| Chapter 8 |

# The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

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**ABSTRACT**

This chapter aims to provide a comprehensive analysis of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), with a specific focus on Central and Eastern Europe (CEE). The paper describes the historical, political and legal background and circumstances that led to the creation of the Convention, analyses the content and specificities of the Convention in comparison with other international instruments, and discusses in detail the work of the treaty body Committee on the Elimination of Racial Discrimination (CERD). It discusses the mechanisms operated by the CERD: State reports, Inter-state complaints, Individual communications, Early warning and urgent action procedures, with particular reference to the CEE states. The study provides an exhaustive overview of the individual communications received from the region and addresses the issues of racial discrimination faced by Roma communities living in or originating from this area. Concluding remarks reflect on the ongoing challenges of racial discrimination in the region and the critical role of non-governmental organisations in advocating for marginalised groups. Finally, it raises pertinent questions about the implications of emerging technologies and artificial intelligence on racial equality, calling for adaptive legal frameworks to address new forms of discrimination in contemporary society.

**KEYWORDS**

ICERD, CERD, racial discrimination, discrimination, Roma

## 1. Introduction

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted on December 21, 1965, unanimously during the 20th plenary session of the United Nations General Assembly. Although the term "discrimination" is absent from the UN Charter and the Universal Declaration of Human Rights, as these documents employ the phrase "without distinction", the prohibition of racial discrimination is nonetheless not alien to these international legal instruments.

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One could view the prohibition of racial discrimination as a necessary logical consequence of the core values and commitments articulated in the UN Charter and the Universal Declaration of Human Rights. Nevertheless, the unanimous adoption of the convention was considered one of the most significant human rights achievements of the era by some of the signatory states,[1] and it indeed proved to be a substantial innovation in several aspects. The ambitious commitment identified in the title of the convention is nothing less than 'the elimination of all forms of racial discrimination.' Michael Banton points out the impossibility of fulfilling this commitment in his book: 'the Convention is founded upon a noble lie'.[2] While he acknowledges that racial discrimination can be reduced, restrained, or limited in society, he finds the notion of its complete eradication to be illusory.

This raises the question: if this is a commitment akin to the impossible from the perspective of the states, why did these states widely support the adoption of the convention? International law is not characterised by states making aspirational, unrealistic commitments that they can later be held accountable for through a monitoring mechanism. The question arises as to what political circumstances or state insights motivated these actors to undertake a commitment to solve an unsolvable problem. The second part of this chapter seeks to answer this question by examining the political, historical, and legal circumstances that converged to create such a significant international political consensus in favour of codifying the prohibition of racial discrimination. In the third part of the chapter, we will review the content of the convention, while the fourth part will examine the work of the treaty body overseeing its implementation.

## 2. The Preparation of ICERD

### *2.1. The Prevention of Discrimination and the Protection of Minorities*

The prohibition of racial discrimination was not unfamiliar to international law after World War I. The minority treaties, which were part of the post-war peace processes,

1 See: General Assembly, 20th session: 1406th plenary meeting, Tuesday, 21 December 1965, New York, A/PV.1406, paras. 87, 95, 109. Mr. Verret (Haiti): '87. In conclusion, the delegation of Haiti pays homage to the members of the Third Committee and the General Assembly for this meritorious effort, which represents a new landmark on the path to social progress.' Mr. Lamptey (Ghana): '95. My delegation has been proud and honoured to participate in the drafting and adoption of this Convention, and we thank those who joined us in this collective task... 96. We leave this rostrum convinced that, because of what you have done today; when the story of the twentieth session of the General Assembly comes to be told, it can well be said, as it was once said by a great war leader: This was its finest hour.'
Mr. Bosco (Italy): '109. We are convinced that today's date will constitute a landmark in the history of the United Nations.' Mr. Morozov (Union of Soviet Socialist Republics): '117. Today, at its twentieth session, and on the twentieth anniversary of the founding of the United Nations, the General Assembly has added a memorable page to the annals of the Organization.'
2 Banton, 2003, p. 50.

declared that racial, religious, or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other nationals.[3] However, The Covenant of the League of Nations endorsed the practices of colonisation and imperialism.[4] Between the two World Wars, discriminatory political thinking and legislation based on eugenics[5] and racial theories gained increasing traction not only in colonial territories but also within Western societies. Ultimately, the horrific historical experiences of race-based discrimination during World War II led to an international political consensus promoting a system of human rights under the auspices of the United Nations. The victorious powers of World War II recognised the tragic consequences that could ensue if international law provided no protection for those deprived of their fundamental rights due to national, ethnic, religious, or racial affiliations. It is no coincidence that the first article of the UN Charter, adopted on June 26, 1945, commits to the principle of equal treatment without distinction to race, sex, language, or religion. The Charter, drafted in San Francisco, proclaimed in its very first article the promotion and respect of human rights and fundamental freedoms for all, without regard to race, gender, language, or religion.[6] The Assembly, in Resolution 103 (I) on Persecution and Discrimination on 19th November 1946 (A/RES/103(I)), used the term *racial discrimination*, stating that 'it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination'.[7] From the *travaux préparatoires*, we can see that states uniformly supported this initiative and fundamentally agreed on this at least at the level of political declarations.[8]

The prohibition of discrimination – including race-based discrimination – gradually became one of the declared cornerstones of the emerging human rights system.

3 See: Art. 8 of the Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles, June 28, 1919.

4 See: Art. 22 of The Covenant of the League of Nations.

5 Eugenics is a pseudoscientific theory popular in the 19th and early 20th century. Based on the logic of Darwinian natural selection, eugenics viewed the improvement of the human race or certain national groups as possible and even desirable through the scientific and political control of human reproduction. In the 20th century, this theory led to biopolitical measures such as the sterilisation, segregation, or even the killing of those deemed unfit. For more information see: Turda, 2010.

6 See: Art. 1: 'The Purposes of the United Nations are: [...] 3. To achieve international co-operation [...]in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion [...].'

7 See: A/RES/103(I).

8 See: General Assembly, 1st session: 48th plenary meeting, held on Tuesday, 19 November 1946, p. 971 (A/PV.48). The Soviet Union found it overly general: 'This resolution is general in character. It does not give any concrete data when mentioning racial persecution and discrimination, it does not give any facts, any names or addresses, calling for attention and the taking of appropriate measures against this discrimination and persecution on racial or similar grounds. This resolution, therefore, is of a general character, and there is nothing concrete in it. Nevertheless, we know that such facts exist and that measures to put an end to this shameful state of affairs should indeed be taken.'

Article 68 of the UN Charter[9] enabled the Economic and Social Council (ECOSOC) to create committees aimed at promoting human rights. This allowed for the establishment of the Commission on Human Rights, as well as the Commission on the Status of Women, which was originally intended as a subcommittee but ultimately fell directly under the Council.[10] The Commission on Human Rights was tasked with making proposals, providing recommendations, and preparing reports for the Council on various fundamental rights issues, including the protection of minorities and the areas of racial, gender, linguistic, or religious discrimination.[11] The Commission proposed the creation of additional sub-commissions. In addition to the Sub-Commission on Freedom of Information and of the Press, it suggested the establishment of two more sub-commissions focused on the prevention of discrimination and the protection of minorities. Although the Council allowed the creation of three sub-commissions, the Commission on Human Rights ultimately established only two during its first session held from January 27 to February 10, 1947, merging the topics of preventing discrimination and protecting minorities into the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.[12]

The Universal Declaration of Human Rights was adopted by the UN General Assembly on December 10, 1948,[13] after nearly two years of preparation.[14] Articles 2 and 16 of the Declaration use the concept of "race" with Article 2 explicitly prohibiting race-based distinction; however, it does not use the term "racial discrimination." Part C of the resolution adopting the Declaration attested to the need to address the unsettled international legal status of national minorities. In this resolution, the Assembly directed the ECOSOC to ask the Commission on Human Rights and its subsidiary body, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, to prepare a comprehensive study on the issues faced by minorities, enabling the UN 'to take effective measures for the protection of racial,

9 UN Charter, Art. 68:'The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.'

10 See: Resolution adopted by ECOSOC on the establishment of a Commission on Human Rights with a Sub-Commission on the Status of Women, E/RES/5(I), 16 February 1946. Also see: Humphrey, 1968, p. 869.

11 United Nations, 1949, pp. 422–423.

12 In 1995 the Sub-Commission on Prevention of Discrimination and Protection of Minorities was replaced by the Sub-Commission on the Promotion and Protection of Human Rights. Simultaneously, under the new Sub-Commission, the Working Group on Minorities was established. In 2006, both expert bodies were dissolved. The Commission on Human Rights was replaced by the Human Rights Council, which, through its Resolution 6/15 of 28 September 2007, established the UN Forum on Minority Issues.

13 The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 (III) A).

14 The Drafting Committee on an International Bill of Human Rights held its very first session from June 9 to 25, 1947.

national, religious or linguistic minorities'.[15] The Sub-Commission prepared two separate studies, one titled *Definition and Classification of Minorities*[16] *and the other The Main Types and Causes of Discrimination.*[17] Racial discrimination represented one of the primary inquiries of the second study.

