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**CIVIL AND POLITICAL RIGHTS**

**The incompatibility between democracy and racism**

**Report of the High Commissioner for Human Rights submitted  
in accordance with Commission resolution 2002/39**

### **Executive summary**

The present report is submitted pursuant to Commission on Human Rights resolution 2002/39 of 23 April 2002, in which the Commission invited the High Commissioner for Human Rights to solicit comments from Governments, non-governmental organizations and other relevant bodies on the main trends and governmental policies regarding the incompatibility between democracy and racism, especially on the development process of political parties with racist platforms, as well as actions to counter such trends, and to submit a report to the Commission at its fifty-ninth session.

The Office of the High Commissioner for Human Rights received nine responses to its request for information: from Argentina, Kuwait, Norway, Portugal, the Food and Agriculture Organization of the United Nations (FAO), the Economic and Social Commission for Western Asia (ESCWA), the Organization of American States (OAS), the National Human Rights Commissions of India and of New Zealand. These responses are summarized in the body of the present report.

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## **I. INTRODUCTION**

1. This report is submitted in accordance with Commission on Human Rights resolution 2002/39 and contains summaries of replies received from Governments, United Nations and regional organizations, and national institutions on the incompatibility between democracy and racism. The full text of all replies can be consulted in the files of the secretariat. FAO, ESCWA, OAS, and the National Human Rights Commissions of India and New Zealand, in their submissions, included information also relevant to Commission on Human Rights resolution 2002/46 entitled "Further measures to promote and consolidate democracy". This information can be found in E/CN.4/2003/64.

## **II. SUMMARIES OF REPLIES**

### **A. Governments**

2. The Government of Argentina advised that, as a result of the 1994 constitutional reform, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) obtained constitutional status. This Convention is on a par with all other constitutional provisions and takes precedence over other international treaties and national or provincial legislation. Several decisions of the Supreme Court have confirmed this superiority. A 1995 act created a National Institute against Discrimination, Xenophobia and Racism to prepare national policies and specific actions to combat these phenomena. The State had also submitted all reports due to the Committee on the Elimination of Racial Discrimination, and the declaration on article 14 of ICERD, permitting individual communications, is being ratified separately. According to article 38 of the Constitution, political parties must act in accordance with the main international human rights instruments, including ICERD. Pursuant to article 4 of ICERD, Act No. 23.592, in force since November 1988, punishes illegal and criminal activities linked to discrimination. The provisions of the Act were incorporated into the Penal Code and bind all individuals and organizations, including political parties. Article 3 of this Act provides penalties ranging from one month to three years of imprisonment for persons belonging to organizations, or who engage in propaganda, based on ideas or theories of racial or other superiority aiming to justify or promote racial and religious discrimination of any kind. The same penalty is applicable to those who encourage or incite persecution or hatred based on race, religion, nationality or political ideas.

3. The State of Kuwait informed the Office of the High Commissioner for Human Rights that article 29 of its Constitution establishes the principle of equal rights and obligations in general terms, but goes on to specify its most important applications by stating that there shall be no distinction among people "on grounds of race, origin, language or religion". In the State of Kuwait, there is no trace of racial discrimination or discrimination on grounds of wealth, the reason for which there is no explicit mention of "colour or wealth" in the Constitution. The State of Kuwait acceded to ICERD under the terms of Act No. 33 of 1968, to the International Convention on the Suppression and Punishment of the Crime of Apartheid by Act No. 5 of 1977, and to the Convention on the Elimination of All Forms of Discrimination against Women by Act No. 24 of 1994.

4. The Norwegian Government submitted a summary of its National Plan of Action to Combat Racism and Discrimination 2002-2006, which concerns groups subject to racism and discrimination in Norway, namely indigenous people, national minorities and the immigrant population. This Plan of Action is a significant part of the Government's long-term efforts to fight against racism and discrimination and aims to secure equal opportunities for all. The measures included therein are primarily oriented towards the majority population, and to the structures and processes which are controlled by the majority, since it is this population that is deemed responsible for discrimination in Norway. They are mainly focused on eight target areas: working life; public services; schools/education; the judicial system; documentation/monitoring; the Internet; the local community; and strengthening legal protection against ethnic discrimination and racist harassment. The Norwegian Government also submitted a draft paper which aims to establish and revise laws in this field. The paper discusses basic concepts, describes certain features of the actual and current legal situation in Norway and Norway's international obligations. It describes the legal situation as regards ethnic discrimination in the European Union as well as in other selected countries. The paper discusses, evaluates and proposes how the ICERD can be implemented in Norwegian law. It evaluates the protection in criminal law against racist acts and speech, and proposes a new Act against Ethnic Discrimination, as well as evaluating the enforcement and sanctions for violations of the Act. The paper looks into the need for special measures to promote ethnic equality and discusses the future role of a centre for combating ethnic discrimination. It also contains draft legislation. This paper is expected to be introduced to Parliament during autumn 2003 or spring 2004.

5. The Portuguese authorities informed that article 46, paragraph 4, of the Constitution prohibits the existence of racist associations or organizations pursuing a fascist ideology. Should an association, including a political party, be recognized as "racist" or "fascist" by a court following a legal process, it shall be disbanded or prevented from exercising its activity (Law 64/78). In 1994, there was a request for the disbandment of one such organization, which claimed that it had already been dissolved in the early 1990s. The Constitutional Court thus found it unnecessary to declare its disbandment. The creation or foundation of a racist organization, participation in its activities and assistance, including financing, or the participation in activities inciting to, or encouraging, racial or religious discrimination, hatred, or violence is a crime punishable with six months to five years of imprisonment. Furthermore, article 160, paragraph (d), of the Constitution, states that members of parliament shall lose their seat if they are judicially convicted, inter alia, of participation in racist organizations or organizations which pursue a racist ideology.

