

FIFTH ANNUAL MEETING OF THE ASIA-PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS  
ROTORUA, NEW ZEALAND, 7-9 August 2000

NATIONAL INSTITUTIONS AND THE WORLD CONFERENCE AGAINST RACISM, XENOPHOBIA AND RELATED INTOLERANCE

**BACKGROUND**

From its inception, the United Nations has viewed racism as a violation of human rights. This was clearly expressed in the Universal Declaration of Human Rights<sup>1[1]</sup> and subsequently in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which echoed the language of the Universal Declaration by affirming that the rights set out in both Covenants should be enjoyed without distinction as to race and colour.<sup>2[2]</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted by the General Assembly in 1965, provides the most comprehensive international human rights instrument dealing with racism.

In furtherance of the fight against racism, the United Nations has declared three decades to Combat Racism and Racial Discrimination, commencing in 1973, 1983 and 1993. Today, in the midst of the Third Decade to Combat Racism and Racial Discrimination (1993-2003), CERD has been ratified by 155 countries, a monitoring body has been established under Article 8 of CERD, and there is a Special Rapporteur on contemporary forms of racism. However, racial discrimination, xenophobia and similar prejudices continue to flourish worldwide. The Committee on the Elimination of Racial Discrimination has concluded

that no State was immune to racially discriminatory practices, which often emerged as a reflection of traditions or age-old prejudices or as a result of the introduction of policies or ideologies based on chauvinistic nationalism. Other factors [have] also contributed to racial discrimination in the exercise of economic, social and cultural life, including socio-economic underdevelopment, segregation experienced by indigenous populations, racial conflicts giving rise to violence, and xenophobia against minority groups, undocumented immigrants, refugees and displaced persons.<sup>3[3]</sup>

Facing these continuing struggles, the focus of the Third Decade has been the illumination and eradication of the roots of racism and recognition of institutional racism and the need to foment institutional change. The Decade has also stressed the need to examine new forms and manifestations of racism, such as on the Internet. As part of the Third Decade's activities, the United Nations General Assembly decided in 1997 to convene a World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance to

- review progress made in the fight against racism and racial discrimination, in particular since the adoption of the Universal Declaration of Human Rights, and to re-appraise the obstacles to progress in the field and to identify ways to overcome them;
- consider ways and means to better ensure the application of existing standards and their implementation to combat racism and racial discrimination;

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<sup>1[1]</sup> Universal Declaration of Human Rights, Article 2

<sup>2[2]</sup> ICESCR Art 2 (2), ICCPR Art 2 (1)

<sup>3[3]</sup> Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, Geneva, 16-18 February 2000.

- increase the level of awareness about the scourge of racism and racial discrimination;
- formulate concrete recommendations on ways to increase the effectiveness of the activities and mechanisms of the United Nations through programs aimed at combating racism and racial discrimination;
- review the political, historical, economic, social, cultural and other factors leading to racism and racial discrimination;
- formulate concrete recommendations to further action-oriented national, regional, and international measures aimed at combating all forms of racism and racial discrimination; and
- draw up concrete recommendations to ensure that the United Nations has the necessary resources for its activities to combat racism and racial discrimination.<sup>4[4]</sup>

With the Conference scheduled to occur in South Africa from 31 August to 7 September 2001, regional meetings have been planned in order to formulate region-specific standpoints and recommendations prior to the World Conference. The Asian Regional Expert Group Meeting will be held from 5-7 September in Bangkok and the Asian regional preparatory meeting will be held this Northern Hemisphere autumn or winter in Iran.

The Committee for the World Conference Against Racism has already held one preparatory session. Several other consultations (notably the Bellagio consultation, held to formulate expert recommendations on the Conference agenda)<sup>5[5]</sup> and preparatory meetings have also been convened. While a final agenda awaits the conclusion of the regional meetings, the General Assembly, the Committee of CERD and the Sub-Commission on the Promotion and Protection of Human Rights have made suggestions concerning the provisional agenda for the World Conference. These groups envision an “action-oriented” and “practical” focus for the agenda and have proposed specific topics including the impact of economic globalisation, migrants, refugees, the aftermath of colonialism and slavery, xenophobia, accountability, remedies and redress, hate speech and multiple identities and racism – such as gender and race.<sup>6[6]</sup>