### *2.2. From the Swastika Epidemic to the Codification of ICERD*

Despite the fact that the prohibition of racial discrimination was one of the cornerstone principles of human rights from the beginning, the international legislative process to prohibit racial discrimination was ultimately catalysed by a wave of anti-Semitic acts that occurred during the winter of 1959–1960, known as the "swastika epidemic." The first antisemitic act was registered in Cologne, West Germany on Christmas morning, when neo-Nazis vandalised the Roonstrasse Synagogue. From the Christmas of 1959 to March 1960, antisemitic incidents (swastika paintings, display of anti-Semitic slogans, physical attacks on Jewish property) were reported in 34 countries. In the United States alone, over 637 antisemitic acts were recorded in 236 different cities.[18] These incidents triggered a series of resolutions from the Sub-Commission on Prevention of Discrimination and Protection of Minorities, through the Commission on Human Rights to the Economic and Social Council. In January 1960, the Sub-Commission, 'deeply concerned by the manifestation of anti-Semitism and religious and racial prejudices'[19] requested the Commission on Human Rights to adopt a resolution condemning these manifestations as

> 'violations of principles embodied in the Charter of the United Nations and in the Universal Declaration of Human Rights, as a violation of the human rights of the groups against which they are directed, and as a threat to the human rights and fundamental freedoms of all peoples'.[20]

The Commission on Human Rights adopted its condemning resolution on 16 March 1960.[21] Upon the proposal of the ECOSOC, the General Assembly adopted Resolution 1510 (XV) on 12 December 1960. This resolution condemned all forms of racial, religious, and national hatred across political, economic, social, educational, and cultural areas of society. It declared such practices to be violations of the United Nations

15 General Assembly resolution 217 (III) C. International Bill of Human Rights: 217 C (III) Fate of Minorities. UN Doc., A/Res/3/217C.
16 United Nations – Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Definition and Classification of Minorities, 27 December 1949, UN Doc., E/CN.4/Sub. 2/85.
17 United Nations – Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities: The Main Types and Causes of Discrimination, New York, 7 June 1949, UN Doc., E/CN.4/Sub.2/40/Rev.1.
18 Ehrlich, 1962, pp. 264–265.
19 Resolution 3 A (XII) (E/CN.4/800, para. 194).
20 Resolution 3 B (XII) (E/CN.4/800, para. 194).
21 Resolution 6 (XVI) (E/CN.4/804, para. 200).

Charter and the Universal Declaration of Human Rights. The resolution also urged all governments to take the necessary steps to prevent these forms of hatred.[22]

The issue of religious intolerance and racial discrimination divided the members of the UN. The phenomena of anti-Semitism, the question of Israel for the Arab states, along with the mixed feelings of the communist bloc towards the issue of religious intolerance, and the fear of African countries that religious issues would impede the resolution of racial matters led the Third Committee of the General Assembly to decide to address racial and religious issues in separate documents.[23] Thus, the General Assembly adopted two resolutions in 1962, instructing the ECOSOC to have the Commission on Human Rights adopt separate draft resolutions and conventions concerning the elimination of all forms of racial discrimination[24] and the elimination of all forms of religious intolerance.[25]

On November 20, 1963, the General Assembly adopted its Resolution on the United Nations Declaration on the Elimination of All Forms of Racial Discrimination.[26] The legally non-binding Declaration referred to discrimination based on race, colour, or ethnic origin multiple times while lacking a definition for racial discrimination. The General Assembly emphasised in its Resolution 1906 (XVIII) the necessity of taking further action towards the elimination of racial discrimination and the importance of preparing and adopting an international convention on the elimination of all forms of racial discrimination. The General Assembly requested the ECOSOC to invite the Commission on Human Rights to give absolute priority to the preparation of a draft international convention on the elimination of all forms of racial discrimination. Although anti-Semitic manifestations were the triggering actions for the process that led to the adoption of the first international legal instrument dedicated to the elimination of racial discrimination, the final adopted version of the Convention did not explicitly address this issue. The international motivation that enabled the adoption of the Convention primarily originated from countries in the Global South and the communist bloc. This motivation was largely driven by opposition to the exploitation experienced in the colonial world, the ongoing apartheid regime in South Africa, and the discrimination faced by black people in the United States. This explains why apartheid was rather explicitly mentioned in the Convention as a specific form of racial discrimination, instead of antisemitism that initially triggered the codification process.[27]

As the Mexican representative changed his abstention to an affirmative vote, the Draft International Convention on the Elimination of All Forms of Racial

22 A.Res.1510 (XV), p. 22.
23 See: Lerner, 2014, p. 4. Lovelace, 2022, p. 1858.
24 G.A.Res. 1780 (XVII).
25 G.A.Res. 1781 (XVII).
26 G.A.Res. 1904 (XVIII).
27 For a detailed analysis of the problem read: Schabas, 2023, pp. 272–275.

Discrimination was unanimously adopted on December 21, 1965, with 107 votes in favour and no votes against it.[28]

## 3. Content of the ICERD

After the Preamble, the Convention is divided into three parts. The first part[29] defines racial discrimination, outlines the scope of the Convention, and details the passive and active commitments of states to eliminate racial discrimination. The second part[30] describes the establishment and functioning of the expert committee responsible for monitoring, which is a true innovation in international law, and explains the complaint mechanisms against states. Article 16 clarifies the relationship between the ICERD and other international agreements concerning disputes or complaints related to discrimination. The third part[31] addresses the signing and ratification,[32] accession,[33] entry into force,[34] reservations,[35] denunciation,[36] dispute resolution between parties,[37] review of the Convention,[38] notification of changes to states,[39] and the deposit of the Convention.[40]

In this subchapter, we will examine the Preamble and Part I of the Convention. Part II will be analysed in the following subchapter. Part III will not be discussed in detail.[41]

### *3.1. Preamble*

Although the Preamble of the ICERD does not impose legally binding obligations, it is a significant part of the Convention.[42] It refers to various conventions, values, and challenges that must be considered when interpreting and applying the Convention's substantive provisions. The Preamble cites the Charter of the United Nations, the Universal Declaration of Human Rights, the *Declaration on the Granting of Independence*

28 A/PV.1408, pp. 1–2.
29 Arts. 1–7 of the ICERD.
30 Ibid., Arts. 8–16.
31 Ibid., Arts. 17–25.
32 Ibid., Art. 17.
33 Ibid., Art. 18.
34 Ibid., Art. 19.
35 Ibid., Art. 20.
36 Ibid., Art. 21.
37 Ibid., Art. 22.
38 Ibid., Art. 23.
39 Ibid., Art. 24.
40 Ibid., Art. 25.
41 For the detailed analyses of Part III see: Lerner, 2014, pp. 94–102.
42 The legal relevance of the preamble is evidenced by the fact that the International Court of Justice (ICJ) refers to it in its judgement. See: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v. United Arab Emirates*), Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 71, paras. 85–86.

*to Colonial Countries and Peoples* of 14 December 1960, the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, the *Convention concerning Discrimination in respect of Employment and Occupation* adopted by the International Labour Organization in 1958, and the *Convention Against Discrimination in Education* adopted by UNESCO in 1960.

Through the Preamble, the signatory states reaffirm their commitment to the principles of human dignity and equality outlined in the UN Charter and pledge to uphold the UN's goals, specifically the universal respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion. Similarly, they commit to the principle in the Universal Declaration of Human Rights that all people are born equal in dignity and rights, and that these rights apply to everyone without discrimination. The second paragraph declares that all people are equal before the law and are equally entitled to protection against discrimination and incitement to discrimination.

The third paragraph highlights that the convention was adopted during the decolonisation process. The text emphasises that the UN condemns colonialism, segregation, and the discrimination that accompanies these practices, as stated in *Resolution 1514 (XV)*, which called for the unconditional and prompt end of these practices.

Furthermore, the Preamble states that discrimination impedes peaceful and friendly relations between nations, threatens peace and security among people, and disrupts harmony within states. It also affirms that the existence of racial barriers is incompatible with the ideals of any human[43] society.

A particularly significant and debated issue is the explicit mention of apartheid in the Convention and its Preamble, while no reference is made to the Holocaust, antisemitism, or Nazism. Throughout various stages of the drafting process, there were suggestions to include explicit references to Nazism or antisemitism, but the majority of states repeatedly argued that it would be unjustified to single out a specific political regime or historical crime – the Convention needed to be more universal in scope.[44] This argument may seem contradictory given that apartheid is explicitly mentioned, but it can be explained by the fact that Nazism and the Holocaust were already in the past at the time of the Convention's adoption, whereas apartheid was still the official political system in South Africa. However, this reasoning was not satisfactory to everyone,[45] as the very events that led to the Convention's creation were the numerous antisemitic acts targeting the Jewish community. The ninth paragraph refers to apartheid, segregation, and separation as existing practices of racial discrimination, advocating racial superiority. However, as we will see in Article 1, these do not exhaustively define racial discrimination.

43 During the drafting process, an earlier version of the text included the term "civilized society," which was rejected by several states. See: Lerner, 2014, p. 26.

44 For more details on the debate that arose during the preparatory process, see: Banton, 2003, pp. 58–62.

45 For example, Natan Lerner finds this argument unconvincing. See: Lerner, 2014, pp. 70–75.

### *3.2. Part I of the Convention (Articles 1–7)*

Part I of the Convention consists of Articles 1–7. Article 1 defines the term "racial discrimination" and outlines the scope of the Convention in terms of subject matter and the individuals it protects. Articles 2–7 address the passive and active obligations of states in combating racial discrimination.

#### *3.2.1. Article 1 – The Definition of Racial Discrimination*

##### 3.2.1.1. Paragraph 1

Paragraph 1 of Article 1 defines what is meant by racial discrimination within the context of the Convention. Intuitively, one might think that defining racial discrimination would require a definition of race. However, this presents a challenge since the UN would need to define race while simultaneously denying the existence of distinct races among humans.[46] The drafters of the Convention chose a different approach, treating racial discrimination as a specific legal term used within the closed system of the Convention:

> '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'.

