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Dimensions of Racism

Proceedings of a Workshop
to commemorate
the end of the United Nations Third Decade
to Combat Racism and Racial Discrimination

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Editorial Note

The United Nations Third Decade to Combat Racism and Racial Discrimination ended in 2003. One of the Decade's educational activities was a workshop that brought together education and training experts, academics, United Nations human rights experts and individuals from non-governmental organizations (NGOs) working on racism and related issues. The purpose of the workshop was to develop educational materials for use by teachers and students on eliminating racial prejudice and fostering tolerance.

The workshop, organized by the Office of the High Commissioner for Human Rights (OHCHR) in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), took place in Paris on 19-20 February 2003. The background papers presented at the workshop analysed racism and racial discrimination in specific contexts, including in education, the workplace, health, migration, contemporary forms of slavery, the media, the criminal justice system, and the experience of double discrimination based on gender and race.

Those papers form the basis of the chapters in this book. The aim of the publication is to provide a better understanding, on a cross-cultural basis, of racism, racial discrimination and xenophobia. It examines how these phenomena manifest themselves and are experienced by victims. It explains how racism is currently combated and how it can be prevented. The intention is to generate interest and encourage students in particular to develop ideas on how to fight racism, and to become involved in that fight.

Special acknowledgement is due to Mr. Kevin Boyle of the Human Rights Centre of the University of Essex in the United Kingdom, who had the task of editing this manual. Finally, thanks are due to the staff of the UNESCO Struggle against Discrimination and Racism Section and the staff of the OHCHR Anti-Discrimination Unit who were closely involved in the early stages of the project.

CONTENTS

Introduction

Kevin Boyle

"All human beings are born free and equal in dignity and rights…"

(Universal Declaration of Human Rights, 1948)

All of us have difficulty with the idea that although we are all different we all should be treated the same. It seems 'natural' to ascribe negative meanings to differences, to associate difference with the supposedly inferior or superior or the dangerous. It is not, however, natural. It is something we learn and is therefore something we can unlearn. This book is about the meanings that we give to differences between us, on account of race or ethnicity or nationality, and the negative effects those meanings have on the quality of life of millions of people in the world. It is also about the continuing struggle, of which we as moral beings should all be a part, to understand, and ultimately eliminate from our world, racism, racial discrimination and xenophobia.[1] This book is intended as a resource in that struggle. It is aimed at college and university-level students and their teachers.

The fight against racism begins with being informed. In the different chapters of the book experts explain how racism manifests itself, what its effects are and how it can be countered. The authors bring out how racism, racial discrimination and xenophobia have impacted on all our lives, but especially on those who are its victims. Racism is to be found in all parts of the world. It is present in the workplace, in education, in health care and in the courts. It is to be found in the media and the Internet. It is imbued in how majorities see and treat ethnic minorities, immigrants and asylum-seekers. It is often present in the stereotypes minority groups hold of majorities as well. It can represent additional discrimination and suffering for women or those living with HIV/AIDS. These are among the dimensions of racism examined in this book.

This introduction will provide some flavour of the analyses and ideas presented in the chapters that follow. It will also highlight what the authors believe needs to be done if we are to defeat discrimination and intolerance.

The Durban World Conference

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was an important event in the history of international efforts to address racism. It was convened in 2001 in Durban, South Africa, by the United Nations and is, therefore, known as the Durban Conference. South Africa was an appropriate setting for the Conference since a new non-racial democracy had replaced decades of institutionalized racism under apartheid. A world conference, as the name implies, is a gathering that can claim to reflect world opinion and bring together Governments, inter-

governmental and non-governmental organizations or civil society groups from every region. The goals of the Conference were to agree upon a global repudiation of the evils of contemporary forms of racism and also to define a comprehensive programme of action to eradicate it.

The Durban Conference achieved these difficult goals over nine days of intense nego-tiation. The *Declaration and Programme of Action* adopted at the Conference by con-sensus provides the basis for future international cooperation against all forms of racism and racial discrimination. These documents call for continued dialogue and research, as well as offering detailed proposals for national-level policy and action. The *Declaration and Programme of Action* feature strongly in this book. Excerpts are used to introduce each chapter. The Durban texts, which are easy to access, are therefore a useful, even an indispensable, companion to consult while using this book.[2]

Racism is a global reality. It may be comforting to think of it as confined to the West and as reflecting colonialism and the slave trade. It does include that sorry history as was recognized in important language in the Durban Conference documents. But forms of racism with equally sorry histories are to be found also in other regions of the world, in fact in all regions. Before the World Conference in Durban, four preparatory conferences were held in the different regions of the world to ensure maximum consultation and to bring out regional problems and approaches.[3] Without exception, these meetings con-firmed that racism, racial discrimination and xenophobia are global phenomena. Each regional context is different of course. The victims differ in language and culture. But the experience of exclusion, subordination, violence and discrimination is remarkably similar.

So we should start by understanding racism as a worldwide phenomenon that requires a worldwide response. All societies, and all of us in those societies, must address racism in the forms that it manifests itself in our lives and cultures. That spirit is reflected in the diversity of people who have contributed to this book. Glance at the authors' bio-graphies at the end of the volume. They are from different parts of the world and they write from within different intellectual disciplines. But, as they emphasize, they are dealing with a common concern – the denial of equality to fellow human beings because of their race or ethnicity or nationality.

