



Racism and Xenophobia: The legal framework against racism and racial discrimination

**2nd Annual Integration Conference
9 December 2020**

International Legal Framework: Principle of equality and non- discrimination



A principle which is proclaimed in the first article of the Universal Declaration of Human Rights (UDHR)

“All human beings are born free and equal in dignity and rights”

- Reiterated in all international and regional human rights treaties.
- The human rights legal framework also contains international instruments to combat specific forms of discrimination, including against migrants, minorities, people with disabilities, discrimination against women, racial and religious discrimination, or discrimination based on sexual orientation and gender identity

International Legal Framework: Racial Discrimination

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is specifically devoted to the elimination of discrimination based on race.

- Racial discrimination is defined in Article 1(1) of the ICERD “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.”

International Legal Framework: Racial Discrimination



- The prohibition of racial discrimination is absolute
- The prohibition of racial discrimination applies in all matters pertaining to both private and public life.
- Article 4 of the International Covenant on Civil and Political Rights, measures that States may adopt to respond to public emergencies threatening the life of the nation cannot discriminate on the ground of race, colour, sex, language, religion or social origin.

International Legal Framework: Racial Discrimination



- Article 1 of the ICERD provides for affirmative actions
- States are required to adopt special measures “for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals’ equal enjoyment or exercise of human rights”.
- Such special measures are not considered to amount to racial discrimination provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued once their objective has been achieved.

International Legal Framework: Racial Discrimination



In its General Recommendation No.30, the Committee on the Elimination of Racial Discrimination provides guidance to States in relation of the applicability of the anti-discrimination prohibition of racial discrimination with regard to refugees and displaced persons as well as non-citizens, including on issues related to hate speech and racial violence, access to citizenship, administration of justice, and expulsion and deportation

International Legal Framework: Racial Discrimination: Responsibilities

- 1. Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2, provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

International Legal Framework: Racial Discrimination - Responsibilities

- 2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

International Legal Framework: Racial Discrimination - Responsibilities

- 3. Article 5 of the Convention incorporates the **obligation** of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights.
- States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

International Legal Framework: Racial Discrimination - Responsibilities

- 4. Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination **if the criteria for such differentiation**, judged in the light of the objectives and purposes of the Convention, **are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.** Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory;

International Legal Framework: Racial Discrimination - Responsibilities

- 5. States parties are under an obligation to report fully upon legislation on non-citizens and its implementation.
- Furthermore, States parties should include in their periodic reports, in an appropriate form, socio-economic data on the non-citizen population within their jurisdiction, including data disaggregated by gender and national or ethnic origin;

International Legal Framework: Racial Discrimination - Recommendations

- **General Measures**

6. Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in article 5, without discrimination;

International Legal Framework: Racial Discrimination - Recommendations

- **General Measures**

7. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens;

International Legal Framework: Racial Discrimination - Recommendations

- **General Measures**

8. Pay greater attention to the issue of multiple discrimination faced by non-citizens, in particular concerning the children and spouses of non-citizen workers, to refrain from applying different standards of treatment to female non-citizen spouses of citizens and male non-citizen spouses of citizens, to report on any such practices and to take all necessary steps to address them;

International Legal Framework: Racial Discrimination - Recommendations

- **General Measures**

9. Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin;

10. Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping;

International Legal Framework: Racial Discrimination - Recommendations

Protection Against Hate Speech

11. Take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens;
12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large;

International Legal Framework: Racial Discrimination - Recommendations

Access to Citizenship

1. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;
2. Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;
- 3.

International Legal Framework: Racial Discrimination - Recommendations

Access to Citizenship

3. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;
4. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;
5. Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State Party;

International Legal Framework: Racial Discrimination - Recommendations

Expulsion and Deportation of Non-Citizens

25. Ensure that laws concerning deportation or other form of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies;

26. Ensure that non-citizens are not subject to collective expulsion in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account;

International Legal Framework: Racial Discrimination - Recommendations

Expulsion and Deportation of Non-Citizens

27. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment;

28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life;

International Legal Framework: Racial Discrimination - Recommendations

Administration of Justice

18. Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence;

19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards;

International Legal Framework: Racial Discrimination - Recommendations

Administration of Justice

20. Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law;

21. Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights;

International Legal Framework: Racial Discrimination - Recommendations

Administration of Justice

22. Introduce in criminal law the provision that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment;

23. Ensure that claims of racial discrimination brought by non-citizens are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny;

International Legal Framework: Racial Discrimination - Recommendations

Administration of Justice

24. Regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin so that once a non-citizen has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment;

European Legal Framework: The Racial Equality Directive

According to the Treaty on European Union and the Treaty on the Functioning of the European Union, the EU is founded on the value of equality and non-discrimination and through its policies should combat discrimination based on racial or ethnic origin.

- The Racial Equality Directive represents a key measure in this regard as a framework for combating discrimination and giving effect to the principle of equal treatment.
- Although significant progress has been made towards the realization of racial and ethnic equality, several challenges remain to be overcome.