To constitute "racial discrimination" under this definition, an action must meet three conditions simultaneously: 1) It must involve a *distinction, exclusion, restriction, or preference*. 2) It must be based on *race, colour, descent, or national or ethnic origin*. 3) It must *have 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.*

Both the first and second components involve closed lists. In relation to the first component, it can be noted that the legislative intent was to provide the most comprehensive and complete conceptual framework for discrimination. The second component lists the specific bases for discriminatory treatment: *race, colour, descent, or national or ethnic origin,* excluding categories like political views, gender, sexual orientation, or social status. The third component covers various fundamental and

46 See: Valencia-Rodriguez, 1991, p. 194.

human rights fields but does so with an open-ended list, meaning it could extend to other areas.[47]

Significantly, the Convention condemns actions not only with the purpose of nullifying or impairing equal human rights but also those with the effect of doing so. This means that the Convention prohibits not only direct but also indirect discrimination. To determine whether an action contravenes the Convention, it is necessary to assess whether the action has an unjustifiable disparate impact on a group distinguished by race, colour, descent, or national or ethnic origin.[48] According to General Recommendation No. 32:

> 'The reference to public life does not limit the scope of the non-discrimination principle to acts of public administration but should be read in the light of the provisions in the Convention mandating measures by States parties to address racial discrimination "by any persons, group or organization"'.

3.2.1.2. The Definition of "Race" in Other International Treaties

The ICERD is not unique among international anti-discrimination treaties in not defining "race." For example, The European Convention on Human Rights, The European Commission Against Racism and Intolerance, The EU's Racial Equality Directive, and the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law all address racial discrimination extensively, but do not define "race" specifically.

The European Convention on Human Rights prohibits discrimination on the grounds of race but does not define race. However, the jurisprudence of the European Court of Human Rights distinguishes between race and ethnicity:

> 'Ethnicity and race are related and overlapping concepts. While the notion of race is rooted in the biological classification of human beings based on morphological features like skin colour or facial characteristics, ethnicity originates in societal groups marked by nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds'.[49]

47 We can see a very similar definition in the ILO Convention (1958) Concerning Discrimination in Respect of Employment and Occupation defines discrimination in its first article as '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 UNESCO Convention Against Discrimination in Education uses the words 'distinction, exclusion, limitation or preference' based on "race," "colour," "national" origin or "birth".

48 See: CERD Committee, General Recommendation No. 14 on Art. 1 para. 1 of the Convention, Forty-second session (1993) (A/48/18).

49 ECtHR, *Timishev v. Russia*, Nos. 55762/00 and 55974/00, 13 December 2005, para. 55.

The EU's Racial Equality Directive[50] establishes a framework for combating discrimination on the grounds of "racial or ethnic origin" but does not define these terms. Likewise, the Framework Decision on combating racism and xenophobia by means of criminal law[51] defines neither race nor racial origin but refers to racism as violence or hatred *directed at groups defined by race, colour, religion, descent, or national or ethnic origin*.

The Council of Europe's monitoring body specialised in combating racism, the European Commission Against Racism and Intolerance (ECRI) defines terms such as "racism" and "direct and indirect racial discrimination" in General Policy Recommendation No. 7. According to ECRI, racism is: 'The belief that a ground such as race, colour, language, religion, nationality, or national or ethnic origin justifies contempt for a person or group of persons, or the notion of superiority of a person or group'.

#### 3.2.1.3. Paragraphs 2–4

Paragraphs 2–4 of Article 1 address situations that are not considered racial discrimination under the Convention. According to Paragraph 2, the Convention does not apply to distinctions, exclusions, restrictions, or preferences made by a State Party between citizens and non-citizens. Paragraph 3 states that the Convention shall not be construed as having any impact on the legal provisions of States Parties regarding nationality, citizenship, or naturalisation, as long as these provisions do not discriminate against any specific nationality.

#### 3.2.1.4. Special and Concrete Measures

Paragraph 4 allows states to implement *special measures* aimed at aiding certain racial or ethnic groups to achieve equality in the enjoyment of their rights. These measures are designed to be temporary and must be carefully managed to avoid creating separate rights or institutionalising inequality. By clarifying that these measures are not considered discrimination, the provision seeks to encourage states to take proactive steps to rectify historical disadvantages while ultimately aiming for a society where all individuals enjoy equal rights and freedoms. Similarly, Article 2, paragraph 2 addresses this issue from the perspective of state obligations. Although it refers to *special and concrete measures,* the terminological differences between the two articles are primarily formal, not substantive. Both paragraphs refer to the protection of groups and individuals with respect to human rights and fundamental freedoms. In its general recommendation, CERD also clarified that *special and concrete measures* should not be confused with specific rights aimed at accommodating the cultural needs of minorities, which allow them to practice their own culture, religion, or use their native language. The latter represents the permanent rights of these individuals

50 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
51 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

or groups. In contrast, *special and concrete measures* may remain in effect only as long as the circumstances of disadvantage exist, obliging the state to implement such measures until those conditions are rectified.[52]

*Special and concrete measures* are key components of non-discrimination measures in the human rights system: a) the UN Subcommittee, established in 1949, stated in its previously mentioned studies titled *The Main Types and Causes of Discrimination* and *Definition and Classification of Minorities* that in order to achieve actual equality, national minorities require not only a general prohibition of direct discrimination that ensures formal equality but also "special rights" and "positive services".[53] b) The term *special measures* later appears in the 1990 Copenhagen Document adopted under the auspices of the Conference on Security and Co-operation in Europe,[54] the UN's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities,[55] and the Framework Convention for the Protection of National Minorities[56] adopted by the Council of Europe in 1993, all with similar implications. c) The Venice Commission refers to these rights as reinforcing measures that enable the manifestation of minority identities, thereby making real, effective equality attainable.[57]

The legal status of groups within the framework of prohibiting racial discrimination deserves attention, as the international human rights system primarily recognises only the right to self-determination of people as a collective human right. Thus, it raises questions about which group rights the Convention seeks to protect. Paragraph 34 of General Recommendation No. 32 clarifies that groups are not mentioned by chance:

> 'Beneficiaries of special measures under Article 2 paragraph 2, may be groups or individuals belonging to such groups. The advancement and protection of communities through special measures is a legitimate objective, pursued alongside respect for the rights and interests of individuals. Identifying an individual as part of a group should be based on self-identification unless a justified reason exists to the contrary'.

52 CERD General Recommendation No. 32. The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination. 24 September 2009. UN Doc., CERD/C/GC/32.

53 United Nations – Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Definition and Classification of Minorities, 27 December 1949, UN Doc., E/CN.4/Sub. 2/85, pp. 3–4; The Main Types and Causes of Discrimination, New York, 7 June 1949, UN Doc., E/CN.4/Sub.2/40/Rev.1, pp. 2–3.

54 Document of the Copenhagen meeting of the conference on the human dimension of the CSC, Part IV, para. 30.

55 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, Art. 4.1.

56 Framework Convention for the Protection of National Minorities, art. 4.

57 CDL-MIN(1998)001rev, Summary Report on Participation of members of minorities in public life, Introduction, paras. 1.1., 2.1., 2.2.

#### *3.2.2. Article 2*

Article 2 discusses the obligations of the signatory parties. In the previously mentioned paragraph 2, the State Parties committed to the application of *special measures* in certain circumstances. Paragraph 1(a)–(d) addresses the obligations of states to *condemn racial discrimination and to undertake, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.*

##### 3.2.2.1. Paragraph (a)

Paragraph (a) focuses on the negative obligation of the state to abstain from *any practice of racial discrimination against persons, groups of persons, or institutions*. While institutions themselves do not possess race, colour, descent, or national or ethnic origin, the leaders and members of these institutions certainly do. Therefore, it is reasonable that institutions without racial characteristics can also be included in this listing. However, it requires further investigation to define what constitutes an institution. For instance, does a minority-language school operated by the state, a church maintained by a specific ethnic group, or a company or association founded by members of a particular group qualify as institutions under the Convention?

##### 3.2.2.2. Paragraph (b)

Paragraph (b) addresses another negative obligation of the state, namely, *not to sponsor, defend, or support racial discrimination by any persons or organizations.*

##### 3.2.2.3. Paragraph (c)

Paragraph (c) calls on states to review their own laws, local and national policies, and to ensure that they do not result in or perpetuate racial discrimination. This shift in focus from direct racial discrimination to the outcomes and perpetuation of discrimination highlights the collective dimension of the anti-discrimination principle, which refers to various forms of structural discrimination affecting disadvantaged groups.

##### 3.2.2.4. Paragraph (d)

Paragraph (d) outlines the state's obligation not only to refrain from discrimination but also to prevent and eliminate racial discrimination perpetrated by individuals, groups, and organisations.

##### 3.2.2.5. Paragraph (e)

Paragraph (e) prescribes measures for promoting anti-discrimination education within society, fostering a culture of human rights, and encouraging initiatives that weaken racial divisions among the contracting states. According to this paragraph, State Parties are not only committed to eliminating discrimination but also to encouraging, where appropriate, integrationist multiracial organisations and movements, as well as other means of eliminating barriers between races, while discouraging any actions that tend to strengthen racial division.