The World Conference brought out the grip of history. Every one of us, whether we are conscious of it or not, are living out our lives in societies shaped by history. In all socie-ties structures of inequality, including economic inequalities, have been laid down in the past. In a number of cases these structures have been based on or influenced by racist assumptions that, transmitted over time have continuing effects today. The challenge for all of us is not to be passive in accepting the hand history has played, but to work for positive change that can leave behind what has been negative about the past. A univer-sal human rights era in which we now live gives us the necessary values and means to work to end such inequalities and the prejudices and attitudes that sustain them.

Rights, dignity and equality

One of the great successes of the past century has been the popularity of the idea of universal human rights. But the full meaning of human rights is often not fully understood, namely equal human rights: not just rights for me and people 'like me', but for each and every one of us, whether you are like me or not. The real message of the Universal Declaration of Human Rights is that everyone is entitled to the same human rights and to equal human dignity. No one can be denied their human rights because they are different from others, whether by sex, race or ethnicity, work or descent, caste, culture, religion, skin colour or other grounds. The struggle to ensure equality of treatment for everyone is thus at the centre of all efforts to promote the universal protection of human rights.

Racism and anti-racism is first a battle of ideas. This truth is conveyed well in *Doudou Diène*'s chapter. He notes that the new and shared context of globalization is not in itself transformative – the speed of communications and the interconnectedness of the world will not inevitably lead to the demise of racism. To the contrary, the impact of globalization can, he believes, give a boost to racism: "…the 'global village' spanning the world has produced more villages, and more insularity, than it has global consciousness." The impact of the horrific events of 11 September 2001 in the United States, in terms of increasing levels of hostility to immigrants and asylum-seekers in many countries, is also noted. The writer argues for a new intellectual strategy that gets at the deep cultural roots of racism and discrimination. The chapter sets out some key elements of that strategy as well as its goal. The goal is to achieve mutual accommodation and understanding and that can best be done through recognition of the mutual influences that exist and have existed between cultures, civilizations and spiritual traditions.

This contribution offers an exciting direction for further research as well as a framework of thought to help address the cultural antagonisms that are very evident in many societies. In concrete terms all societies that receive immigrants need to explore what the new and old populations have in common as an antidote to the assumption that they are wholly different. All societies are becoming increasingly multicultural or pluralist and there is an equal obligation on the newcomers and on those who have been there for generations to learn about each other. Such a learning process will reveal the potential for mutual appreciation of each other's cultures and customs as well as foster compromise and tolerance. Such a process hopefully will bring out that their respective cultures are less remote from each other than stereotypes project and will also provide the basis of trust for managing inevitable problems. That process, it may be noted, is best supported by a framework of laws that enshrine human rights and equality principles within which cultural affinities can be recognized and differences negotiated.

Learning about others and the overcoming of mutual ignorance are ideals of education. The role of education in ending racism is addressed by *Katarina Tomaševski*, who for six years was a United Nations expert or 'special rapporteur' on the right to education.

What is distinctive about her ideas is her conviction that only the integration of human rights learning and teaching into education can ensure that racial prejudice and intolerance are successfully combated in children when they are in school and out of school. She notes that the implementation of the right to education for all is a progressive achievement. She sketches the stages of that progress from the gradual inclusion of those previously excluded from education for racist motives (as in the school segregation of African children in colonial times, the Roma in Europe, the untouchables in India or black children in the United States of America), to the stage of integration. She argues, however, that there is a further stage to be achieved in which the cultural diversity of children is recognized. The previous requirement that children adapt to the education available should give way to one in which education is adapted to the best interests of each child.

The contributions from *Mr. Diène* and *Professor Tomaševski* are asking us to consider how best to combine pluralism with the necessary common values that enshrine equality and dignity. It is that combination which will provide our societies with the very best defence against the perpetuation of racial prejudice and discrimination.

The role of law

The function of law, both national and international, is to translate the principle of non-discrimination into binding norms or rules on how we should behave. Such rules are designed first to offer legally binding protections and also redress for those victims of discrimination. Second, these rules impose obligations on Governments and on all of us not to act in a discriminatory manner. Over the past half-century or so extensive efforts at international level have been made to find effective uses of law to end racism and racial discrimination. Countries have negotiated and ratified many international legal instruments. *Nozipho January-Bardill* surveys these instruments. She notes that the United Nations has expended more effort to tackle racial discrimination than on any other human rights issue. The centrepiece of the international community's drive against racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination. Its requirements have been accepted by over three quarters of the States in the world. The Convention's definition of racial discrimination provides a useful perspective on the subject.

> "In this Convention the term '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."

With that definition as a guide, States are required by the Convention to pass their own laws and to enforce them so as to prevent and to punish racial discrimination in all aspects of public life. Governments must ensure that those who experience racial discrimination have effective access to courts or other bodies to complain of such treat-

ment and have an adequate remedy. States must also condemn and seek to end the propagation of discredited theories or ideas claiming the superiority and inferiority of racial or ethnic groups as well as speech that promotes racial hatred. There are also duties on States to promote education for tolerance and mutual understanding. The Convention does one other vital thing. It incorporates a monitoring system whereby States are expected to give regular progress reports to an independent international committee (of which Ms. January-Bardill is a member). Her contribution provides a balanced assessment of what the Convention and its monitoring committee have achieved to date, along with an analysis of other international initiatives and mechanisms working for the elimination of racial discrimination.

