

## **The International Rule of Law and the Elimination of Racial Discrimination**

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This paper analyses the reception of “minority” rights in the UN Human Rights protection system, checking the concept of the “rule of law” included in the UN Charter and in International Law, giving particular attention to the procedures of the Committee on the Elimination of Racial Discrimination (CERD). As the first treaty-based body created in 1966 by the UN, it monitors implementation of the core international human rights as race discrimination. It is particularly essential to the rule of law, since many scholars have considered already it to be an example of *ius cogens*.

In this sense, the rule of law is a basic principle in which the State is liable to laws. As the Secretary General has described “is a principle of governance in which all persons, institution and entities (...) are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights”.

The treaty monitoring bodies are conventional mechanisms that may have an important role in the development of International Law in its commitment to protect humanity from atrocities perpetrated under the sovereignty of States or under its responsibility. In the 21st century “hate crimes” and other “restrictions” or “exclusions” based on race, colour, national or ethnic origin are in the middle of continuous threats to human rights worldwide, and the works of CERD are central to prevent them from being an unwilling expression of the violation of the international rule of law.

Promoting and encouraging universal respect for and observance of human rights and fundamental freedoms for all, without distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin is one of the main purposes of the United Nations. The adoption of the International Convention on the Elimination of All Forms of Racial Discrimination was an important step in the codification process to combat such discrimination. It constitutes the normative basis upon which

international efforts to eliminate it should be built. As at 20 January 2012, there were 175 State parties to the Convention, which was adopted by the General Assembly in resolution 2106 (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19. In accordance with its article 8, the Committee on the Elimination of Racial Discrimination was established to ensure that the Convention is observed and implemented. The Committee is composed of 18 independent experts of high moral standing and acknowledged impartiality. Members are elected for a term of four years and serve in their personal capacity. They may be re-elected if nominated.

The work of this Committee has been extensively proven, with the commitment of States and civil society, resulting in a fruitful Human Rights monitoring. Racial discrimination is something about past. Hate crimes and hate speech is alive now a days worldwide. This is something the Committee has given attention. It has integrated this right to freedom of expression into its work on combating hate speech, commenting where appropriate on its lack of effective implementation and, where necessary, drawing upon its elaboration in sister human rights bodies. The Committee practice has included all the specific speech forms referred to in article 4 directed against groups recognized in article 1 of the Convention — which forbids discrimination on grounds of race, colour, descent, or national or ethnic origin — such as indigenous peoples, descent-based groups, and immigrants or non-citizens, including migrant domestic workers, refugees and asylum seekers, as well as speech directed against women members of these and other vulnerable groups.

Particularly regarding the General Recommendation adopted in 2013 about “Combating racist hate speech” VIEW

Regarding the Concluding observations on the combined tenth to seventeenth periodic reports of Sri Lanka, the Committee welcomes the adoption of several legislative modification and policies. Even so, It has concerns about the situation of hate speech in the country:

*The Committee is alarmed by reports of hate speech, incitement to violence and violent attacks, including riots, against ethnic and ethno-religious minority groups, which have resulted in deaths, injuries and destruction of property. The Committee is concerned that groups or individuals inciting violence and undertaking violent attacks against ethnic and ethno-religious minorities are not held accountable. The Committee notes recent efforts by the State party to introduce draft legislation to criminalize hate speech (arts. 4 and 5).*

**17. Bearing in mind its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

**(a) Take immediate measures to protect the safety and security of ethnic and ethno-religious minorities and their places of worship, in accordance with article 5 of the Convention;**

**(b) Adopt comprehensive legislation on hate speech fulfilling the requirements of article 4 of the Convention, which requires States parties to ensure the prohibition of ideas based on racial superiority and hatred, the incitement to racial hatred, acts of violence against any race or groups of persons of another colour or ethnic origin, and incitement to such acts. It also recommends that the State party ensure that its criminal legislation defines racial motivation as an aggravating circumstance;**

**(c) Enforce legislative provisions to prosecute perpetrators of hate speech, incitement to violence and hate crimes to deter further crimes and prevent impunity of perpetrators. It also recommends that the State party provide information in its next periodic report on the number of cases reported, investigations, prosecutions, convictions of perpetrators and remedies for victims;**

**(d) Foster tolerance and unity by facilitating dialogue between communities in conflict to eliminate tensions.**

**Conclusion:** State Commitment to the International Rule of law is the only guarantee of the efficacy of Human Rights Treaties. Equality and diversity are common values in the International Community and the work of the Racial Discrimination Committee is valuable and necessary, to continue developing a more o more powerful citizens, solid rights and respectful States.