*3.2.3. Article 3*

Article 3 of the Convention condemns racial segregation and apartheid, and commits the signatory states to prevent, prohibit, and abolish these practices under their jurisdiction. As previously discussed, paragraph 9 of the preamble also addresses the issue of apartheid, which has been a divisive topic among the states involved in the preparation of the Convention. During the drafting of this article, there was a proposal to also include antisemitism alongside racial segregation and apartheid. Natan Lerner consistently argues that the logic of the document warranted the inclusion of Nazism and antisemitism if the specific practice of apartheid was mentioned. He believes that the exclusion of Nazism and antisemitism can be attributed solely to political reasons.[58] General Recommendation No. 19 on Article 3 states that '[T]he reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries'.[59]

*3.2.4. Article 4*

Article 4 imposes further obligations on the signatory states. The introductory paragraph states that the participating states condemn propaganda and organisations that justify racial theories or incite racial hatred and discrimination. Furthermore, they commit to taking immediate and active steps to eliminate incitement and acts of discrimination. This paragraph is followed by three active commitments, which imply restrictions on freedom of speech, thought, and assembly to prevent the dissemination of racial theories and incitement based on race in society. This posed problems for several states, leading to the incorporation of the following phrase in the introductory paragraph: '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'.[60]

CERD has demonstrated longstanding and resolute engagement with the issue of hate speech, recognising its role in fostering serious human rights violations, and reflecting this concern in numerous general recommendations, including General Recommendations No. 7 (1985) on the implementation of article 4 and freedom of expression, No. 25 (2000) on gender-related dimensions of racial discrimination, No. 27 (2000) on discrimination against Roma, No. 29 (2002) on descent-based discrimination, No. 30 (2004) on discrimination against non-citizens, No. 31 (2005) on racial discrimination in criminal justice, and No. 34 (2011) on people of African descent.[61]

58 Lerner, 2014, p. 47.
59 CERD, General Recommendation No. 19 on Art. 3 of the Convention, Forty-seventh session (1995). Contained in document A/50/18.
60 The problem of hate speech was analysed in detail by the CERD, General Recommendation No. 35, Combating racist hate speech on art. 3 of the Convention, Forty-seventh session (1995). Contained in document A/50/18.
61 General Recommendation No. 35, para. 3.

#### 3.2.4.1. Paragraph (a)

The first of the three commitments states that the State Parties shall punish the dissemination of racist ideas, hatred, incitement to racial discrimination, and all acts of violence or incitement to such acts, as well as the provision of any assistance to racist activities.

#### 3.2.4.2. Paragraph (b)

The second subsection specifies that states must declare illegal and prohibit any organisations and propaganda activities that promote or incite racial discrimination. Participation in such organisations or activities is also to be considered a punishable offence by law.

#### 3.2.4.3. Paragraph (c)

The third paragraph extends the prohibition of incitement to racial discrimination and its promotion to state institutions and authorities.[62] In General Recommendation No. 1 concerning States Parties' obligations, CERD found that the legislation of several State Parties did not include the provisions envisioned in Article 4(a) and (b) of the Convention, the implementation of which is obligatory under the Convention for all State Parties.[63]

As General Recommendation No. 35 points it out, Article 4 of ICERD is not self-executing, States parties are under an obligation to enact domestic legislation to address racist hate speech within its scope. Drawing on the Convention's provisions, General Recommendation No. 15, and General Recommendation No. 35, CERD urges states to criminalise specific forms of expression and conduct. These include the dissemination of ideas based on racial or ethnic superiority or hatred; incitement to hatred, contempt, or discrimination; threats or incitement to violence; expressions that amount to incitement through insult, ridicule, or slander; and participation in organisations that promote racial discrimination.[64]

Although Article 4 of the ICERD requires States Parties to criminalise certain forms of racist conduct, it does not provide detailed criteria for qualifying such conduct as criminal offences. According to the Committee, several contextual factors must be considered when assessing whether dissemination of ideas or incitement constitutes a criminal offence. These include: the content, form, and style of the speech; the prevailing social, economic, and political context, particularly where discrimination against specific groups is systemic; the speaker's status and influence;

62 General Recommendation No. 15 on art. 4 of the Convention (Contained in document A/48/18, 1993) reminds us that para. 2 of Art. 20 of The International Covenant on Civil and Political Rights adopted on 16th December 1966 prescribes similarly the prohibition of incitement to discrimination: '2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

63 CERD Committee, General Recommendation No. 1 concerning States parties' obligations, contained in document A/87/18 (1972).

64 Ibid., para. 13.

the reach and repetition of the message, especially through mass media or online platforms; and the intent of the speech. Notably, speech aimed at defending human rights should not be subject to criminal sanctions.[65]

*3.2.5. Article 5 of the Convention*

Article 5 of the Convention aims to identify and outline various categories of rights that should be available to individuals without discrimination based on race, colour, nationality, or ethnic origin. While the list provided appears comprehensive, it is not considered exhaustive, as indicated by the use of the word "notably" in the introductory paragraph. This interpretation is further supported by the *travaux préparatoires* and General Recommendation No. 20, which clarifies that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list.[66] Thus, the article can be seen as a broad catalogue of human rights.[67]

*Paragraph (a)* stipulates that access to justice must be available without discrimination: *The right to equal treatment before the tribunals and all other organs administering justice.*

*Paragraph (b)* outlines the state's obligation to protect citizens from all forms of violence based on discrimination: *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.*

*Paragraph (c)* mandates the non-discriminatory assurance of political rights in an open list format. It specifically mentions the rights to vote and be elected, to participate in any public affairs, and to have equal access to public services.

*Paragraph (d)* enumerates nine civil rights: the right to freedom of movement and residence within the borders of the State; the right to leave any country, including one's own, and to return to one's country; the right to nationality; the right to marriage and choice of spouse; the right to own property alone as well as in association with others; the right to inherit; the right to freedom of thought, conscience, and religion; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and association.

*Paragraph (e)* specifies six economic, social, and cultural rights: the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration; the right to form and join trade unions; the right to housing; the right to public health, medical care, social security, and social services; the right to education and training; the right to equal participation in cultural activities.

At the time of writing, the most recently issued General Recommendation No. 37 (2024) is closely linked to the right to health set out in paragraph (e) (iv). In the

65 Ibid., para. 15.
66 CERD, General Recommendation No. 20 on Art. 5 of the Convention, Forty-eighth session (1996). Contained in document A/51/18.
67 DH-MIN(2006)021; Henrard, 2006, p. 4.

context of the ICERD, the right to health is interpreted in accordance with Article 12(1) of the International Covenant on Economic, Social and Cultural Rights, which defines it as the highest attainable standard of physical and mental well-being. This understanding is increasingly influenced by ecocentric perspectives, aligning with Indigenous Peoples' conceptions of health that emphasise both individual and collective dimensions. These include spiritual well-being, traditional healing systems, biodiversity, and the interconnectedness of all life – elements that are inherently tied to the right to self-determination and reinforced by the United Nations Declaration on the Rights of Indigenous Peoples. As outlined in General Recommendation No. 37, the right to health encompasses not only access to healthcare services, but also access to the broader determinants of health: clean water, adequate food and housing, sanitation, a healthy environment, and information and education, including sexual and reproductive health. Meaningful participation in decision-making processes at the local, national, and international levels is also essential. Public health efforts prioritise the prevention of illness, improvement of social and environmental conditions, and fostering trust between communities and health institutions. Healthcare includes timely and appropriate preventive, curative, rehabilitative, and palliative services, while social welfare systems play a critical role in addressing racial disparities in health outcomes.[68]

The last *paragraph (f)* guarantees access without discrimination to all public or private services available to the general public: *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.* The phrase *such as* indicates that this list is not exhaustive.

### *3.2.6. Article 6*

Article 6 not only emphasises effective protection against and remedies for racial discrimination but also recognises the need for adequate reparation or satisfaction for any damage suffered as a result of such discrimination. The personal scope of this article extends beyond citizens, as it applies to anyone who is within the jurisdiction of the state. It is important to note that the ICERD, by providing not only an effective remedy but also reparation or satisfaction, goes beyond the standards set by the Universal Declaration of Human Rights (Article 8), the Covenant on Civil and Political Rights (Article 2), and the Declaration on the Elimination of All Forms of Racial Discrimination (Article 7(2)).

General Recommendation No. 26 on Article 6 emphasises that the CERD believes that acts of racial discrimination and racial insults harm the victim's perception of his or her own worth and reputation; therefore, punishing the perpetrator of discrimination does not compensate for the victim's loss. In the opinion of the CERD, courts and

68 General Recommendation No. 37 (2024) on equality and freedom from racial discrimination in the enjoyment of the right to health adopted by the Committee at its 113th session (5–23 August 2024), para. 6.

other competent authorities should consider awarding financial compensation for the material or moral damage suffered by a victim whenever appropriate.[69]

*3.2.7. Article 7*

Article 7 advocates for immediate and effective measures in the fields of teaching, education, culture, and information with a view to combating prejudices that lead to racial discrimination. According to this article, states must fight against the prejudices underlying racial discrimination. General Recommendation No. 5 (1977) noted with regret that

> 'few States parties have included, in the reports they have submitted in accordance with Article 9 of the Convention, information on the measures they have adopted to implement the provisions of Article 7 of the Convention, and that this information has often been general and perfunctory'.[70]

Based on the reporting guidelines for the CERD-specific document to be submitted by States parties under Article 9,[71] states have the following obligations based on Article 7.

3.2.7.1. Education and Teaching

States must ensure that the school curriculum and the training programmes for teachers and other professionals promote the development of tolerance and cooperation among groups, as well as an understanding of human rights. During this training, participants should be made aware of the values and principles found in the UN Charter and the Universal Declaration of Human Rights. Similarly, states must review educational materials to ensure that textbooks and other resources do not reinforce prejudices and stereotypes against different groups. Additionally, the history and culture of groups protected under the Convention should be included in textbooks and the media, potentially in their own languages.[72] The obligations in the field of education also extend to law enforcement officials, whose training must incorporate respect for human dignity and the protection of human rights, regardless of race, colour, or national or ethnic origin.[73]

69 CERD, General Recommendation No. 26 on art.6 of the Convention, Fifty-sixth session (2000).
70 CERD, General Recommendation No. 5 concerning reporting by States parties (art. 7 of the Convention), Fifteenth session (1977). Contained in document A/32/18.
71 CERD/C/2007/1, Guidelines for the CERD-specific document to be submitted by states parties under Art. 9, para. 1 of the Convention, pp. 14–15.
72 See: CERD, General Recommendation No. 27 (2000) on discrimination against Roma, para. 26.
73 See: CERD, General Recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

#### 3.2.7.2. Culture

National culture and cultural products can represent values regarding relationships between different groups. For this reason, the Convention encourages states to be supportive of interculturality in the cultural sphere, promoting cooperation among creators from different cultural backgrounds and showcasing cultural diversity, including support for the use of minority languages.