A related topic is the challenge presented where racial prejudice infects the law itself and the administration of justice within society. *Leila Zerrougui* examines the problem of racial and ethnic discrimination in the criminal justice system. She finds that it is a dimension of racism that has been uncovered in many countries and that it exists in others where it has yet to be addressed. The evidence is to be found in the behaviour of the police, the courts and the prisons. Amnesty International, for example, has described as blatant ethnic discrimination in the entire criminal justice system of Burundi. Research from the United States of Amercia, shows that race and ethnicity matters when it comes to sentencing, including to the death penalty.

The author concludes a fairly depressing picture with the statement that "the elimination of manifestations of racism, xenophobia and related intolerance in the administration of justice is a long and costly process that requires political will and the mobilization of resources as well as education, research and advocacy. Above all, in order to carry conviction, we need research that fathoms the workings of those mechanisms that perpetuate discrimination."

Her plea for more research is echoed in other contributions. Not enough is yet known about the nature and extent of racism and racial discrimination or on how best to combat it.

Racism, poverty, employment and health

It is often said that legal prohibitions on racist behaviour cannot eliminate the attitudes that underlie such behaviour. As *Julio Faundez* points out in his chapter on racial discrimination in employment, however, law is a necessary starting point in tackling other factors that perpetuate such discrimination. Against a background of discussion of the essential human right to have access to work, the author provides a clear account of how discrimination in employment operates and gives examples of how it can be countered in the labour market. Racial discrimination can exclude people *from* work but it is also experienced *at* work in the form of racial harassment. Both need to be tackled and the policies needed require employer and trade union cooperation and commitment to international labour standards.

This chapter also addresses the particular challenges created for the elimination of discrimination where there is large-scale unemployment and poverty. In many developing countries victims of racial discrimination live in conditions of extreme poverty without hope of obtaining qualifications and, therefore, no opportunity of entering the formal labour market. *Professor Faundez* cites the case of indigenous peoples who are often remote from where work might be available and he also highlights the case of poor women without skills who are exploited in low-paid jobs, including as domestic servants, or who eke out a living in the informal sector. Anti-discrimination policies therefore need to take into account conditions of extreme poverty and unemployment and the author suggests how that might be done.

The links between extreme poverty and racial discrimination is a recurrent theme in several of the chapters of this book. So also are the links between racism, gender, poverty and health. *Dr. Torres Parodi* explores the question of health and racism with data largely drawn from her own region, the Americas. Her chapter reviews the research evidence that brings out the dismal correlation that exists between health status and ethnic or immigrant status in different countries. Minorities fare worst on such indicators as infant mortality or life expectancy and illness. The correlation between poverty and health status, as well as access to health care, is also clear, but the poor who are black, indigenous or socially marginalized suffer even more and being female adds a further layer of disadvantage.

HIV/AIDS

A similar human reality underlies one of the most devastating health emergencies of our time, the pandemic known as HIV/AIDS. HIV is the acronym of the human immunodeficiency virus, which can lead to the disease of AIDS, or acquired immuno-deficiency syndrome. As *Shalini Bharat* argues in her chapter, the early focus on gay men and other 'risk groups' obscured the extent to which factors of race, class and gender properly define HIV/AIDS as a social as well as a medical problem. Her examination of the powerful concept of stigma linked to racial stereotyping brings out that many people living with HIV/AIDS are also victims of racism. She demonstrates from empirical and other information how gender is an additional factor in the discrimination faced by women with HIV/AIDS. Awareness of the human dimension of the tragedy of AIDS has increased considerably with the vigorous promotion of a human rights perspective. That perspective also offers a good basis for community action to combat prejudice and discrimination towards HIV/AIDS sufferers. UNESCO and UNAIDS have produced an excellent educational pack for youth action on human rights and HIV/AIDS.[4] In it a young medical student, campaigner in Indonesia, states:

> "The basis of discrimination against people living with HIV/AIDS is fear and this fear comes mostly from wrong or distorted information … so, our first step had to be to correct misunderstandings about how HIV is transmitted…"

The HIV/AIDS Human Rights Guidelines, prepared by OHCHR and UNAIDS and the basis of the youth educational pack, are suggested for follow-up reading to *Ms. Bharat*'s chapter.

Migrants

A distinctive feature of the Durban Conference documents is their ʻvictim approachʼ, meaning that anti-racism policies need to understand more precisely who are the targets of racism and what are their specific needs for protection. A category of victim that features prominently in the recommendations from Durban is that of migrants. Two chapters in the present book address the discrimination faced by millions of people who live and work in countries other than that of their birthplace. We are told in the first sentence of chapter 8 that:

> "[O]ne in every 50 human beings is a migrant worker, a refugee or asylum-seeker, or an immigrant living in a ʻforeignʼ country. Current estimates by the United Nations and the International Organization for Migration (IOM) are that some 175 million people live temporarily or permanently outside their countries of origin (2.5 per cent of the worldʼs population)."

