

## TWO ANTI RACISM WATCH DOGS

In Information Leaflet no. 18, 'Working with the Media' it is noticed that modern racism is a structural problem rather than a matter of personal prejudice. And therefore there is only one genuine solution; institutional change. 'Working with the Media' then takes the change of individual perceptions leading to institutional change, as a starting principle. It explains how to use media to persuade individuals to take action. This leaflet has the same premise: modern racism is a structural problem. But it starts from the other side. Its objective is to describe some international instruments that can be used to change institutions. More specifically, to make governments change. The focus is on two bodies: the UN (United Nations) and its instruments, and the CoE (Council of Europe) and its instruments. The reason to choose these bodies is that the UN as well as the CoE have similar bodies monitoring racism: CERD (Commission for the Elimination of all forms of Racial Discrimination) and ECRI (European Commission against Racism and Intolerance). This makes it possible to compare them and explain how to make use of them. Moreover: they are international instruments but are very suitable to use on a national or local level.

On the European Union level there is a second body against racism: the EUMC (European Monitoring Centre Racism and Xenophobia). The EUMC is an EU agency founded in 1997. Its focus however is limited to the EC countries whereas the ECRI monitors 41 European member states. For this reason the EUMC will not be described.

### Why influence governments?

The state develops policy, the state provides law, the state executes and upholds law. Most contemporary states are more or less shaped according to Montesquieu's principle of the balance of powers. You will find, in whatever form, something like an executive, legislative and judiciary power. Law and policy have to be in accordance with a wide range of other laws and principles. The most important one will generally be the national Constitution. On an international level, however, states are bound by a complex network of treaties, covenants, conventions, policies and legal, moral and financial obligations.

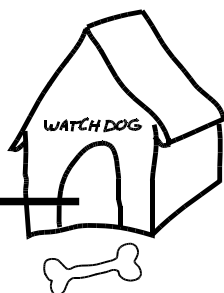
These vary strongly, some are binding, like the EU treaties. Others have no more power than that of a friendly request. The subjects may vary as strongly. You can find treaties on Human Rights, but also on the use of international access codes for telephones, or the precise angle of a banana.

But whatever the subject and whatever the strength of its binding power, there will be influence on what the state does or does not. Most states are sensitive to (inter)national pressure or even international shame. Or in the worst case the threat of an international conflict. In this respect states behave like humans: they will try as much as they can to avoid problems (or cause problems when there is enough to win). The world is a global village, and as in villages, we care of what our neighbours think or say about us. Being named and shamed is not a good feeling, it is something that is better to avoid, if possible.

It is this simple principle that makes it possible for a.o. NGOs to gain influence, to use the instruments that were developed to change situations.

Can this be done? Yes, it can. It is true, however, that the sole existence of instruments is not enough to make a difference. Instruments should be used by organisations, and the more organisations start using them, the more sophisticated and effective an instrument will become.

It is also true, alas, that no miracles can be expected. It may take a long breath before even a comma is moved.



## Using international legal instruments in the fight against racism

## Why international instruments?

Most NGOs are more or less familiar with the use of a broad range of instruments within their own country. International instruments are considered to be complex, long-termed and very costly. Partly this is true. There is some complexity in the variety of treaties, covenants and the like. Some procedures do indeed take much time. But in the case of CERD and ECRI it is not difficult to contact either the UN or the CoE, and the procedures are well described: either on their websites, or in this info leaflet. They are in fact not more difficult to learn and practice than a national law or procedure.

The costs can be low. The CERD and ECRI procedures are not legal procedures where you would need an expensive lawyer (though it is always good to consult one) but they are practical comments on how states implement their obligations. Costs in terms of gathering information can be low too, thanks to Internet. Both bodies have extensive websites.

The use of international instruments can be complimentary to an already existing national lobby. But such instruments can also be used independently. Either way they can produce pressure because the international community is watching.

Before using the instruments that are discussed here or any other instruments, you should develop a plan or a strategy. Your goals, working methods and follow up must clear. Such a plan will help you to stay focussed on what you are trying to achieve. Without it, there is a big risk, that too many side paths will cross you way and distract you from reaching your goal. For designing a plan see also previous info leaflets.

## UN, ICERD and CERD

The UN is one of the most important international bodies. The UN is the world's "market place" where many parties find each other (voluntary or obligatory) in some sort of agreement, be it political or legal. It is also referred to as the UN Family, meaning the whole of the UN and its specialised agencies like the WHO, ILO, UNESCO etc.