#### 3.2.7.3. Information

In the field of communication, states must pay particular attention to how they communicate in cases of incidents that reinforce prejudices against the groups protected by the Convention, ensuring that such communication does not exacerbate existing negative biases and stereotypes.[74] Furthermore, the media has a responsibility to inform the public about the culture, way of life, and social presence of these groups.

In the second part of the article, states are instructed to promote understanding, tolerance, and friendship among nations and racial or ethnic groups, as well as to propagate 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.[75]

## 4. The Committee on the Elimination of Racial Discrimination

The CERD is an unprecedented innovation within the UN human rights system, being the first human rights treaty monitoring body established to oversee and monitor the extent to which State Parties fulfil their commitments under the ICERD. Since the establishment of the CERD, an additional nine treaty monitoring bodies have been created.[76] To ensure the professionalism and impartiality of the CERD, the State Parties elect, by secret ballot, eighteen experts of high moral standing and recognised impartiality in the field of human rights from among their nationals, who will serve in their personal capacity.

Members are elected for a term of four years, taking into account equitable geographic distribution, representation of different forms of civilization and legal

74 See for example: General Recommendation No. 27 (2000) on discrimination against Roma, para. 37.

75 For more details on the significance of art. 7, see: Farrior, 1999, pp. 291–299.

76 UN treaty monitoring bodies and the year of their first meeting: Committee on the Elimination of Racial Discrimination (CERD, 1970), Human Rights Committee (HRC, 1977), Committee on the Elimination of Discrimination Against Women (CEDAW, 1982), Committee on Economic, Social and Cultural Rights (CESCR, 1987), Committee Against Torture (CAT, 1988), Committee on the Rights of the Child (CRC, 1991), Committee on the Rights of Migrant Workers (CMW, 2004), Subcommittee on Prevention of Torture (SPT, 2007), Committee on the Rights of Persons with Disabilities (CRPD, 2009), Committee on Enforced Disappearances (CED, 2010).

systems, and balanced gender representation.[77] In 1969, at the first election of the eighteen members, the mandates of nine members were set to expire after two years. As a result, every two years, half of the four-year-long mandates come to an end, ensuring continuity and the transfer of institutional knowledge within the Committee. After the expiration of a mandate, it is not prohibited to obtain a new term.

Originally, the CERD assessed through three mechanisms the extent to which the legislative, judicial, administrative, or other measures adopted by states comply with their commitments under the ICERD. These assessments are catalysed by the following mechanisms: 1) State Reports, 2) Inter-state communications, and 3) Individual communications. In the 1990s, the CERD derived new tasks from its original mandate, establishing the so-called 4) early warning and urgent action procedure.[78]

### *4.1. State Reports*

The process of State reporting is cyclical:[79] Drafting and submission of the State Report by the State Party → Appointment of a Country Rapporteur and compilation of the list of themes → Consideration of the State Report → Drafting of the Concluding Observations by CERD → Follow-up procedure to concluding observations → Implementation of the Concluding Observations by the State Party → Preparation of the next State Report by the State Party (the beginning of the new cycle) → *Drafting and Submission of the State Report by the State Party.*

By Article 9, paragraph 1, State Parties undertake to submit a report to the Secretary-General of the United Nations on the legislative, judicial, administrative, or other measures which they have adopted that 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, or whenever the Committee may request further information.

According to the reporting guidelines[80] published by the CERD, State Reports should consist of two parts: a common core document that includes general information about the reporting state, the general framework for the protection and promotion of human rights, as well as general information on non-discrimination and equality and effective remedies; and a treaty-specific document. The common core document should include information on the demographic composition[81] of the

77 We note that balanced gender representation is not mentioned in Art. 8; however, it does appear on the CERD website. See: https://www.ohchr.org/en/treaty-bodies/cerd/membership (Accessed: 20 May 2025).

78 For more details on the shift in approach, see: Michael Banton: op. cit., pp. 142–171.

79 ICERD and CERD: A Guide for Civil Society Actors [Online]. Available at: https://www.ohchr.org/sites/default/files/documents/HRBodies/CERD/ICERDManual.pdf (Accessed: 20 May 2025).

80 CERD/C/2007/1.

81 This is particularly important because, in some cases, states may report on the existence of various groups but refuse to categorise them as victims of racial discrimination, as they do not recognise them as racial groups. In light of the data, CERD can influence how states approach the situation of these groups.

population referred to in the provisions of Article 1 of the Convention.[82] The treaty-specific document should contain detailed information on the legislative, judicial, administrative, or other measures which they have adopted that give effect to the provisions of the substantive articles (Articles 1–7) of the Convention.

*4.1.1. Appointment of a Country Rapporteur and Compilation of the List of Themes*

Once states have submitted their reports, the CERD assigns a country rapporteur to each report. The country rapporteur is responsible for formulating the 'List of Themes', reviewing the State Report, and writing the 'Concluding Observations'. The CERD established the practice of the "list of themes" during its 77th session. These themes are issues raised by the rapporteur to each state, serving as a call for the states to address these themes in their subsequent state report.

*4.1.2. Consideration of State Reports*

The CERD invites representatives of states to Geneva to participate in discussions of the State Report, allowing for an "interactive dialogue" to take place. During this discussion, the state representative presents the report, after which the country rapporteur provides feedback and asks additional questions. Other members of the CERD can share their opinions and ask questions. If the National Human Rights Institute (typically the ombudsman or a human rights commissioner in the CCE region) is present, it may also participate in the dialogue to share its insights and respond to questions.

*4.1.3. Drafting of the Concluding Observations*

After the interactive dialogue, the Country Rapporteur drafts the complete Concluding Observations, which are then discussed by the full membership of the CERD. The document approved by the CERD is submitted for further review by the state, which is given another opportunity to clarify the CERD's position. Taking into account the state's observations, the CERD ultimately publishes the Concluding Observations regarding the state. The state's previously expressed comments are also included in the CERD's annual report.

A review of the most recent ten Concluding Observations of the Central and Eastern European (CEE) states[83] reveals that these documents consistently follow a structure composed of the following sections: A. Introduction, B. Positive Aspects, C. Concerns and Recommendations, and D. Other Recommendations. The issues addressed in the Concluding Observations typically relate to statistics, national

82 CERD, General Recommendation No. 4 concerning reporting by States parties (art. 1 of the Convention), Eighth session (1973). Contained in document A/90/18.

83 Hungary (2019, CERD/C/HUN/CO/18-25), Lithuania (2019, CERD/C/LTU/CO/9-10), Czechia (2019, CERD/C/CZE/CO/12-13), Poland (2019, CERD/C/POL/CO/22-24), Estonia (2022, CERD/C/EST/CO/12-13), Slovakia (2022, CERD/C/SVK/CO/13), Croatia (2023, CERD/C/HRV/CO/9-14), Bulgaria (2023, CERD/C/BGR/CO/23-25), Albania (2024, CERD/C/ALB/CO/13-14), Bosnia and Herzegovina (2024, CERD/C/BIH/CO/14-15).

human rights institutions, the anti-discrimination legal framework and its enforcement, complaints of racial discrimination, racist hate crimes, racist hate speech, racially motivated crimes, the situation of Roma, and the situation of asylum seekers, migrants, and refugees. It is noteworthy that the Observations on Estonia also highlight concerns regarding the new language policy that adversely affects minority languages. Thornberry highlights that even the 2010 Concluding Observation on Estonia[84] addressed language as a key component of integration. He notes that recommended integration policies are often shaped by specific sectors and available information, and when appropriate, influenced by cultural factors that can both guide and constrain the Committee's recommendations. In Estonia's case, the Committee criticised the integration strategy for placing excessive emphasis on language, urging the State to reconsider laws limiting the use of minority languages in public services to regions where minorities constitute at least half the population.[85] Furthermore, it is significant that all Concluding Observations issued after the publication of General Recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials include a dedicated subsection addressing this issue.

#### *4.1.4. Follow-up Procedure to the Concluding Observations*[86]

The CERD may request a State Party to submit an additional report or information on specific topics after reviewing its State Report, in line with Article 9 of the ICERD and rule 65 of the Committee's rules of procedure. This request is typically included in the Concluding Observations, with a set deadline, usually one year.

To enhance the follow-up process, the Committee added a second paragraph to Rule 65 during its 64th session (2004), appointing two members of the Committee as follow-up coordinators to work with the Country Rapporteur. The coordinators monitor the states' follow-up on CERD's recommendations and report progress back to the Committee, which may adopt formal recommendations or decisions on further action based on the coordinators' findings. These findings are discussed in closed meetings and included in the CERD's annual report.

Drawing on his experience as a Committee member, Thornberry notes that only a few states have submitted such comments, even though they often reflect substantial disagreements with the Committee.[87]

#### *4.1.5. Review Procedure*

Due to several states submitting their State Reports late or not at all, the CERD adopted a Review Procedure at its 39th session (1991), enabling a review in the absence of an up-to-date State Report. Under this procedure, the CERD collects information from other UN organs and NGOs.