These are arresting figures, as is the evidence of the hardships, xenophobia, racial discrimination and violence experienced by these different categories of migrants. The challenge of immigration facing society – and in a globalizing world it is the experience of most countries – is how States can adapt to multicultural and multi-ethnic societies. Part of the answer lies in the proposals for intercultural exchange of *Doudou Diène* (chapter 1), but a further requirement is to ensure effective laws prohibiting discrimination and exploitation of migrant workers and their families. Many migrants are unskilled manual workers who fill the ʻthree-Dʼ jobs, as they are described in Asia – dirty, difficult and dangerous. The human rights perspective on migration is addressed in chapter 8 not only in respect of the migrant who has arrived in a foreign country, but also in respect of the experience of migration itself. A huge concern is the trafficking of human beings, especially women and children; another is the plight of illegal migrants who are vulnerable to exploitation by unscrupulous employers; and still another is refugees and asylum-seekers.

Research on the negative reactions of the settled population to newcomers often expressed in racism and hostility is examined by *August Gächter*, an expert in social research methods. He looks at evidence from public opinion research (Euro-barometer data) on attitudes of European Union citizens to ethnic minorities and immigrants. He also introduces other studies aimed at uncovering evidence of formal and informal discrimination. Formal discrimination is that sanctioned by law, particularly in respect of non-citizens, and informal discrimination is that which is unlawful but is nevertheless practised in different ways. Part of what he teaches us is how to interpret the results of anti-discrimination research and to be aware of the scientific limitations inevitably asso-

ciated with it. Thus, he points to the difficulties of comparing statistics from different countries where, despite efforts to develop common statistical protocols, many data of interest are wholly incomparable. He is also direct in declaring how much we still do not know about how discrimination operates in practice and, joining others, makes a plea for further research, including into the effectiveness of anti-racism training.

The media and racism

Migration is a huge and complex subject generating political controversy that is reflected every day in the European media. *Bent Sørensen* examines the negative and also the positive aspects of European media treatment of immigrants, asylum-seekers and minorities. He sets out the problem:

> "Media policy and coverage often contribute to a racist vision of social reality by suppressing positive information about groups targeted by racists. Generally, the media in the news about ethnic, cultural, religious minorities and migrants in Europe focus on negativity, problems and crime."

While documenting the negative media treatment, the author also identifies media initiatives to understand minorities, convey their points of view and enable their participation in the media. He finds that the responsibility of the media in reinforcing the racist opinions and hostile attitudes that can produce an atmosphere tolerant of violence towards vulnerable groups is not sufficiently acknowledged by media owners or journalists.

This chapter examines also the vexed issue of racism and anti-Semitism on the Internet. There have been efforts at legal control of the dissemination of hate on the Internet and racist content and pornography are unlawful Internet content in many countries. Such regulatory efforts have, however, had limited effect and there is the broader issue of principle, the legitimacy of censorship. Could anything more be done through regulation? Does the Internet require a regulatory regime separate from that for the written press or radio and television? Or is it a matter of accepting that the racist content, like other undesirable content such as pornography, should be seen in the perspective of the extraordinary and much greater volume of positive content that can be accessed with this wonderful new communications technology? What is the situation in your country? These are questions for discussion in the classroom.

Slavery past and present

The Durban Conference was historic in that States faced up to the past. They agreed that slavery and the slave trade are a crime against humanity and should always have been so. But as *Kevin Bales* and *Jessica Reitz* report in their chapter, slavery and slavery-like practices still exist. While slavery is illegal in practically all countries, some 27 million people in the world can be described as slaves to other human beings. The chapter addresses the question of how to define slavery given that it takes many forms.

The authors suggest that the core of any definition should be the control of the labour of another backed by the threat of violence. Further they say that the criteria for enslavement are no longer colour, tribe or religion. Modern slave owners are "colour-blind"; they seek out those who are weak, gullible or vulnerable without regard to race or ethnic origin. The most rapidly growing forms of slavery arise from human trafficking, including that of agricultural and domestic workers, and of women and children for sexual exploitation. A suggested exercise for students after reading the chapter is to discuss a possible definition of contemporary slavery; without a definition it is hardly possible to eliminate it. The elimination of slavery requires all of us to educate ourselves about the links that in a globalized economy connect us with slavery practices. The authors work for an NGO – Free the Slaves – campaigning to end what should be abhorrent to us all, the continued existence of slavery in the 21st century.

Women, racism and the concept of intersectionality

The Durban Conference emphasized that women victims of racism and racial discrimination often carry a double burden. They suffer multiple discriminations because of their gender and because of their race or ethnic status. *Sapana Pradhan-Malla* introduces the concept of intersectionality, that is, the intersection of race or ethnic status and gender. Such a concept facilitates a deeper understanding of female victims of racism. Research on such multiple discrimination burdens is a further development of a new process of gender awareness in the study of human rights violations. We know now that women and girls suffer violations of their human rights that are gender-specific and that can affect them disproportionately. Rape and sexual violence in the context of armed conflict for example, as well as the pervasiveness of domestic violence, are given greater attention today than they were in the past. As the author brings out, however, there is less focus on women as being the majority of the illiterate in the world, or on the fact that the girl child is less likely to be in school and stay there than the boy child. The gender analysis of racism while treated more expansively in this chapter is also addressed in other contributions to the book. To disaggregate the male and female victim does not take away from the struggle against racism. It rather deepens our consciousness of the evil and should reinforce our commitment to eliminate it for men, women and children alike.

Some common themes

What may be said, in conclusion, on the common themes of the chapters? Three points suggest themselves.