According to the Provisional Rules of Procedure, representatives from national institutions can act as observers at the Conference.<sup>7[7]</sup> The Bellagio Consultation emphasised the importance of participation by national institutions and recommended special meetings at the main conference for national institutions.<sup>8[8]</sup> It also recommended that building the capacity of national institutions to combat racism should be an outcome of the Conference.<sup>9[9]</sup>

Papers have also been prepared on a variety of issues including ways of improving coordination between the Office of the High Commissioner for Human Rights and specialised agencies, racism, refugees and multi-ethnic states, discrimination against migrants, migrant women and the effects of racial discrimination on the children of minorities among others.

In Conference preparations, emphasis has been placed on the importance of national and regional discussions in fostering consensus and action around racism and related intolerances because

<sup>4[4]</sup> United Nations General Assembly resolution 52/111, paragraph 28.

<sup>5[5]</sup> Bellagio Consultation: Report of the Consultation on the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance held at the Rockefeller Foundation’s Study and Conference Center Bellagio, Italy, 24-28 January 2000, A/CONF.189/PC.1/10.

<sup>6[6]</sup> Provisional Agenda, Draft Rules of Procedure, Dates, Duration, Venue of and Participation at the World Conference, A/CONF.189/PC.1/2

<sup>7[7]</sup> Rule 64 of the Provisional Rules of Procedure states that “Representatives designated by national institutions and ombudspersons for the protection and promotion of human rights may participate as observers in the deliberations of the Conference, any Main Committee and, as appropriate, any other committee or working group on questions within the scope of their activities.”<sup>7[7]</sup>

<sup>8[8]</sup> Bellagio Consultation, point 53, 55, 57.

<sup>9[9]</sup> Ibid, point 50.

[i]t is recognised that the most effective way to combat racism is at the country level. While there has been much progress in cooperation at the international level, there is an urgent need for more systematic cooperation at the country level.<sup>10[10]</sup>

Through national and regional sessions “specific problems of racism can be identified, ‘best practices’ and successful models for combating racism can be examined, concrete strategies can be formulated, and consensus and broad-based participation can be mobilised.”<sup>11[11]</sup> In order for the struggle against racism to be successful, racism must be understood, acknowledged and fought against both internationally and locally.

As in the rest of the world, racism, xenophobia and related intolerance continue to thrive in the Asia Pacific. For example the effects of globalisation, economic hardship, migration, ethnic conflict and the situation of indigenous people affect many, if not all, countries in our region. While the specific roots and understandings of racism and situations are complex and country-specific, issues relating to education, access to services, disparate economic status, autonomy and problems arising from migration are among the manifestations of racism and xenophobia in this region. Fighting to end racism, xenophobia and related intolerance therefore remains a critical issue in our region.

## **RACISM AND RECENT INTERNATIONAL AGREEMENTS**

Recent agreements from the Vienna Platform on Human Rights in 1993 to this year’s Rabat Declaration have highlighted both the role of national human rights institutions in the international promotion of human rights and the importance of eliminating racism.

The Vienna Platform on Human Rights states that

The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.<sup>12[12]</sup>

The Vienna Platform also “encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organisations and the United Nations.”<sup>13[13]</sup> Targeting racism, the Platform also states that participants consider

the elimination of racism and racial discrimination, in particular in their institutionalised forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion program in the field of human rights.<sup>14[14]</sup>

In 1995, the Fourth World Conference for Women Beijing Declaration and Platform for Action again emphasised the importance of strengthening and establishing cooperative relationships between national institutions and other agencies working for the promotion of human rights. Besides focusing on the role national institutions could play in the advancement of women by

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<sup>10[10]</sup> “Ways of improving coordination between the Office of the United Nations High Commissioner for Human Rights and all specialised agencies and international, regional and subregional organisations in the field of action to combat racism, racial discrimination, xenophobia and related intolerance,” Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, A/CONF.189/PC.1/4.

<sup>11[11]</sup> Bellagio Consultation, 58.

<sup>12[12]</sup> Vienna Platform on Human Rights, 36.

