nations, and economic and social progress. Equally, they have an important role to play in making known the views and aspirations of the younger generation.

### *Article V*

In order to respect freedom of opinion, expression and information and in order that information may reflect all points of view, it is important that the points of view presented by those who consider that the information published or disseminated about them has seriously prejudiced their effort to strengthen peace and international understanding, to promote human rights or to counter racialism, *apartheid* and incitement to war be disseminated.

#### *Article VI*

For the establishment of a new equilibrium and greater reciprocity in the flow of information, which will be conducive to the institution of a just and lasting peace and to the economic and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries, and between those countries. To this end, it is essential that their mass media should have conditions and resources enabling them to gain strength and expand, and to co-operate both among themselves and with the mass media in developed countries.

#### *Article VII*

By disseminating more widely all of the information concerning the universally accepted objectives and principles which are the bases of the resolutions adopted by the different organs of the United Nations, the mass media contribute effectively to the strengthening of peace and international understanding, to the promotion of human rights, and to the establishment of a more just and equitable international economic order.

#### *Article VIII*

Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their functions in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.

#### *Article IX*

In the spirit of this Declaration, it is for the international community to contribute to the creation of the conditions for a free flow and wider and more balanced dissemination of information, and of the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media, UNESCO is well placed to make a valuable contribution in this respect.

#### *Article X*

1. With due respect for constitutional provisions designed to guarantee freedom of information and for the applicable international instruments and agreements, it is indispensable to create and maintain throughout the world the conditions which make it possible for the organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration.
2. It is important that a free flow and wider and better balanced dissemination of information be encouraged.

3. To this end, it is necessary that States facilitate the procurement by the mass media in the developing countries of adequate conditions and resources enabling them to gain strength and expand, and that they support co-operation by the latter both among themselves and with the mass media in developed countries.

4. Similarly, on a basis of equality of rights, mutual advantage and respect for the diversity of the cultures which go to make up the common heritage of mankind, it is essential that bilateral and multilateral exchanges of information among all States, and in particular between those which have different economic and social systems, be encouraged and developed.

#### *Article XI*

For this declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favorable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

## 5. Declaration of Principles on Tolerance

*Solemnly adopted by acclamation on 16 November 1995 at the twenty-eighth session of the UNESCO General Conference.*

*The Member States of the United Nations Educational Scientific and Cultural Organization, meeting in Paris at the twenty-eighth session of the General Conference, from 25 October to 16 November 1995,*

### PREAMBLE

*Bearing in mind* that the United Nations Charter states «We, the peoples of the United Nations determined to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and for these ends to practise tolerance and live together in peace with one another as good neighbors»),

*Recalling* that the Preamble to the Constitution of UNESCO, adopted on 16 November 1945, states that «peace, if it is not to fail, must be founded on the intellectual and moral solidarity of mankind»,

*Recalling also* that the Universal Declaration of Human Rights affirms that «Everyone has the right to freedom of thought, conscience and religion» (Article 18), «of opinion and expression» (Article 19), and that education «should promote understanding, tolerance and friendship among all nations, racial or religious groups» (Article 26),

*Noting* relevant international instruments including:

- the International Covenant on Civil and Political Rights,
- the International Covenant on Economic, Social and Cultural Rights,
- the Convention on the Elimination of All Forms of Racial Discrimination,
- the Convention on the Prevention and Punishment of the Crime of Genocide,
- the Convention on the Rights of the Child,
- the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and regional instruments,
- the Convention on the Elimination of All Forms of Discrimination against Women,
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
- the Declaration on the Elimination of All Forms of Intolerance Based on Religion or Belief,
- the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,
- the Declaration on Measures to Eliminate International Terrorism,
- the Vienna Declaration and Programme of Action of the World Conference on Human Rights,

- the Copenhagen Declaration and Programme of Action adopted by the World Summit for Social Development,
- the UNESCO Declaration on Race and Racial Prejudice,
- the UNESCO Convention and Recommendation against Discrimination in Education,

*Bearing in mind* the objectives of the Third Decade to Combat Racism and Racial Discrimination, the World Decade for Human Rights Education, and the International Decade of the World's Indigenous People,

*Taking into consideration* the recommendations of regional conferences organized in the framework of the United Nations Year for Tolerance in accordance with UNESCO General Conference 27 C/Resolution 5.14, as well as the conclusions and recommendations of other conferences and meetings organized by Member States within the programme of the United Nations Year for Tolerance,

*Alarmed* by the current rise in acts of intolerance, violence, terrorism, xenophobia, aggressive nationalism, racism, anti-Semitism, exclusion, marginalization and discrimination directed against national, ethnic, religious and linguistic minorities, refugees, migrant workers, immigrants and vulnerable groups within societies, as well as acts of violence and intimidation committed against individuals exercising their freedom of opinion and expression - all of which threaten the consolidation of peace and democracy both nationally and internationally and which are all obstacles to development,

*Emphasizing* the responsibilities of Member States to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, gender, language, national origin, religion or disability, and to combat intolerance,

### **Adopt and solemnly proclaim this Declaration of Principles on Tolerance.**

*Resolving* to take all positive measures necessary to promote tolerance in our societies, because tolerance is not only a cherished principle, but also a necessity for peace and for the economic and social advancement of all peoples.