1. Common human rights ideals are the main antidote to the persistence of racism.

The acceptance of universal standards on human rights and fundamental freedoms is a clear register of human progress over the past half-century. That of course does not mean that such standards are everywhere achieved in practice or even believed in by all who

exercise governmental power. International law, however, provides protection against violation and insists that States must provide remedies when such violation occurs. Any form of racism or racial discrimination contradicts these human rights ideals and standards. On a personal level, each of us can demonstrate our commitment to human rights and its core message that we are all equal in rights and human dignity and all unique in our attributes and personality. We can do that through refusing and challenging racist remarks or actions in daily life. We can campaign with others for the implementation of equal treatment laws wherever we live and for the promotion of human rights education. Whether we are members of majorities or minorities, we can learn more about those who are different from us in ethnic origin, religion, language, culture or nationality.[5]

2. Research and racially disaggregated information is vital to anti-racism policies.

Considerable research effort is required in order to acquire the knowledge needed for effective anti-discrimination policies. The chapter on health and racism emphasizes that our understanding of the links – between race and health status, race and vulnerability to disease, race and gender, and race and poverty – is still rather limited. The same is true about the operation of racial discrimination in the criminal justice system, and for the study of migration and immigration and for other aspects of social life affected by racial discrimination. A vital requirement for effective research is disaggregated information. When Governments and other authorities collect population statistics – such as birth, death, marital status, education, health or other data – such information needs to be collected by reference to ethnicity, gender, citizenship status or to other classifications known to be related to the experience of discrimination. It was and is a widespread assumption in many countries that to consciously ask people to categorize themselves or to be counted by reference to ʻraceʼ or ethnic origin is to encourage racial thinking. If there is only one human race, why label people by categories such as ʻblackʼ, ʻwhiteʼ, ʻmestizosʼ, ʻAsianʼ, ʻArabʼ, ʻforeigner or alienʼ and so on? The question needs to be asked and to be answered. One answer might be that in the best of possible worlds it would be preferable to avoid such labels, but, as several experts explain (see chapters 5 and 9 for example), without such data it is not possible to know the full nature of the discrimination occurring in any society, nor to undertake research or devise and monitor effective responses to it. There must, however, be safeguards in the process of gathering and using such information. The Durban Programme of Action, which endorsed the need for disaggregated data collection, rightly calls for information to be "collected with the explicit consent of the victims, based on their self-identification" and consistent with human rights standards protecting privacy.[6] But to work without disaggregated data is to work in the dark.

3. Overcoming the effects of discrimination requires affirmative measures.

Another theme to be found in several chapters is that of the impact of historical patterns and traditions of racial or ethnic discrimination on the victims of today. Equality of opportunity cannot be provided solely by general guarantees of equality of opportunity

and political and social participation or by universal policies of access to vital services such as education, health care, housing and employment. These are the essential foundation of equality. Minorities that have experienced often generations of prejudice and exclusion require in addition targeted policies that help them to catch up.[7] International human rights standards encourage what are termed affirmative action policies or special measures, where these are designed strictly to correct inequalities of the past and are for a limited period. Any such measures should be sensitive to the concerns of majorities, including those who are themselves poor and disadvantaged and who may interpret such policies as representing unfairness to them. It is possible, however, to devise social measures and action plans to address victims of historical exclusion from which all gain in the longer term not least in terms of more successful multicultural and multiracial democratic societies. However, it should be recognized that affirmative action can create tensions between groups and individuals within groups as in the short term there will be winners and losers with such policies.

The hope is that the topics covered in this book will encourage students in particular to probe further the many issues raised; a good example might be the subject of affirmative action. Suggestions for discussion and further reading are added to each chapter. Racism is a global problem but it is therefore also a local problem. In what ways are the dimensions of racism and racial discrimination explored in this book reflected in your country? What is being done by your Government and by non-governmental organizations to implement the Durban *Programme of Action*? How can you find out? What can you do to combat racism?

References

1. *Racism* is an ideological construct that assigns a certain race and/or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the 'superior' race exercises domination and control over others. *Racial discrimination* is 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 a equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
    Xenophobia describes attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.
    These definitions are taken from chapter 8, where they are further discussed. For legal and social science definitions, see chapters 2 and 6. There is an excellent A-Z book on racism prepared by Amnesty International United Kingdom Section; Josef Szwarc, Faces of Racism, Code PB250, Amnesty International UK, August 2001.

2. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration and Programme of Action*. The texts are published in book form in the United Nations six official languages by the United Nations Department of Public Information, New York (ref. DP 1/2261). They can also be found on the website of the Office of the High Commissioner for Human Rights; www.ohchr.org. See also the Official Report of the World Conference, A/CONF.189/12.

3   Council of Europe European Conference against Racism, Strasbourg, France, 11-13 October 2000 (A/CONF.189/PC.2/6) ; Regional Conference of the Americas, Santiago, Chile, 5-7 December 2000 (A/CONF.189/PC.2/7) ; African regional meeting, Dakar, 22-24 January 2001 (A/CONF.189/PC.2/8) ; Asian regional meeting, Tehran, 19-21 February 2001(A/CONF.189/PC.2/9).

4   UNESCO/UNAIDS, *HIV/AIDS and Human Rights – Young People in Action*, 2001.

5   An excellent resource on surmounting prejudice and developing tolerance is to be found at the Southern Poverty Law Center's site, www.tolerance.org.