<sup>13[13]</sup> Ibid., point 85.

<sup>14[14]</sup> Ibid., point 19.

promoting a gendered perspective in human rights work and working to ensure female representation in all levels and fields,<sup>15[15]</sup> the Platform also addressed “particular barriers” women might face because of factors such as race and ethnicity in addition to gender.<sup>16[16]</sup> Several points throughout the Platform recognise that because of these factors, some women are particularly vulnerable to violence,<sup>17[17]</sup> lower standards of health care<sup>18[18]</sup> and “face additional barriers to the enjoyment of their human rights.”<sup>19[19]</sup>

Earlier this year, at the Fifth International Workshop for National Institutions for the Promotion and Protection of Human Rights held in Rabat, Morocco, participants discussed the World Conference Against Racism and the role of national institutions. The concluding statement of the workshop states that

the Declaration and Plan of Action of the United Nations Conference on Human Rights held in Vienna in 1993 stressed the specific role of national institutions in the fight against racism and [their] wish to be in a position to participate fully at the next World Conference Against Racism, Xenophobia and Other Forms of Discrimination, in accordance with the precedent established by the Vienna Conference.<sup>20[20]</sup>

The statement went on to

highlight the important role that national institutions must play in the fight against all forms of discrimination, and in particular against racism, by participating in particular in the preparation, at both national and regional levels, in the next World Conference on Racism. Given the re-emergence and extension, noted in numerous countries, of various forms of racial discrimination, especially against immigrant workers and their families, the activities of national institutions in the countries concerned are of prime importance to fight against this discrimination. In this regard, they request all States to ratify the International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families.<sup>21[21]</sup>

In April 2000, the Commission on Human Rights passed a resolution in which they

Affirm[ed] the important role of national human rights institutions in combating racial and related forms of discrimination and in the protection and promotion of the human rights of women and the rights of the child, and in this context:

(a) Encourages the appropriate participation of national institutions in preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at the national, regional and global levels;<sup>22[22]</sup>

## **ROLE OF FORUM MEMBERS**

The Asia Pacific Forum, in past meetings, has endorsed views which complement those expressed in the Rabat Declaration. For example the concluding statement of the Fourth Annual Meeting of the Forum addressed participation by national human rights institutions in the World Conference Against Racism. In addition at the Third Annual meeting several

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<sup>15[15]</sup> Fourth World Conference for Women, Beijing Declaration and Platform for Action, point 205(c).

<sup>16[16]</sup> Ibid., point 31.

<sup>17[17]</sup> Ibid., points 116, 125.

<sup>18[18]</sup> Ibid., point 89.

<sup>19[19]</sup> Ibid., point 225.

<sup>20[20]</sup> The Rabat Declaration, 13-15 April 2000, point 4.

<sup>21[21]</sup> Ibid., point 5.

<sup>22[22]</sup> National institutions for the promotion and protection of human rights. The Commission on Human Rights. E/CN.4/RES/2000/76.

recommendations highlighted the needs of minorities and migrant workers in dealing with economic issues. These included the importance of “working with NGOs to identify the needs of vulnerable groups and to develop successful strategies/programs to respond to those needs,” and “addressing discrimination issues, in particular the needs of minorities and other vulnerable groups (eg. migrant workers).”<sup>23[23]</sup> At the same meeting, Forum members discussed and recognised problems facing refugees and migrant workers.<sup>24[24]</sup>

Forum institutions “can play a vital role in ensuring compliance with national and international standards and norms, and in combating racism and racial discrimination.”<sup>25[25]</sup> While the exact functions of each Forum member institution differ, their mandates all confer power to monitor and make recommendations for the implementation of international treaties in their respective countries, to educate about national and international human rights, to cooperate with other agencies for the promotion and protection of human rights and to undertake human rights research and investigations.<sup>26[26]</sup>

The States of Australia, Fiji, India, Indonesia, New Zealand, the Philippines and Sri Lanka have all ratified CERD. However, several of the States have entered reservations against certain sections of CERD,<sup>27[27]</sup> and only one has deposited a declaration in support of Article 14, which allows for individual communications to be heard by the CERD committee.<sup>28[28]</sup>

## RECOMMENDATIONS

National human rights institutions are well placed to act as catalysts to further the fight against racism and to positively contribute to the World Conference’s final platform of action.

