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INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

1. THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION.

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted on 21st December 1965 by the United Nations General Assembly in its resolution 2106 A (XX) and entered into force on 4th January 1969. It is one of the main international human rights treaties. They began to be developed after the II World War and from them emerge the principles set out in the Universal Declaration of Human Rights.

In terms of structure, the Convention is divided into three different parts. The first comprises articles 1 to 7, which focus on the obligations of

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States Parties to the Convention and the human right to non-discrimination. The second part covers articles 8 to 16, and article 22 can also be included, as they all focus on the different compliance mechanisms that the Convention provides. The last part includes articles 17 to 25, which deal with general provisions on ratifications, entry into force of the Convention or amendments.

The Committee on the Elimination of Racial Discrimination (CERD) is the body responsible for monitoring the proper implementation of the Convention. This body is responsible for monitoring the progress of states in fulfilling their legal obligations under the Convention. It will be discussed in more detail in the second section.

The Convention itself defines racial discrimination in article 1.1 as “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”. This is a definition that adopts a broad approach

to racial discrimination, reaching different ways and motives.

If we talk about the impact that the Convention has had, if measured by its acceptance, we can say that the Convention has almost universal acceptance by the international community. As of March 2023, there are 182 States Parties, most of which have also accepted the individual complaints mechanism contained in the Convention. This demonstrates, *a priori*, the strong desire of the States Parties to be bound by its provisions. Finally, it should be noted that the adoption of affirmative action measures is permitted by the Convention where circumstances so warrant (article 2.2); and, similarly, that the Convention does not apply to distinctions, exclusions, restrictions or preferences made by a state between citizens and non-citizens (article 1.2).

2. THE COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION.

Returning to the topic briefly introduced about the CEDR, it is the body of independent experts charged with monitoring that States Parties to the Convention are duly complying with its implementation. It is a pioneering body, as it was the first body created by the United Nations to

monitor and review the measures taken by States Parties to comply with their obligations under a specific human rights agreement.

The Committee is an autonomous body composed of 18 experts of high moral standing and recognised impartiality who serve in their personal capacity, although they are selected by the States Parties. The procedure for its election is that each State must nominate one person from among its nationals and then proceed to the election of the members of the Committee by secret ballot from a list containing each of the persons who have been nominated by each State. Members of the Committee are elected for a period of four years, with elections being held every two years. This therefore means that only half of its members are renewed each time, that is nine members are elected each time. In order for the election of members to take place, a quorum of two-thirds of the members must be present at the meeting.

As stated in the Convention, the constitution of the Committee shall take into account equitable geographical distribution and representation of the different forms of civilisation, as well as of the principal legal systems.

3. COMPLIANCE MECHANISM OF THE CONVENTION.

Finally, we will refer to the compliance mechanisms provided for in the Convention.

- Firstly, there are regular reports (article 9) that States Parties must submit to the Committee on the different legislation, judicial and administrative or other measures they have adopted and which serve to give effect to the provisions of the Convention; these are to be submitted every two years and whenever the Committee requested.
- On the other hand, the Convention also provides for an individual complaints mechanism (article 14) which recognises the possibility for a person or group of persons who are victims of violations of any of the rights stipulated in the Convention to lodge a complaint. To do so, available local remedies must have been exhausted and, in addition, the State against which the complaint is lodged must not only be a party of the Convention, but also recognise the competence of the Committee to receive such complaints.

- Similarly, it also establishes a dispute settlement mechanism between the parties (article 11-13), whereby a state that is party to the Convention may lodge a complaint against another if it considers that it is not complying with the provisions of the Convention.
- Finally, the Convention recognises that disputes concerning the interpretation or application of the Convention that are not settled by negotiation or established procedures shall be submitted to the International Court of Justice for decision (article 22). This procedure may be initiated at the request of any of the parties to the dispute.



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