6   Programme of Action, paras. 92-98.

7   It is not always a minority experience. See discussion of South Africa in chapter 4.

1. Eliminating racism in a changing world : arguments for a new strategy

Doudou Diène

We further affirm that all peoples and individuals constitute one human family,
rich in diversity. They have contributed to the progress of civilizations and cultures
that form the common heritage of humanity. Preservation and promotion of tolerance,
pluralism and respect for diversity can produce more inclusive societies.

(Durban Declaration, para. 6)

Introduction

The cultural implications of globalization are such that now may be the time to look again at the question of racism, racial discrimination and xenophobia. The debate on ethnicity and culture that globalization raises is fuelled by the pressures – real or apparent – for cultural standardization stemming from global market attitudes that are indifferent to cultural identity and national specificity, from the predominance of materialistic values such as consumption and competition, and from the erosion of spiritual and religious values and behaviour.

These disturbing developments in turn arouse sensitivity about identity and a heightened awareness of it in individuals, nations and communities alike. Paradoxically, the 'global village' spanning the world has produced more villages, and more insularity, than it has global consciousness. From ground such as this, racism, discrimination and xenophobia draw sustenance, grow and are propagated, to the extent that they become commonplace. Oversensitivity about identity, itself a defensive reaction in the face of standardization, is aggravating insular attitudes based on the notion of nation, community, group, race, religion, way of life and lifestyle, or 'the values we all share'. In the ideological context of anti-terrorism that ensued from the 11 September 2001 attacks, the religious sphere is turning into one where, increasingly, discrimination and racism are being vented. Religion and ethnic origin are being lumped together. They are the target of deliberate acts of discrimination.[1]

The most radical, violent and intractable of the major new present-day conflicts are basically cultural antagonisms, having as their common feature the emergence of the figure of the 'other' as the threat, the enemy, the being perceived as different or alien. The culture of discrimination against the stranger, the 'other', particularly in the guise in which the latter appears at present – non-national, refugee or migrant – is fuelled by a disturbing trend : the rise of a new variant of ethnocentricity seeking to justify itself by interpreting difference as antagonism. The awareness of difference is reinforced both through traditional modes of expression : outward appearance – physical characteristics

or simply clothing – and levels of development and ways of life. Refusal of recognition and negative images of the 'other' evolve in the cultural domain, where they find both self-justification and their most radical forms of expression. Cultural disrespect, as a consequence of ethnocentricity or an ideological structure justifying domination, offers a rock-solid foundation, explicit or implicit, for the dominant discriminatory mentality and new forms of racism. The 'strange' foreigner, who may yesterday have been a neighbour, is now set to become the chief and central object of both new and older forms of discrimination, the focus of political debate and a subject of media distortion.

The ideology and discourse of discrimination and racism have now laid siege to the new communications technologies, such as the Internet, and are exploiting them for their own ends.[2] Conflict between respect for certain principles, such as freedom of thought and expression, and anti-racist and anti-discriminatory laws and principles has unveiled new challenges and the need for new answers and strategies. In this context, reality, make-believe, fantasy and strategies for power, control and domination become intertwined, distorting any objective understanding of the problem and the attempt to provide any thoroughgoing and lasting response.

Given this background, the battle against racism, discrimination and xenophobia requires us to devise new strategies. Our actions must be informed by discussion of the origins, workings, processes, shapes and forms of expression (blatant and subtle) of discrimination and racism. In other words, we need an intellectual strategy to get at the cultural roots of the racism and discrimination that, deep down, determine attitudes and behaviour. Our understanding of those cultural roots must inform and provide the basis for the laws and legal machinery directed at eliminating racism.

1. Diversity and identity

At the heart of discriminatory culture and behaviour lie two somewhat difficult concepts – diversity and identity – that give shape and sustenance to both new and older forms of racism.

Diversity

The concept of diversity is increasingly seen as providing the answer both to the risk of globalization-induced cultural standardization and to extreme forms of human reaction, such as exclusive allegiance to cultural, religious, ethnic and community-based identities. The concept of diversity, however, carries with it ideological and historical connotations. Conceptually, diversity is an undeniable fact of a social, cultural, ethnic or religious reality or situation. It is, therefore, highly specific to its own political, philosophical and ideological context. Diversity is not of itself a value in the ethical sense of the term. The notion carries strong connotations of the philosophical and scientific thinking of the 18th and 19th centuries.

Scientific and philosophical inquiry into species and racial diversity at that time produced theories of a hierarchical ordering of the different species and races.[3] Those theories served as the ideological and philosophical underpinning, not only for the development of theories of racial, ethnic, social and religious discrimination, but also as an intellectual framework to justify operations that were forms of exploitation or domination, such as the slave trade and colonization. In that context, diversity was taken, in theory and in practice, to mean 'fundamental difference' and was used as a framework of interpretation to justify a hierarchy of races, cultures and civilizations. It is precisely this exploitation of diversity that lies at the heart of ethnocentricity. Ethnocentricity has always and everywhere been the product, historically, ideologically and culturally, of an interpretation of diversity as radical difference, discrimination and inequality of the 'other'. The recent conflicts in the African Great Lakes region and in the Balkans confirm that not only is the ideology of discrimination with us today, but it can take its ultimate and most extreme form, namely, genocide, the physical elimination of the 'other'.