European Legal Framework: The Racial Equality Directive

- The aim of the Racial Equality Directive is to establish a framework for combating discrimination and give effect to the principle of equal treatment in the EU Member States.
- It operates alongside the Employment Equality Directive, which prohibits discrimination on the basis of religion or belief, disability, age or sexual orientation, and the Gender Equality Directive and Gender Equality Directive on Goods and Services which prohibit discrimination on the basis of gender.

European Legal Framework: The Racial Equality Directive

Under the Racial Equality Directive, EU Member States are required to prohibit discrimination on the grounds of racial or ethnic origin and authorised to adopt specific measures to prevent or compensate for disadvantages linked to these grounds ('positive action').

- In order to give effect to these aims, Member States are required to adopt a range of measures and a particular architecture: judicial and/or administrative procedures, which may include conciliation, must be available for individuals to pursue their rights.
- In the course of such procedures the burden of proof should be shared between the claimant and the respondent, and effective, proportionate and dissuasive sanctions should be available

European Legal Framework: The Racial Equality Directive

Several measures are required in order to assist and support victims pursuing claims.

- One or more equality bodies should be assigned to offer assistance to victims pursuing complaints.
- EU Member States must also authorize civil society organizations to engage on behalf of or in support of a claimant in judicial or administrative proceedings, which may include NGOs, trade unions or the equality bodies themselves.

European Legal Framework: The Racial Equality Directive



UNHCR

The UN
Refugee Agency

Equality bodies are also to be empowered to undertake a range of promotional activities, namely:

- the publication of reports and recommendations and the conduct of independent surveys.
- Member States are also to take steps to ensure that provisions adopted pursuant to the directive are disseminated.
- Finally, Member States are to promote dialogue between the social partners (employers and employees) with a view to the elaboration of policies to promote equality, as well as dialogue with NGOs.

European Legal Framework: The Racial Equality Directive



UNHCR

The UN
Refugee Agency

Equality bodies are also to be empowered to undertake a range of promotional activities, namely:

- the publication of reports and recommendations and the conduct of independent surveys.
- Member States are also to take steps to ensure that provisions adopted pursuant to the directive are disseminated.
- Finally, Member States are to promote dialogue between the social partners (employers and employees) with a view to the elaboration of policies to promote equality, as well as dialogue with NGOs.

National Legal Framework



UNHCR
The UN
Refugee Agency

With the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the subsequent amendments introduced to the basic law, Cyprus established a number of offences relevant to combating racism and intolerance, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination.

- The offences include incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services.

National Legal Framework



UNHCR
The UN
Refugee Agency

Article 2A of the amended law renders criminally liable those persons who:

- (a) Incite acts which are likely to cause discrimination, hatred or violence against persons on account of their racial or ethnic origin or religion;
- (b) Establish or participate in organisations that promote propaganda aiming at racial discrimination;
- (c) Express ideas that insult persons by reason of their racial or ethnic origin or religion;
- (d) Refuse to supply goods or services to people by reason of their racial or ethnic origin or religion.

National Legal Framework



UNHCR

The UN
Refugee Agency

Criminal Provisions on Racial Crime

Under the Cypriot Criminal Code (Cap.154) a number of discriminatory acts are punishable offences:

(a) Article 47: publication with a seditious intention;

(b) Article 48: “intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic”;

(c) Articles 51 and 51A: the calculated statement, printed or published to “encourage recourse to violence on the part of any of the inhabitants” or to “encourage recourse to violence or promote feelings of ill will between different classes of communities or persons in the Republic of Cyprus

(

National Legal Framework



UNHCR
The UN
Refugee Agency

Criminal Provisions on Racial Crime

(d) Article 138: the destruction, damaging or defiling of any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion.

(e) Article 142: the publication of a book or pamphlet or any article or letter in a newspaper or magazine which is perceived by a group of people as a public insult to their religion, with intent to ridicule such religion or to shock or insult its followers.

National Legal Framework



UNHCR
The UN
Refugee Agency

Criminal Provisions on Racial Crime

(f) Article 149: the uttering of any word or the making of any sounds with the deliberate intention of wounding the religious feelings of any person in the hearing of that person, or any gesture in the sight of that person, or the placing of an object in the sight of that person.

National Legal Framework



UNHCR

The UN
Refugee Agency

On 1 May 2004 three laws came into force purporting to transpose Directives 43/2000/EC and 78/2000/EC:

- (a) The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law purporting to discharge the Republic's obligation to appoint a national Equality Body under Article 13 of the Race Directive
- (b) The Equal Treatment (Racial or Ethnic Origin) Law purporting to transpose the Race Directive; and
- (c) The Equal Treatment in Employment and Occupation Law purporting to transpose the Framework Directive.

National Legal Framework



UNHCR
The UN
Refugee Agency

Law No. 42(1) appoints the Commissioner of Administration or Ombudsman, an independent official appointed by the President of the Republic, as the specialized body to

- (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin;
- (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law irrespective of 'race', community, language, colour, religion, political or other beliefs, national or ethnic origin

National Legal Framework



UNHCR
The UN
Refugee Agency

(iii) promote equality of opportunity in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.



Thank you