It is recommended that Forum members:

- **Cooperation**

Work to build strong relationships with Governments, NGOs and the private sector in the fight against racism. Cooperation with NGOs and Governments could include consulting with and using each other’s expertise in the preparation of reports to UN Treaty bodies and joint projects on education about racism.

Work with Governments, NGOs and the private sector to promote discussion of the objectives of the World Conference.

Cooperate with each other both bilaterally and multilaterally under the auspices of the Forum to share plans, research, materials, strategies and submissions relevant to the World Conference.

- **Laws and redress**

Work to ensure that criminal laws are adopted that advocate for redress for and punishment of racist acts as set out in Article 4 of CERD.

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<sup>23[23]</sup> Third Meeting of the Asia Pacific Forum of National Human Rights Institutions, 7-9 September 1998, Appendix 4: Recommendations contained in Secretariat Background Papers as adopted by the Third Annual Meeting.

<sup>24[24]</sup> Ibid, Appendix 3: Statement of Conclusions.

<sup>25[25]</sup> Bellagio Consultation, 45-46.

<sup>26[26]</sup> Australia – Human Rights and Equal Opportunity Commission Act of 1986; India - Human Rights Act, 1993; Indonesia – Number 39 of 1999, Concerning Human Rights; New Zealand – Human Rights Act, 1993; Philippines – The Constitution, Barangay Human Rights Action Center Handbook; Sri Lanka – Human Rights Commission of Sri Lanka Act No 21 of 1996.

<sup>27[27]</sup> Australia has reserved on Article 4; Fiji on Articles 4, 5, 6, 15 and 20 and India on Article 22.

<sup>28[28]</sup> Only Australia has deposited a declaration in support of Article 14 of CERD, which allows for individual communications to be heard by the CERD Committee.

Examine existing administrative and legal redress mechanisms and undertake research and policy development in order to make recommendations to Government/Parliament on the implementation of 'best practice' mechanisms.

- **Treaties**

Encourage Governments to deposit declarations in support of Article 14 of CERD and to withdraw all reservations to the Convention.

Monitor Government reporting obligations under CERD, advocate that national laws conform to CERD, that appropriate information is made available to the relevant UN committees. Where they consider it appropriate, advocate that Governments follow up and implement committee recommendations.

Encourage Governments to ratify the International Convention for the Rights of Migrant Workers.

- **Multiple Disadvantage**

Pay particular attention, in the performance of their functions, to the combination of race with other multiple disadvantages such as, but not limited to, gender, age, sexuality, the rights of non-citizens and immigrants, indigenous populations and economic status.

- **Academic Research**

Encourage academic research and study into the causes, effects and possible remedies associated with racism and formulate national plans of action.<sup>29[29]</sup>

Research and document experiences of racism and evaluate strategies to address racial discrimination for inclusion in submissions to World Conference preparatory processes.

- **Representation**

Encourage representation and participation by minorities and Indigenous groups in their activities to combat racism.

Encourage Governments to ensure the representation and participation by minorities and Indigenous groups in World Conference preparations, meetings and delegations.

- **Education**

Undertake national inquiries and public awareness campaigns to inform the public about racism, the rights of racial minorities/illegality of disparate treatment of racial minorities in ways appropriate to country/situation.

Undertake training for judges and law enforcement officers concerning applicable international human rights instruments relating to racism. The training should include guidance on the practical implementation of such provisions in their daily work.<sup>30[30]</sup>

Publicise the World Conference and encourage the active participation of key stakeholders including Indigenous and migrant communities and representative groups in civil society.

- **World Conference processes**

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<sup>29[29]</sup> An example of this might be the "National Racism Barometer" suggested by Rev Barney Pitanya "to publish details of anti-racism practice in schools, the civil service, commerce and industry, and report regularly on the index of racism in society."

<sup>30[30]</sup> Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, 16-18 February 2000, point 5.55

Provide advice to national delegations on questions relating to the World Conference within the scope of their mandates and activities.

Make direct input to World Conference preparatory processes, including submitting suggestions for the draft Platform and Program for Action to the Office of the High Commissioner for Human Rights.