Historically speaking, ethnocentricity has fallen heir to this ideology through the intermediary of colonial anthropology. The colonized were thought of, presented and treated, solely and specifically in any relationship as an ethnic group, lacking or incapable of any coherent or organized vision of national, ethnic or cultural identity. Theoretical constructions of the 'ethnic group' in the colonial period, with their emphasis on cultural (language, religion) or on physiological aspects, smacked of scientific opportunism – the sole aim, behind the scientific window dressing, being to reinforce and justify discrimination, domination and exploitation. And in the post-colonial era the concepts of diversity and ethnocentricity have been subject to fresh political distortion.

Ethnocentricity and diversity, therefore, are not conflicting or paradoxical, but rather complementary, to be exploited and understood in different ways. Interpreting diversity as difference is not merely a historical phenomenon. In the present context, where globalization is perceived as a force for standardization, it is a factor that could reinforce the defensive reaction invoking identity that lies at the heart of present forms of ethnic conflict and anti-immigration sentiment. The promotion of diversity on its own can, therefore, be exploited to exacerbate discrimination, oversensitivity or insularity where identity (ethnic, cultural or spiritual) is concerned. Central to most discriminatory practices and theories, is the idea of diversity understood solely as difference and also another equivocal concept: identity. This concept, too, must be held up to critical scrutiny.

Identity revisited

The entire history of the relations between peoples reveals the determining influence of misunderstandings about identity. The Janus-like quality of the concept of identity means that it is at one and the same time affirmation of self and denial of the 'other'. In the light of long historical memory and the major dialectical constant – Movement-Encounter-Interaction – which has shaped all civilizations and cultures, it is crucial to

foster a new sense of identity (ethnic, cultural or spiritual), so that it is no longer insular in outlook and imbued with a ghetto mentality, but understood, embraced and lived out as a process, an encounter, a dynamic synthesis. Thus, in a context where identity is essentially inward-looking, where, as most present-day conflicts serve to demonstrate, yesterday's neighbour is today's enemy, there is a need to present or 'put over' identity as many-stranded, interwoven, constantly in the making, essentially multilayered. Identity consequently expresses the mysterious alchemy whereby a people receives, transforms and assimilates influences from elsewhere in a dialectic of give and take. This means promoting the idea that identity can provide the foundation for a moral code and a rediscovery of the local community. But this should be done in such a way that diversity on its own, and the ghetto mentality, are not experienced as isolation, exclusion or insurmountable difference, and do not provide an ideological basis for discriminatory culture and practices. It is imperative, within every society and at the international level, to win acceptance for the fruitful dialectic of unity and diversity.

'Bioculture'

An ongoing strategy for eradicating the culture and ideology of discrimination might look to the basic lesson of biodiversity, namely, that the existence of different species and the interaction between them is the source and condition of life and that the disappearance of any species is fatal to the entire ecosystem. Transposing that lesson on to the plane of 'living together' gives rise to a new vision of human relations based on the dialectic of unity and diversity and the understanding and promotion of the value of cross-pollination of cultures, peoples, ethnic groups and religions, as an essential condition of the vitality of any society, not to mention its survival. The dialogue of cultures and civilizations would thus be recognized as the expression of a form of 'bioculture'.

Diversity as pluralism

Consequently, the eradication of discrimination requires that diversity be transformed from a historically and ideologically laden concept into a value – pluralism – linking diversity and unity dialectically. Ethnic, cultural, social and spiritual pluralism is an essential value in the fight against all forms of discrimination, particularly in the context of globalization. It is possible to define pluralism as recognition, protection, promotion of and respect for diversity. Pluralism expresses in its profoundest sense both the recognition and protection afforded to ethnic, cultural or spiritual specificities, and the acceptance of those values which, in a given society, reach out beyond and transcend those specificities. In this sense, then, pluralism is the operative value in the unity/diversity dialectic that offers the firmest base for stability and harmony in multicultural societies. The promotion of pluralism could thus constitute the core value around which to build any strategy for eliminating discrimination at the deepest level and on an enduring basis. A global strategy in this spirit entails promoting pluralism as a value by means of

practical, democratically developed measures in the fields of law, education, information and communication, and their application to areas of society where discrimination finds expression, such as employment, housing, health care, education and so forth.

In the final analysis, the aim is to ensure that intercultural dialogue makes it possible for people to know one another while achieving recognition in their own right. In other words, the cultural equation that every society and the international community need to solve is how to link protection and respect for specificity (ethnic, spiritual, community or other) with recognition of the shared values that encompass and transcend those specificities.

2. An intellectual strategy against racism and the culture of discrimination

History

History is the theatre of operations in which cultures, civilizations and peoples have forged their identities and the way they relate to one another. It is to history therefore, to the place where all misunderstandings, conflicts, friendships and enmities alike have their origins, that particular attention should now be directed. Through memory, and more precisely by taking the long view of history, we are able to discover the processes, mechanisms and forms of expression of racism and discrimination and trace them back to their remotest origins. What is needed then, in the here and now, is for all peoples, each one separately and all as a body, to conduct an urgent review of the account given by history, its content and the lessons to be learned from it, particularly in regard to how their own identities were formed and how they formed their image of the 'other'.