*We declare* the following:

#### *Article 1- Meaning of tolerance*

1.1 Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

1.2 Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human

rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.

1.3 Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.

1.4 Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

#### *Article 2- State level*

2.1 Tolerance at the State level requires just and impartial legislation, law enforcement and judicial and administrative process. It also requires that economic and social opportunities be made available to each person without any discrimination. Exclusion and marginalization can lead to frustration, hostility and fanaticism.

2.2. In order to achieve a more tolerant society, States should ratify existing international human rights conventions, and draft new legislation where necessary to ensure equality of treatment and of opportunity for all groups and individuals in society.

2.3 It is essential for international harmony that individuals, communities and nations accept and respect the multicultural character of the human family. Without tolerance there can be no peace, and without peace there can be no development or democracy.

2.4 Intolerance may take the form of marginalization of vulnerable groups and their exclusion from social and political participation, as well as violence and discrimination against them. As confirmed in the Declaration on Race and Racial Prejudice, «All individuals and groups have the right to be different» (Article 1.2).

#### *Article 3- Social dimensions*

3.1 In the modern world, tolerance is more essential than ever before. It is an age marked by the globalization of the economy and by rapidly increasing mobility, communication, integration and interdependence, large-scale migrations and displacement of populations, urbanization and changing social patterns. Since every part of the world is characterized by diversity, escalating intolerance and strife potentially menaces every region. It is not confined to any country, but is a global threat.

3.2 Tolerance is necessary between individuals and at the family and community levels. Tolerance promotion and the shaping of attitudes of openness, mutual listening and solidarity should take place in schools and universities, and through non-formal education, at home and in the workplace. The communication media are in a position to play a constructive role in facilitating free and open dialogue and discussion, disseminating the values of tolerance, and highlighting the dangers of indifference towards the rise in intolerant groups and ideologies.

3.3 As affirmed by the UNESCO Declaration on Race and Racial Prejudice, measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary. In this respect, particular attention should be paid to vulnerable groups which are socially or economically disadvantaged so as to afford them the protection of the laws and social measures in force, in particular with regard to housing, employment and health, to respect the authenticity of their culture and values, and to facilitate their social and occupational advancement and integration, especially through education.

3.4 Appropriate scientific studies and networking should be undertaken to co-ordinate the international community's response to this global challenge, including analysis by the social sciences of root causes and effective countermeasures, as well as research and monitoring in support of policy-making and standard-setting action by Member States.

#### *Article 4- Education*

4.1 Education is the most effective means of preventing intolerance. The first step in tolerance education is to teach people what their shared rights and freedoms are, so that they may be respected, and to promote the will to protect those of others,

4.2 Education for tolerance should be considered an urgent imperative; that is why it is necessary to promote systematic and rational tolerance teaching methods that will address the cultural, social, economic, political and religious sources of intolerance - major roots of violence and exclusion. Education policies and programmes should contribute to development of understanding, solidarity and tolerance among individuals as well as among ethnic, social, cultural, religious and linguistic groups and nations.

4.3 Education for tolerance should aim at countering influences that lead to fear and exclusion of others, and should help young people to develop capacities for independent judgement, critical thinking and ethical reasoning.

4.4 We pledge to support and implement programmes of social science research and education for tolerance, human rights and non-violence. This means devoting special attention to improving teacher training, curricula, the content of textbooks and lessons, and other educational materials 'including new educational technologies, with a view to educating caring and

responsible citizens open to other cultures, able to appreciate the value of freedom, respectful of human dignity and differences, and able to prevent conflicts or resolve them by non-violent means.

*Article 5- Commitment to action*

We commit ourselves to promoting tolerance and non-violence through programmes and institutions in the fields of education, science, culture and communication.

*Article 6- International Day for Tolerance*

In order to generate public awareness, emphasize the dangers of intolerance and react with renewed commitment and action in support of tolerance promotion and education, we solemnly proclaim 16 November the annual International Day for Tolerance.