

The Rights of Ethnic and Racial Minorities

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Introduction

One of the fundamental bedrocks of human rights is the principle that all human beings are born free and equal in dignity and rights. Discrimination and persecution on the grounds of race and ethnicity are clear violations of this principle. Racial discrimination can take many forms from the most brutal and institutional form of racism - genocide and *apartheid*, to more covert forms whereby certain racial and ethnic groups are prevented from enjoying the same civil, political, economic, social and cultural rights as other groups in society.

Racial and ethnic discrimination continues to be a major human rights problem in the world today facing both minority and sometimes even majority populations. Much of the early focus of international attention was on apartheid in South Africa which came to an end in 1994. However, the struggle against ethnic and racial hatred has continued with the decade of the 1990's being riven with some of the worst ethnic conflicts the world has ever seen in the Balkans and the Great Lakes region in Africa.

Race is defined as "a group of people of common ancestry, distinguished from others by physical characteristics such as hair type, colour of eyes and skin, stature etc". (Collins English Dictionary) Ethnic is defined as "relating to or characteristic of a human group having racial, religious, linguistic and certain other traits in common". (Collins English dictionary)

In international human rights law the term race is generally used in a broader sense and often blurs with other distinctions between groups of people based on religion, ethnicity, social groupings, language and culture. The term "race" in human rights law is sometimes used to encompass groups which may not fall into distinctive biological racial groupings, for example caste systems in India and Japan.

The [International Convention on the Elimination of Racial Discrimination](#) (article 1) does not define "race" but it does define "racial discrimination" to 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." Ethnicity is explicitly subsumed under this definition by the term "race". Most human rights treaties simply refer to "race" and do not use the terminology of "ethnicity".

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Rights at Stake

The rights of ethnic and racial minorities are protected in international human rights law are as follows:

The right to be protected from racial discrimination, hatred and violence

International human rights law requires states not to engage in acts of racial discrimination and to carry out a variety of measures to prevent racial discrimination by public institutions, organisations and individuals. The nature of the measures required varies from treaty to treaty but can include: an obligation to review laws and policies to ensure they are not discriminatory; the eradication of racial segregation and apartheid; outlawing of propaganda espousing racial superiority; and banning of organisations promoting racial discrimination and hatred.

Right to equal protection before the law irrespective of racial or ethnic origin

Racial and ethnic minorities have equal rights and the law should be equally applied of various civil, political, economic, social and cultural rights to these groups. Most human rights treaties (even those not specifically dealing with issues of race and ethnicity) specifically contain non-discriminatory provisions requiring states to apply principles of human rights law equally to all peoples irrespective of race, religion, social origin, etc.

Unequal treatment in the criminal justice system has been a particular area of concern in a number of countries with practices such as racial profiling (stop and search of suspects on the basis of racial origin) or uneven treatment in the arrest, prosecution and sentencing of offenders. Inequalities in health care provision, housing, education and employment for racial and ethnic minorities are common areas of concern.

The right of racial and ethnic groups to enjoy their own culture, practice their own religion and use their own language

This right appears in a several international human rights treaties and is an acknowledgement that racial and ethnic groups are free to act in accordance with their cultural heritage. There can sometimes be a conflict between the cultural, religious and linguistic practices and values of the state and the practices of minority groups. Some states

have responded by insisting on a certain level of knowledge of the dominant culture and language.

Right to benefit from positive steps taken by the state to promote racial harmony and the rights of racial minorities

Governments are obliged to take special measures to ensure the adequate development and protection of racial groups. This includes affirmative action programmes. States are also required to promote racial understanding through the education system.

Right to seek asylum for reasons of a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion

This provision in international refugee law allows individuals to seek asylum in another state if the country of their nationality is unable to protect them from persecution on inter alia racial grounds. This is one of the few cases where the failure of a state to uphold human rights law creates the right for its individuals to seek the protection of another state.

Moreover, states are required to apply the provisions of international refugee law in such a way that it does not discriminate on the grounds of race.

The right to remedies

Governments must ensure that effective protection and remedies are provided through competent national tribunals and other state institutions. Individuals also have the right to seek just and adequate reparation from such tribunals for damage done. This article may hold true for individual cases but is highly controversial when it comes to reparations for entire groups of people. The question of remedies was the main sticking point at the 2001 World Conference Against Racism with some countries insisting on a right to reparation, both financial and other, and some Western governments (former colonial powers and the USA) resisting any obligation to remedy past abuses. This debate is similar to the one surrounding issues of reparation to former slaves.

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International and Regional Instruments for Protection and Promotion

International legal instruments take the form of a *treaty* (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are *ratification* or *accession*. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later

stage, accede to the treaty. The treaty *enters into force*, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

The *binding treaties* can be used to force governments to respect the treaty provisions that are relevant for the human right to adequate food and water. The *non-binding instruments*, such as declarations and resolutions, can be used in relevant situations to embarrass governments by negative public exposure; governments who care about their international image may consequently adapt their policies.