## **B. United Nations organizations**

6. The Food and Agriculture Organization of the United Nations (FAO) referred to the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the FAO Conference in November 2001. In the field of biodiversity, this treaty clearly addresses cultural and philosophical concepts. On the right to adequate food, FAO referred to the Declaration of the World Food Summit: five years later, in particular to the Intergovernmental Working Group that will elaborate a set of voluntary guidelines to support the efforts of member States to achieve the progressive realization of the right to adequate food in the context of national food security. FAO has also proposed the launching of an International Alliance against Hunger,

which would mobilize political will, technical expertise and financial resources, so that every country can achieve success in reducing the number of undernourished by at least half by 2015. FAO has formulated a policy and strategy for cooperation with non-governmental and civil society organizations.

7. The Economic and Social Commission for Western Asia (ESCWA) provided information on actions to strengthen popular participation, equity and social justice, and to promote democracy. ESCWA advised that it is seeking to directly involve people and civil society in development policies, particularly through two ongoing projects. The “Local Community Development field projects” were launched in Egypt, Syria and Lebanon and are aimed at building adequate social and economic capacities to satisfy the basic needs of local communities; they deal with the problems of poverty, unemployment and marginalization. ESCWA regional training programme entitled “Training of Local Community Development Workers” aims to simultaneously train and build capacity. ESCWA is also implementing the first phase of a comprehensive regionwide project called “Towards Integrated Social Development Policies in ESCWA Countries” to promote the development and enhancement of social policies. In an effort to contribute to the promotion of democracy in the Arab world, ESCWA aims to establish a *Database of Democracy in the Arab World*, to address and alleviate the shortfall in information and thus deepen the ongoing process of democratization. The project will have four components: free, fair and competitive elections; freedom of speech, association and assembly; institutional setting; and the index of democracy in the Arab world.

### **C. Regional organizations**

8. The Organization of American States (OAS) provided a copy of the speech made on 30 April 2002 by the President of the Inter-American Commission on Human Rights (IACHR) to the Permanent Council of OAS. In it, the President, inter alia, stated “that today’s altered context certainly presents a new challenge to OAS member States. They must find a way to balance their responsibility to protect the civilian population from the threat and consequences of acts of violence with their duty to administer justice with all due guarantees and to shield their people from arbitrariness”. IACHR intends to prepare a report on terrorism and human rights with the purpose of helping member States to design legislative and other responses to violence and the threat of terrorism that would take into account respect for standards set by international law. In the Inter-American Democratic Charter, member States acknowledged that poverty and low levels of human development affect the consolidation of democracy. They have thus committed themselves to meeting the challenge of development by stressing “the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy”. However, IACHR noted that, during the reporting period, the region had witnessed socio-economic crises. Both individually and cooperatively, member States should implement measures designed to overcome the social, racial and ethnic marginalization that afflicts the peoples of the region and to assure them decent living conditions, equal opportunity and participation in decision-making processes. Article 9 of the Democratic Charter states that the elimination of gender, ethnic, racial, cultural and religious discrimination and of all forms of intolerance will contribute to strengthening democracy and citizen participation. IACHR maintains that States should safeguard and promote the development of vulnerable groups,

especially children, women, indigenous peoples, communities with roots in Africa living in various parts of the region, and migrant workers and members of their families. Member States can do this by creating and/or strengthening legal and institutional mechanisms to combat discrimination, with due consideration for parameters currently existing in the system.

#### **D. National institutions**

9. The National Human Rights Commission of India noted that the subject of the resolution is of central importance to the work of national institutions, which, through their efforts to promote and protect human rights, contribute to the strengthening of democracy. The NHRC of India emphasizes the value of national institutions as instruments for the furtherance of democracy, equity, social justice and non-discrimination.

10. The New Zealand Human Rights Commission informed that the 1993 Human Rights Act makes it unlawful to incite racial disharmony, with both civil and criminal sanctions for offences of this nature. The Bill of Rights Act 1990 protects freedom of expression in New Zealand. In 2002, the 1993 Human Rights Act was amended, having the effect of bringing the standard in the Bill of Rights relating to freedom from discrimination into the principle act. As a result of the amendment, striking a balance between freedom from race speech and the right to freedom of expression has become more difficult. The New Zealand Human Rights Commission has begun a project which will deal with some of the issues that have been raised in this context. On education and tolerance, over the past year, the Commission has been promoting a kit designed to combat racial harassment in the school community. In addition, in an attempt to help senior high school students to learn about other cultures by actively participating in them, a cross-cultural exchange programme called "Culture X" has been developed. The Commission has also developed a teaching resource on human rights for classroom use. The Commission advised that during the recent election in New Zealand, although no party had an overtly racist platform, one party did attempt to capitalize on what it described as the negative impact of Asian immigration during the 1980s and 1990s. The party had some success but not to the extent to suggest that there had been a rise of organized right-wing racism. There was also considerable public criticism of that party during the election campaign and in the post-electoral period. The changes to the human rights legislation also confer an additional function on the Commission which is now directed to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

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