84 See: CERD/C/EST/CO/8-9, para 13.
85 Thornberry, 2016, p. 351.
86 See: CERD/C/66/Misc. 11/Rev. 2.
87 Thornberry, 2016, p. 45.

### *4.2. Inter-State Communications*

States that believe another state party is not complying with the Convention may bring the issue before the CERD. The Committee forwards the complaint to the accused state, which must respond within three months (Article 11.1). If a satisfactory resolution is not achieved through negotiations within six months, either state may refer the matter back to the Committee (Article 11.2). The Committee will only consider the case if all available domestic remedies have been exhausted to address the alleged violation that is the basis of the complaint. An exception is made if the remedy has been unreasonably delayed (Article 11.3). In cases referred to the Committee, it may request additional information from the states involved (Article 11.4). The affected states may participate in the proceedings before the Committee regarding their case without voting rights (Article 11.5).

Once the Committee has gathered the relevant information, the Chair appoints an ad hoc Conciliation Commission of five members (with unanimous agreement from the disputing states) to seek an amicable resolution. For members on which the disputing parties could not agree, the CERD will designate members from among its own members. The established Commission will adopt its own rules of procedure, and the costs will be shared equally between the disputing parties (Article 12).

After the Conciliation Commission has prepared its report on the disputed issue, it sends it to the disputing parties, the states. The states must inform the Chair of the Committee within three months whether they accept the recommendations made in the Commission's report. Finally, the Chair communicates the Commission's report and the statements of the affected states to the parties involved (Article 13).

Any dispute between two or more States Parties regarding the interpretation or application of this Convention that cannot be resolved through negotiation or the procedures specifically outlined in Articles 11–13 shall be referred to the International Court of Justice for a decision, upon the request of any disputing party, unless the parties agree to an alternative method of settlement (Article 22).

During the half-century since the adoption of the Convention, states have never utilised this complaint mechanism. However, on March 8, 2018, the CERD received two inter-State communications for the first time during its operations: *Qatar v. Kingdom of Saudi Arabia* and *Qatar v. United Arab Emirates*. On April 23, 2018, the state of Palestine submitted a complaint to the CERD against Israel.[88] The *Palestine v. Israel* case led to the publication of a report by the Ad Hoc Conciliation Commission, released by CERD on 21 August 2024.[89] This case represents the first time in UN treaty body history that the inter-State communications procedure has been carried through in its entirety. Despite the historic nature of the case, conciliation proved impossible due to the dispute's complexity and Israel's refusal to cooperate or recognise the Commission's jurisdiction. The report addresses alleged racial discrimination by

88 See: https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications (Accessed: 20 May 2025).
89 See: CERD/C/113/3.

Israel in the Occupied Palestinian Territory, specifically the West Bank (including East Jerusalem) and Gaza. It also notes a core disagreement: while Israel contests the Convention's applicability beyond its borders, the Committee affirms it applies to all areas under Israel's effective control. The occupied Syrian Golan, though included in this interpretation, was not part of the communication.[90]

Gay McDougall correctly points out how the decision on jurisdiction in the Inter-State Communication submitted by the State of Palestine against Israel proves the unique nature of the Convention. Unlike the communication procedures found in most other human rights treaties – except for the Convention on the Prevention and Punishment of the Crime of Genocide – under Articles 11 to 13 of this Convention, States Parties are not required to grant explicit consent for CERD to consider Communications alleging non-compliance with the Convention. This mechanism operates automatically, even in cases where Israel does not recognise the State of Palestine as a State. The obligations imposed on states under Articles 11 to 13 serve the shared goal of ensuring the effective prohibition of racial discrimination, which is considered an *erga omnes* norm, benefiting the entire international community and impervious to derogation by the unilateral actions of any one State Party (Decision, paragraph 3.43).[91]

### *4.3. Individual Communications*

According to Article 14, in addition to signing the Convention, states may make a specific commitment to allow individuals or groups under their jurisdiction to submit complaints to the CERD. Therefore, individuals or groups can only file complaints against a particular state for violations of the commitments outlined in the ICERD if that country has made a supportive statement regarding the option for individual communications. As David Keane points out, the ICERD was very similar to the European Convention on Human Rights (ECHR) in this respect, since the individual petition under ex-Article 25 of the ECHR was optional at the time of the creation of ICERD.[92]

Complaints must be submitted within six months after the exhaustion of the last available domestic remedy. The acceptance of a complaint does not require that the case has not been referred to any other human rights forum. Decisions on individual complaints are not legally binding court rulings but advisory opinions.[93] Of the 182 countries that have ratified the ICERD, 59 have recognised the CERD's competence in relation to individual communications submitted under Article 14.[94] The Central and Eastern Europe (CEE) countries that have made such declarations are Slovenia, Slovakia, Serbia, Romania, Moldova, Poland, North Macedonia, Hungary, Estonia, Czech Republic, Bulgaria, and Austria. To date, seven complaints have been filed under Article 14 against these states. Among these, five complaints were filed against

90 CERD/C/113/3, para. 5.
91 McDougall, n.d.
92 Keane, 2024, p. 22.
93 Keane and Waughray, 2017, p. 44.
94 As of September 2024.

Slovakia,[95] one against Serbia and Montenegro,[96] and one against Estonia.[97] In the communications against Slovakia and Serbia and Montenegro, the complainants invoked racial discrimination on the basis of their Roma origin in all six cases. In the case of Estonia, the petitioner claimed discrimination based on being a member of the Russian minority. Of the seven complaints, the CERD found five to be well-founded. Below, we will briefly review these five cases.

#### *4.3.1. Miroslav Lacko v. Slovak Republic, Communication No. 11/1998, CERD/C/59/D/11/1998*

In *Miroslav Lacko v. Slovak Republic*, Lacko, a Roma person was refused service at a restaurant because of his ethnicity. He sought legal remedies from the Slovak General Prosecutor, County Prosecutor, Railway Police, and Inspectorate of Commerce, but none found evidence of discrimination. Lacko argued that Slovakia's failure to address racial discrimination violated Articles 2–5, and 6 of the ICERD, particularly his right to access public services without racial discrimination and Slovakia's obligation to ensure effective legal remedies. Slovakia responded that the petition was inadmissible due to the non-exhaustion of domestic remedies and that its legal system already included consumer protection and anti-discrimination laws. Following an order from the General Prosecution Office of the Slovak Republic, the Regional Prosecution Office of Košice examined Mr. Lacko's communication. The Regional Office found that the actions of the restaurant could be considered incitement to racial hatred under Section 198a of the Penal Code but did not classify it as a criminal act. The General Prosecution Office disagreed with the legal opinion of the Regional Prosecution Office, asserting that the restaurant had committed a crime of instigation to national and racial hatred. As a result of the indictment from the General Prosecution Office, the restaurant was found guilty and received a fine of 5,000 SKK or a term of three months' imprisonment. The Committee evaluated this newly established legal situation as fulfilling the effective remedies required under Article 6 of the ICERD, ensuring effective remedies against racial discrimination. Therefore, although the CERD admitted the case, it found no violation of the Convention.

#### *4.3.2. Anna Koptova v. Slovak Republic, Communication No. 13/1998, CERD/C/57/D/13/1998*

Anna Koptova, a Slovak citizen of Roma ethnicity and the director of the Legal Defence Bureau for Ethnic Minorities of the Good Romany Fairy Kesaj Foundation in Košice, submitted a complaint to the CERD, alleging violations of Articles 2–5, and

95 See: Communications No. 011/1998, No. 013/1998, No. 056/2014, No. 031/2003, No. 70/2019. In the case of Communication No. 70/2019, the Committee concluded that the petitioners have not exhausted domestic remedies, therefore the communication is inadmissible.
96 See: Communication No. 029/2003.
97 See: Communication No. 64/2018. CERD found that the petitioner did not present sufficient indications to demonstrate that he was a victim of racial discrimination. Therefore, CERD decided that the communication was inadmissible.

6 of the Convention. The petition explained that the Slovak Republic was unable to annul two resolutions by local authorities that expelled and prohibited the settlement and entrance of Roma people from the Municipalities of Rokytovce (Resolution No. 21 of June 8, 1997) and Nagov (Resolution No. 22 of June 16, 1997). After the complaint was submitted, on April 8, 1999, the Municipal Councils of Nagov and Rokytovce held extraordinary meetings, also attended by the District Prosecutor of Humenné, and decided to revoke the resolutions. The CERD decision recommended 'that the State Party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated'.[98]

*4.3.3. Ms. L. R. et al. v. Slovakia, Communication No. 31/2003, CERD/C/66/D/31/2003*
On March 20, 2002, the municipality of Dobšiná adopted a proposal to construct low-cost houses for its 1,800-strong Roma community due to their "appalling" living conditions. This decision sparked outrage among some residents of Dobšiná and the surrounding villages, leading a five-member petition committee to draft a petition stating:

> 'I do not agree with the building of low-cost houses for people of Gypsy origin on the territory of Dobšiná, as it will lead to an influx of inadaptable citizens of Gypsy origin from the surrounding villages and even from other districts and regions'.

Over 2,700 residents of Dobšiná signed the petition. As a result of the petition, the city council unanimously voted to reject the original plan and abandon the construction of housing for the Roma community.