The following are the international treaties, declarations and commitments that determine standards for the protection of ethnic and racial minorities:

[UNITED NATIONS](#)

[Universal Declaration of Human Rights](#) (1948) (article 2, 7)

The Universal Declaration of Human Rights (UDHR) stipulates that everyone is entitled to the rights and freedoms set forth in the Declaration irrespective of their status, including their *racial and social origin* (article 2). Article 7 further affirms that all are equal before the law and are entitled to the protection of the law without discrimination.

[Convention Relating to the Status of Refugees](#) (1951) (article 1, 3)

The Refugee Convention gives individuals the right to seek asylum on the grounds of well-founded fear of persecution based on *race*, religion, nationality, membership of a particular social group. Under article 3, states are required to implement these provisions "without discrimination as to *race*, religion or country of origin".

[United Nations Declaration on the Elimination of All Forms of Racial Discrimination](#) (1963)

This declaration prepared the way for the treaty on the elimination of racial discrimination in 1965. States express their intention to eliminate "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" and intend to adopt "national and international measures to that end, including teaching, education and information".

[International Convention on the Elimination of All Forms of Racial Discrimination](#) (1965)

This treaty entered into force in 1969. This is the most comprehensive treaty concerning the

rights of racial and ethnic minorities. It lays down in detail the steps required by states to prevent racial discrimination and violence and to foster greater racial harmony.

The convention is monitored by the [Committee on the Elimination of Racial Discrimination](#) (CERD) comprised of 18 experts. States are obliged to submit periodic progress reports on the implementation of the convention. Governments must submit reports irrespective of whether they believe they have a problem of racial discrimination. They are also obliged to give effect to the convention by taking preventive and educational measures etc. even if they believe the problem does not currently exist in their country. The committee is able to receive communications from individuals and groups claiming violations of the rights set forth in the convention.

[International Covenant on Economic, Social and Cultural Rights](#) (1966) (article 2)

Article 2 emphasises that the rights protected in this treaty shall be exercised without distinction of social status or *race*.

[International Covenant on Civil and Political Rights](#) (1966) (article 2, 20, 26, 27)

This main human rights treaty on civil and political rights obliges states to guarantee the rights set forth in the 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" (article 2). The treaty also requires governments to prohibit by law any "national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (article 20). ICCPR also stipulates that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (article 26). 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 (article 27).

[Rome Statute of the International Criminal Court](#) (1998) (article 6, 7j)

The statute of the International Criminal Court (ICC) gives the court jurisdiction over acts of genocide of specific national, ethnic, racial or religious groups under article 6. *Apartheid* is further defined as a crime against humanity in article 7(j).

UN treaties relating to specific categories of persons can also be used to protect racial and ethnic rights:

[Convention on the Elimination of All Forms of Discrimination Against Women](#) (1979)

Discrimination against women from racial and ethnic minorities may also constitute breaches of this treaty and can be taken up with the Committee on the Elimination of Discrimination Against Women.

[Convention on the Rights of the Child](#) (1989) (article 30)

This treaty protects the rights of children from ethnic, religious or linguistic minorities to enjoy their culture and to practice their religion and language. Violations of these rights can

be taken up with the UN Committee on the Rights of the Child.

There are numerous other UN treaties and declarations aimed at combating the problem of discrimination against various racial, religious, social, ethnic groups etc. Examples include, the [International Convention on the Suppression and Punishment of the Crime of Apartheid](#) (1973), [International Convention against Apartheid in Sports](#) (1985). UNESCO has adopted the [Convention against Discrimination in Education](#) (1960), which protects the rights of minority groups to education, the [Declaration on Race and Racial Prejudice](#) (1978) and the [Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War](#) (1978).

The United Nations has taken a number of steps since its inception to combat the problem of racial discrimination. In addition to a number of declarations and conventions, efforts have been made to mobilise public opinion and awareness. 1971 was designated United Nations International Year for Action to Combat Racism and Racial Discrimination followed by two consecutive Decades for Action to Combat Racism and Racial Discrimination. World conferences to combat racism have been held under UN auspices in 1978, 1983 and 2001.

[World Conference against Racism](#)

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in September 2001 in South Africa. The documents from the conference contain the latest pronouncements on government consensus concerning issues of race. The Commission on Human Rights established an Intergovernmental working group under its auspices in 2002 to make recommendations on the implementation of the [Durban Declaration and Programme of Action](#) and to prepare complementary international standards to update existing instruments.

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[AFRICAN UNION \(FORMERLY ORGANIZATION OF AFRICAN UNITY, OAU\)](#)

[African Charter on Human and Peoples' Rights](#) (1981) (article 18)

This treaty emphasizes the right of all individuals to enjoy the rights set out in the Charter irrespective of race or ethnic group.

[African Charter on the Rights and Welfare of the Child](#) (1990) (article 26)

This treaty further upholds the principle of non-discrimination based on the child's or his/her parents' or legal guardians' race or ethnic group. Moreover, it recognizes the special

needs of children living under apartheid or other regimes practicing racial, ethnic, religious discrimination and subject to military destabilisation (article 26).