Participate as appropriate in the World Conference, including submitting written statements, participating as observers in World Conference deliberations and meetings of committees and working groups.

## **CONFERENCE PLATFORM**

It is recommended that Forum members support and advocate for inclusion of the following text in the final statement of the World Conference.

### **Elimination of Racial Discrimination**

1. The World Conference Against Racism urges all Governments to take immediate measures to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation which may include penal measures and by the establishment and strengthening of national human rights institutions to combat such phenomena.
2. The World Conference Against Racism urges Governments, with the assistance of inter-governmental organisations, national human rights institutions and non-governmental organisations, to promote an increased awareness of human rights and mutual tolerance, and of the causes and remedies of racism, xenophobia and racial discrimination.

### **Ratification of Relevant Conventions**

3. The World Conference Against Racism urges all States to ratify the Convention on the Elimination of Racial Discrimination (CERD) without any reservations.
4. The World Conference Against Racism urges all current States Parties to the CERD to withdraw any reservations currently lodged.
5. The World Conference Against Racism encourages all Governments to deposit declarations in support of Article 14 of CERD, recognising the competence of the Committee on the Elimination of All Forms of Racial Discrimination to accept and consider individual communications of people claiming to be victims of a violation of any of the rights set forth in the Convention.
6. The World Conference Against Racism urges all States to give effect to CERD in domestic law and through other relevant measures.
7. The World Conference Against Racism encourages all States to promote and protect the human rights of all peoples against racism, xenophobia and related intolerance through the ratification and implementation of human rights instruments and other conventions which relate to non-discrimination, anti-racism and equality before the law, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention against Torture (CAT) and the International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families.

## National Human Rights Institutions

8. The World Conference Against Racism reaffirms the important and constructive role played by national human rights institutions for the promotion and protection of human rights in the struggle against racism and racial discrimination, particularly with regard to their advisory capacity to the competent authorities, their role in remedying human rights violations and in the dissemination and promotion of human rights.
9. The World Conference Against Racism encourages the establishment and strengthening of national human rights institutions in accordance with the "Principles relating to the status of national institutions" (Paris Principles) and recommends that States give these institutions wide mandates to ensure the effective implementation of domestic legislation giving effect to human rights treaties, including CERD, ICCPR, ICESCR, CEDAW and CAT.
11. The World Conference Against Racism urges all States, competent agencies and institutions to provide adequate resources devoted to building effective legal systems to protect human rights and to the work of independent national human rights institutions in the area of racism and racial discrimination.
12. The World Conference Against Racism encourages the strengthening of cooperation between national human rights institutions for the promotion and protection of human rights, including through exchanges of information and expertise relating to racial discrimination, as well as co-operation with regional organisations and the United Nations.
13. The World Conference Against Racism strongly recommends that representatives of national human rights institutions for the promotion and protection of human rights continue to convene periodic meetings, including under the auspices of the Office of the High Commissioner for Human Rights, to examine ways and means of improving their work relating to racism and intolerance.
14. The World Conference Against Racism recommends the strengthening of activities and programs undertaken by the Office of the High Commissioner for Human Rights to meet requests by states for assistance in the establishment and strengthening of national human rights institutions for the promotion and protection of human rights in their work combating racism and racial discrimination.
15. The World Conference Against Racism strongly supports the independent role of national human rights institutions in monitoring and contributing to States' reporting obligations under all treaties relevant to the elimination of all forms of racism discrimination, including CERD and those which highlight the intersection of racism with other aspects of identity and disadvantage such as gender, age, sexuality, the rights of non-citizens and immigrants, Indigenous populations and economic status.
16. The World Conference Against Racism recommends that States establish national human rights institutions to ensure effective redress through individual and representative complaint mechanisms for complaints about discrimination on the basis of race, ethnicity or national origin and other intersecting forms of discrimination including gender, sexuality, immigrant or refugee status, Indigenous identity and economic status.
17. The World Conference Against Racism recommends that States encourage, promote and provide adequate resources for national human rights institutions to effectively implement anti-racist strategies including education programs, relevant policy initiatives and national inquiries into aspects of racism, xenophobia and related intolerance.