Following this situation, Ms. L. R. and twenty-six other Slovak citizens of Roma ethnicity residing in Dobšiná filed a petition to the CERD, claiming violations of: Article 2 paragraph 1(a), because the municipal council unanimously endorsed the petition, the State Party failed to refrain from engaging in acts or practices of racial discrimination. Article 2, paragraph 1(c), by failing to 'nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination'. The District Prosecutor found that 'the resolution in question was passed by the Dobšiná Town Council exercising its self-governing powers; it does not constitute an administrative act performed by public administration, and as a result, the prosecution office does not have the competence to review the legality of this act or to take prosecutorial supervision measures in a non-penal area.'The Constitutional Court could not identify any fundamental rights that were violated. Article 2 paragraph 1(d) and Article 4 paragraph(a), by failing to effectively investigate and prosecute the authors of the petition. Article 5 paragraph (d) (III), since the State Party could not safeguard the

98 *Anna Koptova v. Slovak Republic*, Communication No. 13/1998: Slovakia. 01/11/2000, CERD/C/57/D/13/1998, para. 10.3.

rights of Roma inhabitants to adequate housing. Article 6, by failing to provide an effective remedy.

The Committee recognised the violation of Article 3 paragraph 1(a), Article 5 paragraph (d) (III), and Article 6 of the Convention. Regarding effective remedies, the CERD urged the State Party to restore the petitioners to a situation that existed before the discrimination, effectively returning them to their pre-complaint status. Additionally, the Committee called on the State Party to present within 90 days the steps taken to give effect to the Committee's Opinion and to give wide publicity to the opinion.

#### *4.3.4. V. S. v. Slovakia, Communication No. 56/2014, CERD/C/88/D/56/2014*

Similar to previous Slovak cases, the complainant V. S. was a Slovak citizen of Roma ethnicity. V. S., a history teacher with a university degree, applied for a position at I. B. Zoch Elementary School in Revúca in June 2009. She claimed that when she submitted her job application, the school's head teacher insultingly told her that instead of seeking employment, she should have children, like other Roma women. In July, the head teacher informed her in a letter that there were no vacancies at the school but that her application would be kept on record for future openings. In September 2019, she learned that there was a vacancy, and a non-Roma woman had been hired for the position, despite having lower qualifications and less experience than her.

Suspecting she had fallen victim to discrimination, V. S. first initiated proceedings at the Equity Centre and then at several judicial forums to establish the fact of discrimination and seek redress. While the school claimed that its financial capabilities did not allow for hiring more qualified personnel for the position, the Ministry of Education stated that the lack of resources could not be considered a valid reason for hiring an underqualified person over a candidate with a university degree. After exhausting national legal remedies, V. S. turned to the CERD. The CERD found that

> 'the facts before it disclose a violation of the petitioner's right to work without distinction as to race, colour, national or ethnic origin, in violation of the State party's obligation to guarantee equality in respect of the right to work, as enshrined in Article 5 (e) (i) of the Convention'.

Additionally, it noted that the court's insistence that V. S. should prove the intent of discrimination was incompatible with the Convention's prohibition of any conduct having a discriminatory effect and the principle of shifted burden of proof. The CERD concluded that the petitioner's rights under Articles 2 (1) (a), (c), 5 (e) (i), and 6 of the Convention had been violated.

#### *4.3.5. Mr. Dragan Durmic v. Serbia and Montenegro, Communication No. 29/2003, CERD/C/68/D/29/2003*

In this case, in February 2000, two Serbian citizens of Roma descent were prevented from entering a nightclub. Although the security personnel claimed it was a private

party and entry was only allowed with an invitation, the circumstances clearly indicated that non-Roma individuals were allowed entry without an invitation. Following the incident, one of the Roma men, D. D., filed a criminal complaint to the Public Prosecutor's Office in Belgrade, asserting that his rights and those of the other Roma individuals to equality, human dignity, and equal access to places intended for public use were violated. After prolonged inaction, in October 2001, the Public Prosecutor concluded, in cooperation with the police, that they could not identify who was guarding the entrance but concluded that it was indeed a private party, and therefore no crime had been committed. In January 2002, D. D. filed a petition with the Federal Constitutional Court, arguing that by failing to identify the perpetrators and dismissing the criminal complaint, the Public Prosecutor had prevented him and the alleged victim from prosecuting the case on their behalf. More than 15 months passed without a response from the Federal Constitutional Court.

The CERD assessed D. D.'s complaint, finding that due to the lack of a timely response from the Federal Constitutional Court, D. D. had exhausted his legal remedies. Additionally, the CERD noted that the State Party had failed to promptly, thoroughly, and effectively investigate whether the petitioner's right to access any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres, and parks, had been violated. As a result, the CERD determined that the State Party had violated Article 6 of the Convention.

### *4.4. Early Warning and Urgent Action Procedure*

The direct source of these two procedures is not explicitly found in the Convention. The political transformations of the 1990s allowed the CERD to move beyond its reactive role and implement preventive mechanisms. This process began with the adoption of the working paper on the 'Prevention of Racial Discrimination, including Early Warning and Urgent Procedures' in 1993.[99] In 2007, during the Committee's 71st session, this working paper was replaced by new guidelines.[100] Under these new rules, a working group of up to five members is established, which meets during the CERD sessions and at other appropriate times. The members of the working group are elected for a renewable two-year term, respecting the principle of equitable geographical representation. The working group should make recommendations to the Committee and may draft decisions or formulate letters to States Parties.

#### *4.4.1. Indicators*

The primary goal of the early warning and urgent action procedures is to prevent or promptly halt serious violations of the ICERD and the escalation of processes leading to severe conflicts between groups. The guidelines set out the following indicators,

99 See: Prevention of Racial Discrimination, including Early Warning and Urgent Procedures, UN Doc. A/48/18 (1993), Annex III.

100 See: Guidelines for the Early Warning and Urgent Action Procedure, UN Doc. A/62/18 (2007), Annex III.

which signal the escalation of racial discrimination: a) a persistent and significant pattern of racial discrimination, reflected in social and economic indicators; b) increasing racial hatred, violence, or racist propaganda promoted by individuals, groups, or organisations, particularly elected or State officials; c) the adoption of new discriminatory regulations; d) policies of segregation or de facto exclusion of a group from political, economic, social, or cultural life; e) lack of an adequate legislative framework defining and criminalising all forms of racial discrimination, or lack of effective mechanisms, including lack of recourse procedures; f) practices or policies of impunity regarding: (1) violence against individuals based on race, colour, descent, or ethnic origin, perpetrated by State officials or private actors; (2) public statements by political leaders or prominent figures condoning or justifying such violence; (3) the formation of militias or extremist political groups promoting racist agendas; g) significant refugee or displaced populations, particularly from specific ethnic groups; h) encroachment on indigenous peoples' traditional lands or forced displacement for resource exploitation; i) polluting or hazardous activities that disproportionately affect certain racial or ethnic groups.

#### *4.4.2. Possible Measures to be Taken*

Under the early warning and urgent action procedures, the Committee may take the following measures: a) request urgent information from the State Party about the situation; b) ask the Secretariat to gather data from OHCHR field offices, UN agencies, national human rights institutions, and NGOs; c) adopt a decision expressing concerns and recommendations to: 1) the State Party concerned; 2) special Rapporteurs on racism, indigenous rights, or minority issues; 3) other relevant human rights bodies or the Human Rights Council's special procedures; 4) regional organisations and human rights mechanisms; 5) the Human Rights Council; 6) the Special Adviser on genocide prevention; 7) the Secretary-General, through the High Commissioner, with a suggestion to refer the issue to the Security Council; d) offer to send Committee members to the State to assist in implementing international standards or provide technical assistance for building a human rights infrastructure; e) recommend that the State Party utilise the advisory services and technical support from the OHCHR.

Within the framework of the early warning and urgent measures procedure, the CERD has adopted decisions, issued statements, and sent letters to State Parties. These have all addressed severe violations or the risk of such violations.

For example, in 2023, the CERD adopted two decisions: one concerning the lack of equitable and non-discriminatory access to COVID-19 vaccines,[101] and another on Israel and the State of Palestine.[102]

When reviewing the statements issued by the CERD, it becomes evident that both the issue of Israel and the COVID-19 vaccine distribution had previously been

101 CERD, Decision 1 (2023).
102 CERD, Decision 2 (2023).

addressed in statements: *Statement on Israel and the State of Palestine*[103] *and Statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines*.[104]

The CERD also drafts letters to states. For instance, on May 10, 2019, the CERD sent a letter to Latvia regarding new regulation No. 716 on pre-school education, adopted on November 21, 2018. According to the new regulation, the primary medium of communication in play-lessons should be Latvian, except during activities aimed at learning minority languages and ethnic culture. The CERD expressed concerns that this regulation might be discriminatory towards national minorities.[105]

Slovakia is the only other CEE state to which the CERD addressed letters. Between 2010 and 2012, there were a total of four exchanges where the CERD communicated concerns about the forced eviction of 105 Roma families in Plavecký Štvrtok due to the proximity of a gas pipeline.[106]

### *4.5. Discrimination against Roma*

As we have seen, any examination of the ICERD's application in Central and Eastern European states must address the issue of discrimination against Roma, as Roma communities are 'among those most disadvantaged and most subject to discrimination in the contemporary world'.[107]

Claud Cahn, following Marcia Rooker's analysis of the region, divides CERD's approach to the Roma issue into two major periods.[108] The first period lasted until 1992, the fall of the communist bloc. Until that time, the communist bloc states typically denied the existence of the Roma community or its specific situation. From the second half of the 1990s, CERD began to receive credible data from many countries on the condition of Roma communities within the framework of country reports. The fieldwork and research findings of the international NGO, the European Roma Rights Centre (ERRC), also became a crucial source for the problems of Roma people. The influence of the ERRC on legal practice is also evidenced by the individual communications discussed before. CERD's experiences with the Roma issue in the 1990s culminated in the adoption of General Recommendation No. 27 on Discrimination against Roma in 2000.[109] Its structure reflects CERD's 1990s experience, highlighting the main types and areas of discrimination faced by Roma.

