

**UNITED
NATIONS**

General Assembly**Report of the Committee on the
Elimination of Racial Discrimination**
Official RecordsFifty-First Session
Supplement No. 18(A/51/18)ORIGINAL: ENGLISH

Committee on the Elimination
of Racial Discrimination**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION 48TH SESSION**

26 February - 15 March 1996

General Recommendation XX(48) on Article 5
adopted at 1147th meeting 8 March 1996

1. Article 5 of the Convention contains the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights have been elaborated in the Covenants. All States parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

2. Whenever a State imposes a restriction upon one of the rights listed in article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that the restriction, neither in purpose nor effect, is incompatible with article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to inquire further to make sure that any such restriction does not entail racial discrimination.
3. Many of the rights and freedoms mentioned in article 5 are to be enjoyed by all persons living in a given State, such as the right to equal treatment before tribunals; some others are the rights of citizens, such as the rights to participate in elections, to vote, and to stand for election.
4. The States parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention one by one.
5. The rights and freedoms referred to in article 5 of the Convention and any similar rights shall be protected by a State party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case it is the obligation of the State party concerned to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

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**COMMITTEE ON THE ELIMINATION
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26 February - 15 March 1996

General Recommendation XXI(48)
adopted at 1147th meeting on 8 March 1996

1. The Committee notes that ethnic or religious groups or minorities frequently refer to the right of self-determination as a basis for an alleged right to secession. In this connection the Committee wishes to express the following views:
2. The right to self-determination of peoples is a fundamental principle of international law. It is enshrined in article 1 of the Charter of the United Nations, in article 1 of the International Covenant on Economic, Social, and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, as well as in other international human rights instruments. The International Covenant on Civil and Political Rights provides for the rights of peoples to self-determination besides the right of ethnic, religious, or linguistic minorities to enjoy their own culture, to profess and practise their own religion or to use their own language.
3. The Committee emphasizes that in accordance with the Declaration of

the United Nations General Assembly 2625 (XXV) of 24 October 1970 on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations it is the duty of States to promote the right to self-determination of peoples. But the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations. In this context the Committee draws the attention of governments to the General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.

4. In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, governments are to represent the whole population without distinction as to race, colour, descent, national, or ethnic origins. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation.
5. In order to respect fully the rights of all peoples within a State, governments are again called upon to adhere to and implement fully the international human rights instruments and in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Concern for the protection of individual rights without discrimination on racial, ethnic, tribal, religious, or other grounds must guide the policies of governments. In accordance with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international documents, governments should be sensitive towards the rights of persons of ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth, and to play their part in the government of the country of which its members are citizens. Also, governments should consider, within their respective

constitutional frameworks, vesting persons of ethnic or linguistic groups comprised of their citizens, where appropriate, with the right to engage in such activities which are particularly relevant to the preservation of the identity of such persons or groups.

6. The Committee emphasizes that, in accordance with the Declaration of the General Assembly on Friendly Relations, none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and possessing a government representing the whole people belonging to the territory without distinction as to race, creed or colour. In view of the Committee international law has not recognized a general right of peoples to unilaterally declare secession from a State. In this respect, the Committee follows the views expressed in the Agenda for Peace (paras. 17 et seq.), namely that a fragmentation of States may be detrimental to the protection of human rights as well as to the preservation of peace and security. This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned.

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Economic and Social Council
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Committee on the Elimination
of Racial Discrimination

**COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION 49TH SESSION**

5 August to 23 August 1996

General Recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria:

The Committee on the Elimination of Racial Discrimination,

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world,

Considering that the Universal Declaration of Human Rights and the Convention on the Elimination of all Forms of Racial Discrimination proclaim that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, descent or national or ethnic origin,

Recalling the 1951 Convention and the 1967 Protocol relating to the status of refugees as the main source of the international system for the protection of refugees in general,

1. Draws the attention of States Parties to article 5 of the International Convention of the Elimination of All Forms of Racial Discrimination as well as the Committee's General Recommendation XX(48) on article 5, and reiterates that the Convention obliges States Parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms,
2. Emphasizes in this respect that:
 - a. all such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety.
 - b. States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees.
 - c. all such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.
 - d. all such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

CERD/C/49/Misc. 3/Rev.5

19 August 1996