COUNCIL OF EUROPE

Convention for the Protection of Human Rights and Fundamental Freedoms (1949) (article 14)

This treaty, commonly known as the European Convention on Human Rights (ECHR), prohibits discrimination on the grounds of race or social status in the enjoyment of the rights set out in the ECHR.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedom (2000) (article 1, 2)

Article 1 reiterates this right and article 2 states that no public authority shall discriminate on the grounds of these rights.

Framework Convention for the Protection of National Minorities (1995)

The Framework Convention for the Protection of National Minorities, the first binding international treaty to offer protection specifically for minorities, was adopted in 1995 and entered into force in February 1998. The groundwork for this treaty was laid in an earlier treaty, the European Charter for Regional or Minority Languages, which was adopted in 1992.

EUROPEAN UNION

Charter of Fundamental Rights of the European Union (2000) (article 21)

This treaty prohibits discrimination on the grounds of race, colour, ethnic or social origin etc.

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National Assistance, Protection and Service Agencies

Countries that have ratified international and regional human rights treaties have agreed to meet their obligations under these conventions by inter alia implementing these provisions fully at national level. States need to adopt appropriate legislative measures and provide

judicial remedies which indicate the very real legal nature of economic, social and cultural rights.

The [International Convention on the Elimination of Racial Discrimination](#), under article 6, requires states parties to ensure that competent national tribunals provide redress: "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."

Under the convention states may make a declaration indicating that a national body has been established to receive petitions from individuals or groups. In such cases, petitioners may only bring complaints to the Committee on the Elimination of Racial Discrimination (CERD) if they have not received satisfaction at the national level.

The impact of human rights treaties and initiatives geared to combat racial discrimination have resulted in some positive changes in a number of countries include:

- amendments to national constitutions to include provisions prohibiting racial discrimination;
- systematic reviews of existing laws and regulations to amend those which tend to perpetuate racial discrimination, or the passing of new laws to satisfy the requirements of the International Convention on the Elimination of Racial Discrimination;
- amendments to the law at the suggestion of CERD;
- making racial discrimination a punishable offence;
- legal guarantees against discrimination in justice, security, political rights, or access to places intended for use by the general public;
- educational programmes;
- creation of new agencies to deal with problems of racial discrimination and to protect the interests of indigenous groups.

Areas in which states could do more include:

- passing of laws which penalise dissemination of ideas based on racial superiority and hatred etc; prohibition of organisations and activities which promote racial discrimination;
- legislation to guarantee equality of persons before the law irrespective of race, colour, national or ethnic origin;
- legislation to assure protection and remedies against acts of racial discrimination;
- action in fields of education, teaching, culture and information to promote better racial understanding.

Problems and concerns with implementation in individual countries is well documented in reports of the [Committee on the Elimination of Racial Discrimination](#) as well as submissions to it by NGOs.

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Advocacy, Educational and Training Materials

For advocates

[Minority Rights: A Guide to United Nations Procedures and Institutions](#) (Gudmundur Alfredsson and Erika Ferrer).

This guide provides a brief overview of the relevant and available institutions and forums where state compliance with international human rights standards can be subjected to monitoring and implementation procedures.

[The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs](#) (Minority Rights Group International)

This manual explains what the International Convention on the Elimination of All Forms of Racial Discrimination is, how it fits within the United Nations system and how states, individuals and NGOs can make use of it.

[United Nations Guide for Minorities](#) (Office of the High Commissioner for Human Rights)

The guide has been prepared with a view to assisting minorities in understanding how to seek protection of their rights through the different procedures existing at the international and regional levels. Practical advice is also given on how to take legal action where members of minorities consider that their rights under a particular treaty have been violated.

[Using the international human rights system to combat racial discrimination. A Handbook](#) (Amnesty International)

This handbook is intended to be of use to non-governmental organizations and others who wish to address and combat racial discrimination. It provides an overview of the international and regional treaties and standards that prohibit racial discrimination. It also describes the United Nations and regional bodies that play a role in monitoring how states implement many of these human rights standards.

For educators

[All Different, All Equal education pack](#) (Council of Europe)

The material was developed for audiences 14 years of age and older. The Education Pack is a book intended for use in informal education settings but activities may also be incorporated into the classroom setting.

[Discrimination, Human Rights and You. Teacher's Manual](#) (Human Rights Education

Project/Alberta Civil Liberties Research Centre)

This a sample lesson developed in a human rights education project in Alberta, Canada. The goal of this lesson is to help students distinguish between discrimination, prejudice and stereotyping. It includes two class room activities.

[Learning Activities for Use With Young People to Explore the Issue of Discrimination](#)
(Amnesty International)

These five lesson activities explore the issue of discrimination using discussion, group exercise, project work and a copy of the Universal Declaration of Human Rights.

[Neighbours: Learning to respect one another](#) (Jana Ondráčková)

The aim of this teacher manual is to acquaint young people between the ages of 12-18 (upper primary and secondary school age range) with the multicultural history and tradition of their country and to inculcate in them the spirit of mutual understanding and respect between individuals and groups, members of the majority and minorities.

Source: http://www.hrea.org/index.php?base_id=142