The first section, General Measures, states that to combat racial discrimination against Roma, governments should review and amend relevant laws, adopt national strategies, ensure non-discriminatory citizenship policies, and address the

103 CERD, Statement 5 (2023).
104 CERD, Statement 2 (2022).
105 CERD/EWUAP/98th session/Latvia/JP/ks.
106 See: Supplement No. 18 (A/66/18): Report of the Committee on the Elimination of Racial Discrimination, para. 29.
107 General Recommendation No. 27 on Discrimination against Roma, para. 49.
108 Cahn, 2017, pp. 108–115.
109 Adopted at the Fifty-seventh session of the Committee on the Elimination of Racial Discrimination, on 16 August 2000 (Contained in document A/55/18, annex V).

intersectional discrimination faced by Roma women. They should foster dialogue between Roma and non-Roma communities, protect Roma immigrants and asylum-seekers, provide effective remedies for rights violations, and promote tolerance and respect through education. GR 27 significantly contributed to the recognition of the deportation and genocide of Roma during the Second World War, by recommending that the harm done to Roma during the Second World War should be acknowledged and potentially compensated. The second section deals with police and civil violence targeting Roma. It also emphasises that states must do everything to prevent both violence against Roma and their eviction in post-conflict areas. The third section addresses problems in education, mentioning issues such as high dropout rates, particularly for Roma girls, the problem of segregation in education, the question of mother-tongue education, the recruitment of Roma teachers, the elimination of harassment against Roma students, access to education for adult Roma, and the teaching and mediatising of Roma culture and history. The fourth section focuses on Roma housing issues. States are encouraged to prohibit discrimination in employment and all discriminatory practices in the labour market, promote the employment of Roma, prevent housing segregation, create campsites for nomadic groups, ensure Roma have access to health care and social security services, and establish programmes that take into account the health issues arising from the extreme poverty, lack of education, and the cultural differences of Roma. It also calls for ensuring that public spaces and services are accessible to Roma. The fifth section discusses the media's role in combating prejudice. The sixth section states that governments should ensure equal opportunities for Roma participation in public life, involve them in decision-making, promote their active engagement in society, and provide training for Roma officials and representatives to enhance their political and administrative skills.

Cahn, however, rightly points out that certain specific Roma issues are not included in GR 27. For instance, there is no mention of the coercive sterilisation of Roma women, an issue CERD has addressed in the case of the Czech Republic, Slovakia, and Hungary in the 2000s or the mass expulsion of Eastern European Roma from Western European countries.[110]

As one of the most vulnerable and historically disadvantaged ethno-cultural groups in Europe, Central and Eastern European Roma are a central focus of CERD's work. Understanding the multifaceted discrimination they face is essential for anyone seeking to understand CERD's work in Europe. However, a more detailed presentation of this goes beyond the scope of this chapter.[111]

### *4.6. Efforts to Develop Complementary Legal Instruments to ICERD*

While the main focus of this subchapter is on the functions and procedures of CERD, this section highlights related international efforts aimed at supplementing

110 Cahn, 2017, p. 112.

111 For a more comprehensive analyse of the work of CERD regarding the situation of the Roma community, see: Cahn, 2017, pp. 106–120.

ICERD with additional legal instruments. These efforts, closely linked to CERD's mandate, represent a significant development in the international legal framework against racism.

Efforts to supplement ICERD through additional legal instruments began gaining momentum following the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban, South Africa. Paragraph 199 of the resulting Durban Declaration and Programme of Action (DDPA) explicitly recommended the development of new international standards to reinforce the existing framework addressing racism and related forms of intolerance.[112] In response, the United Nations Commission on Human Rights established the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (IGWG) in 2002 to follow up on the implementation of the Durban outcomes and to explore the need for new legal provisions.[113] Building on the deliberations of the IGWG,[114] the Human Rights Council took a more direct role in 2006 by mandating further studies on possible legal developments to address identified gaps. In its resolution 1/5 of 30 June 2006, the United Nations Human Rights Council tasked a group of five independent experts with developing a base document containing concrete recommendations on how to address both procedural and substantive shortcomings in the existing international framework. The resolution explicitly listed among the options the drafting of an optional protocol to ICERD or the adoption of new legal instruments, such as conventions or declarations.[115] Pursuant to this mandate, the expert group submitted a study identifying substantive legal gaps in combating racism, racial discrimination, xenophobia, and related intolerance.[116] Concurrently, the CERD provided a parallel report proposing procedural enhancements to improve implementation and oversight under ICERD.[117] The responsibility for drafting complementary standards was ultimately transferred to the newly created Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards.[118] The Committee was instructed to begin its work

112 Durban Declaration and Programme of Action, para. 199, adopted at the 2001 WCAR (United Nations, 2001).
113 Commission on Human Rights resolution 2002/68, para. 7, establishing the Intergovernmental Working Group.
114 The Human Rights Council's resolution 1/5 (30 June 2006) followed the recommendations and discussions of the Intergovernmental Working Group (IGWG), particularly concerning the existence of legal gaps in international instruments and the need for further study by experts and CERD. See also A/HRC/4/WG.3/6, para. 1; and A/HRC/4/WG.3/7, para. 2.
115 Human Rights Council, Resolution 1/5, Elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination, 30 June 2006.
116 Human Rights Council, Report on the study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance, A/HRC/4/WG.3/6, 27 February 2007.
117 Human Rights Council, Study by the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures, A/HRC/4/WG.3/7, 27 February 2007.
118 Human Rights Council, Decision 3/103, A/HRC/DEC/3/103, 27 September 2006.

using all previously submitted materials and to prioritise the development of draft instruments for negotiation.[119] This process was politically motivated by the desire to enhance protections for individuals and communities in the post-9/11 context, with a particular focus on strengthening safeguards for religious minorities.[120]

By the time of its 15th session in April 2025, the Ad Hoc Committee had made notable progress toward an optional protocol to ICERD aimed at criminalising acts of a racist and xenophobic nature, as noted by Deputy High Commissioner Nada Al-Nashif during the commemoration of ICERD's 60th anniversary.[121]

It should also be noted that, although the DDPA is not a legally binding document but rather a political commitment, it has become a key reference point in the work of the CERD. For example, in General Recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the term "racial profiling" was defined – for the purposes of the recommendation – in line with the DDPA, as the practice whereby police or other law enforcement officials rely, to any degree, on race, colour, descent, or national or ethnic origin as a basis for subjecting individuals to investigatory actions or for determining whether an individual is engaged in criminal activity.[122]

## 5. Conclusion

As we have seen, the unanimous support for the International Convention on the Elimination of All Forms of Racial Discrimination largely stemmed from a misunderstanding by states in the 1960s, namely that the condemned practice of "racial discrimination" was a phenomenon exclusively found in the relationship between colonial powers (white populations) and the oppressed non-white populations. The unprecedented UN treaty body, the Committee on the Elimination of Racial Discrimination, deserves considerable credit for expanding the concept of "racial discrimination" to encompass unjust intergroup relations found within Europe as well. This achievement would not have been possible if the Convention had centred around the concept of "race" rather than "racial discrimination". The latter term allowed for a much broader interpretation of the scope of the Convention, encompassing not only racial but also colour, descent, national or ethnic origin-based discrimination, and their combinations. The expanded conceptual framework, along with CERD's continuous dialogue with State Parties, facilitated the prohibition of racial discrimination to become an *erga omnes* norm, benefiting the entire international community, embedded in national laws and in the legal consciousness of our societies.

119 Ibid.
120 Lennox, 2009, p. 218.
121 Statement by Nada Al-Nashif, 15th session of the Ad Hoc Committee, 10 April 2025.
122 See: DDPA, para. 72; General Recommendation No. 36, para. 18.

However, the low number of cases invoking CERD mechanisms within the Central and Eastern European region seems to contradict the notion that the ICERD approach has gained widespread recognition and application in these societies. Since CERD's establishment, only seven complaints have been submitted from the CEE region via the individual communications mechanism, involving three State Parties (Slovakia, Serbia and Montenegro, and Estonia). When examining the legal representation of complainants, we see that the five cases leading to substantive decisions were backed by highly qualified attorneys specialising in anti-discrimination law or by human rights NGOs. Although the number of cases is insufficient to form a representative picture of the region's challenges, the fact that six out of seven complaints concerned grievances affecting the Roma community clearly suggests that the Roma population is one of the most frequently targeted groups by racial discrimination within the CEE region. The gravity of the issue is further underscored by CERD's General Recommendation No. 27 which specifically addresses the problem of discrimination against Roma.

The complaints examined also point to another aspect, less explored in this chapter: the critical role of NGOs in the protection of human rights and the fight against discrimination. NGOs not only participate in the reporting cycle by submitting shadow reports and meeting with CERD representatives, but they also play a pivotal role in initiating individual communications on behalf of affected groups and lobbying CERD to draw states' attention to the dangers of discriminatory practices through formal letters.

As a final thought, I encourage the reader to consider the new challenges that may arise in a world where discriminatory social practices meet self-learning artificial intelligence (AI). For example, how can legal tools regulate the seemingly "neutral" pricing algorithms of bank loans to prevent reinforcing and amplifying social inequalities? How can AI-generated, audience-targeted content be regulated to avoid strengthening biases against disadvantaged groups? Or how can AI-driven, increasingly accessible instant translation technologies be used to support the social integration, political participation, and cultural life of national minorities facing linguistic disadvantages? Last but not least, how can we avoid racial profiling in a data capitalism-driven online world?

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