The well known bodies of the UN itself are its General Assembly, the Security Council, the Economic and Social Council (also known as ECOSOC) and the International Court of Justice. Then there are a number of relevant UN offices like the UNHCR (United Nations High Commissioner for Refugees) and the UNHCHR (United Nations High Commissioner for Human Rights). A number of commissions function under this last office: the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination or CERD.

The CERD was the first Commission that was formed by the UN with the specific task of ensuring the implementation of a convention: the ICERD (International Convention on the Elimination of all Forms of Racial Discrimination). ICERD came into force in 1969. Since then some 128 states ratified it.

The ICERD is an anti-racism instrument pur sang. In legal terms the correct expression is "racial discrimination". According to ICERD 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".

ICERD deals not only with the "ten commandments of anti-racism" but obliges member states to take various measures against racism. See for example article 2.

### Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
  - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
  - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

ICERD has many more obligations but the key question is of course the implementation of these obligations. Do the states that sign ICERD do what they have to do under the Convention? This question is the mission of CERD: to ensure the implementation of ICERD.

## ICERD procedure and NGOs

ICERD opens the possibility for individual- and state-to-state complaints. In this context we do not describe those specific procedures.

Every state party has homework. It has to submit a report every four years in which it describes what the state has done to implement the Convention. CERD (the committee) examines the report, and will draw conclusions and make recommendations. Every two years an updated report is required from the state.

To every state CERD "attaches" a rapporteur who is independent from the state and is able to provide CERD with an overview on the state of racism of the reporting state party. Rapporteurs cannot do their work if they do not have access to information that is independent from the information provided by the government. They will need other -reliable- sources in order to be able to judge the state's report. It is obviously that NGOs are a major source of information.

The first step therefore is to know who the rapporteur is for your country. He/she should be contacted, and the issues that are important for your organisation can be brought under his/her attention. It may be more efficient (and effective both for your organisation as well as for the rapporteur) to bundle forces with other NGOs, or to give your information to a co-ordinating NGO.

It is not wise to only try and convince a rapporteur of your own views or opinions. He/she should be given reliable information on which her/his own judgement can be formed and as a result the judgement of the CERD as well. Pushing someone in a certain direction will have an opposite effect. It is far more important that the information you give is valid.

When a state produces a report, it will not be too critical about itself. It is the task of the CERD to find out in a meeting with representatives of the state whether or not obligations were really met. But there is a possibility to comment on the state report before it is discussed by CERD. This comment can be given in various forms. One form that is often used is a shadow report. The state's remarks are one by one (or limited to the mission of your organisation) countered. You can give your -different- view or -sometimes- produce different facts and figures. Be careful, because a shadow report is a powerful weapon but it is also much work. Every counter fact- or figure must be accurate. If not, you will loose credibility. Nevertheless, shadow reports are produced by NGOs in various countries. And: CERD gratefully uses these reports.

The final meetings are in Geneva, where the headquarters of CERD are. The state report will be presented by a governmental representative. There is the possibility for NGOs to attend the meeting, but this will mean travel- and hotel expenses. It is not essential to go there: it is the outcomes are important. The conclusions and recommendations of CERD are the instruments you can use.

### Example

Concluding Observations of the Committee on the Elimination of Racial Discrimination: Iceland 27/04/2001.

(...)

13. The Committee notes that few incidents of racial discrimination are recorded by the police. The Committee recommends that the State party review carefully the allegations of racial insults and threats suffered by immigrants and that it consider additional ways to encourage the formulation of formal complaints in such cases, including publicizing the State party's declaration under article 14 of the Convention.

The above is a concluding observation. It will be brought under the attention of the General Assembly. Chances are that CERD was informed (probably by an NGO, not by the state) that there are the above problems in Iceland with the police.

Now that CERD included this information in its conclusions, the next steps can be taken. You can seek either publicity or bring this under to attention of e.g. members of parliament or other international fora or do both. It could well be though, that the observation is used to open a dialogue (if it did not already) between the government and anti-racism NGOs. It will have an interest to initiate change before the next reports have to be written.

The strategy you follow, will depend on the circumstances in your country, your organisation etc. But again: it is wise to have a plan before starting a process like the above.

## The CoE and ECRI

The CoE (Council of Europe, 41 member states) is sometimes called the House of Human Rights. It should not be confused with the European Union (EU, 15 member states), which is still mostly economic in nature. For more and more issues the EU has legislative power instead of the national governments. Its powers go far beyond that of the CoE. In the context of the CoE many treaties came into force but the member states decide whether or not they will sign. A large part of its work is the exchange of (new) policy (ideas) and the renewal of existing treaties. This is important. It creates a normative context in which almost 41 European states participate. This high number makes it the Pan European Inter Governmental Organisation. Within the CoE its main bodies are the Committee of Ministers, the Parliamentary Assembly and the Human Rights Court.

In the framework of the CoE ECRI (European Commission against Racism and Intolerance) was established in 1993. Its main task is 'to combat racism, xenophobia, antisemitism and intolerance at the level of greater Europe and from the perspective of the protection of human rights. ECRI's action covers all necessary measures to combat violence, discrimination and

prejudice faced by persons or groups of persons, notably on grounds of race, colour, language, religion, nationality and national or ethnic origin.

To achieve this goal ECRI launched in 1994 its so-called CBC (country-by-country) approach. With this approach ECRI examines the situation on racism and intolerance in all CoE states. In the first round, that closed in 1998, an initial picture of each country was drawn. Suggestions and proposals to improve situations were given. The second round started in 1999 and will in end 2002. Thus a cycle of viewing and reviewing is started. The CBC closely resembles the reports of CERD. Both monitor developments in which implementation of conclusions, proposals etc play an important role. There are differences as well. CERD acts on a convention, the ICERD. ECRI mandate is not based on a particular convention. This makes ECRI's playing field less defined and therefore broader than CERD's. At the same time it may be less powerful because it misses a binding agreement. A second difference is a procedural one. In the CERD system it is the state that produces a report, and CERD reviews this report. In the CBC approach it is ECRI that produces a concept- or draft report. The state then has the chance to react to it. In the light of this reaction the draft is reviewed. The final report then goes -via the committee of ministers- to the state. After two months it is usually published, but the state has the possibility to object to publication.

## NGOs and ECRI

ECRI makes it a big point that it wants to involve NGOs. It uses information provided by NGOs but asks them also to spread reports after these have been published. In the second round of the CBC approach, the relevant rapporteur for a state will visit the country before a new report is composed. This makes it attractive for NGOs to use the ECRI reports. As with CERD, there are several possibilities to use the ECRI mechanisms.

The first possibility is before the production of a draft report. For NGO there is the opportunity to give input and share their views. Here a disadvantage of the ECRI system becomes manifest. In the CERD procedure, there is a chance to write a shadow report between the publication of the state report and the meeting of the CERD in which it is reviewed. In the ECRI procedure this is not very useful, if not impossible, because it is ECRI that produces a draft report. And this report is not public. So, a shadow report can only be written after there is a final report. It is doubtful whether this is worthwhile. It will only have its influence in a next round of monitoring. But as with the CERD report, the outcome of the final report can certainly be used to draw media-attention or the attention of the members of the Parliamentary Assembly of the CoE.

## More information / addresses

### Governmental Institutions:

Committee on the Elimination of Racial Discrimination  
Committee for Human Rights,  
OHCHR-UNOG  
8-14 Avenue de la Paix, CH-1211 Genève 10, Switzerland  
phone +41-22-9179000, fax +41-22-9179022  
[www.unhchr.ch/html/menu2/6/cerd.htm](http://www.unhchr.ch/html/menu2/6/cerd.htm)

European Commission against Racism and Intolerance  
c/o Conseil de l'Europe, F-67075 Strasbourg Cedex, France  
phone +33-3-88412964, fax +33-3-88413987  
[combat.racism@coe.int](mailto:combat.racism@coe.int), [www.ecri.coe.int](http://www.ecri.coe.int)

European Union Monitoring Centre Racism and Xenophobia  
Rahlgasse 3, A-1060 Wien, Austria  
phone +43-1-580300, fax +43-1-5803093  
[information@eumc.eu.int](mailto:information@eumc.eu.int), [www.eumc.eu.int](http://www.eumc.eu.int)

OSCE - Tolerance and Non-Discrimination Section / ODIHR  
Aleja Ujazdowskij 19, PL-00557, Warszawa, Poland  
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[office@odih.osce.waw.pl](mailto:office@odih.osce.waw.pl), [www.osce.org/odih](http://www.osce.org/odih)

### Non-governmental organisations:

Anti-Racism Information Service - ARIS  
14 avenue Trembley, CH-1209 Genève, Switzerland  
phone +41-22-7403530, fax +41-22-7403565  
[aris@antiracism-info.org](mailto:aris@antiracism-info.org), [www.antiracism-info.org](http://www.antiracism-info.org)

Int. Movement Against All Forms of Discrimination and Racism  
Casa Postal 2100 - 150 rt. de Ferney, CH-1211 Genève 2,  
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phone +41-22-7916263, fax +41-22-7916480  
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### UNITED for Intercultural Action

European network against nationalism, racism, fascism  
and in support of migrants and refugees

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