Education

Education and the education system are, in the long term, the royal road to generate a change in attitudes. They are where knowledge, learning and values are acquired, where perception and images are conveyed and take root, and, accordingly, where the principles of pluralism and dialogue must first and foremost be firmly instilled. Intercultural education is in this sense a catharsis, forcing individual peoples and cultures to view themselves critically, question certainties, tear down barriers and break out of their insularity.[4] By the same token, communication, the vehicle for constructing and projecting one's own self-image and one's image of the 'other', must equally be intercultural, so as to be able to give concrete utterance to the need for dialogue and interchange encapsulated in Sean Mac Bride's admirable expression "Many Voices – One World".

Economic exchange

Trade is also an ideal vehicle for pluralism and dialogue, and hence to eradicating the culture of discrimination. From time immemorial on all continents, trade has been a vehicle for cultural, artistic and spiritual encounters, dissemination and interaction. It is a matter, therefore, of looking beyond the attractive, if spurious, theories of antagonism between culture and trade, and making the value of dialogue central to the process of exchange that lies at the heart of trade.

In this context, it is important to note the insidious emergence of a new discourse of discrimination, with theories, explicit or implicit, that seek to explain underdevelopment by the presence and influence within the societies concerned of archaic and outmoded values opposed to 'modernity'. According to these theories, underdevelopment is the expression of a form of cultural inferiority.

Growth and development should not be the response to some form or other of market model or market thinking, but should reflect the 'polyphony' of attitudes to life and ways of living. The issues at stake in the dialogue between cultures and civilizations should be a key factor of negotiation on trade and the world economy. A culture-based code of ethics could thus be a means of attenuating the negative aspects of market forces.

3. Mutual understanding through interaction

Mutual understanding has often been thought of as the sole and best response to ignorance of the 'other' and cultural antagonisms. Such understanding is, however, generally confined to the aesthetic dimension of culture, to mere enjoyment of the "other's" forms of expression, whether artistic, musical, culinary or architectural. Such superficial knowledge does not always imply close understanding of or respect for the more profound human and spiritual values or depth of personality of the stranger. Thus, for example, tomorrow, in his own country, a tourist may reject and discriminate against the stranger whose mask, monument, outfit or cuisine he admired yesterday while on holiday. The history of recent cultural conflicts shows that for ideological, political or religious reasons, the erstwhile neighbour – individual, community or culture – can suddenly turn into a present-day enemy who must be ostracized or discriminated against.

Careful examination reveals that an extreme form of ghetto mentality of an ethnic, religious or cultural nature is often to be found at the heart of many conflicts. Hence, with a view to rooting out intellectual racism and discrimination, it is necessary to supplement and enrich mutual understanding by bringing to the fore and taking cognizance of forms of interaction or mutual influence between cultures, civilizations and spiritual traditions. This interactive dimension has been insufficiently studied, understood or explored. Yet here precisely lies the driving force underlying all human relationships, with power to break down the ghetto mentality at the heart of the culture and practice of discrimination and racism.

Further reading

Fredman, S. (ed), *Discrimination and Human Rights – The Case of Racism*, Oxford University Press, 2001.

International Council on Human Rights Policy, *The Persistence and Mutation of Racism*, Geneva, 1999.

Issues for discussion

Identify and discuss the key concepts used by the author to build his strategy aimed at eliminating racism. Is his strategy convincing to you ? What is the author asking us to do about history ? Rewrite it ? Understand it differently ? How might that be done ? Can you find examples of how trade contacts have shaped aspects of your local society and culture ?

References

[1] *Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001*, Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2003/23, 3 January 2003). See also chapter 11, where research into hostile media coverage of Islam and Muslims after 11 September 2001 is discussed.

[2] Chapter 11 discusses the use of the Internet by racist groups.

[3] Banton, M., *Racial Theories*, Cambridge University Press, 1987.

[4] Education, and specifically human rights education as the antidote to racism, is considered in chapter 3.

2. The international legal response to racism

Nozipho January-Bardill

[The World Conference] urges States that have not yet done so to consider ratifying or acceding to the international human rights instruments which combat racism, racial discrimination, xenophobia and related intolerance, in particular to accede to the International Convention on the Elimination of All Forms of Racial Discrimination as a matter of urgency, with a view to universal ratification by the year 2005, and to consider making the declaration envisaged under article 14, to comply with their reporting obligations, and to publish and act upon the concluding observations of the Committee on the Elimination of Racial Discrimination. It also urges States to withdraw reservations contrary to the object and purpose of that Convention and to consider withdrawing other reservations.

(Durban Programme of Action, para. 75)

Introduction

Ideologies of superiority and inferiority with their attachment of negative meaning to difference have left their legacies. The structures and systems designed to dominate and subjugate fellow human beings in the ages of slavery, colonialism, imperialism and apartheid have continuing effects. The present use of political, social, economic, military and cultural mechanisms to perpetuate unequal power relations, remain serious contemporary challenges for the many who desire real social justice, human rights and freedom for all.[1]

The colour line and other forms of division based on origin still divide the world. For much of the past century, the absurdities of race, ethnicity, class and caste operated across ideological lines of right and left. Roma-Sinti and African peoples, for example, bore the brunt of East European and Asian racism under communist regimes. Indigenous peoples, minorities of different ethnic origins, migrants and asylum-seekers have endured and suffered the insidious racism and xenophobia of West European and North American liberal and social democratic societies.

The 'racial democracies' of some South American countries have been a topic of much discussion.[2] The strategy of giving 'race' many faces through the process of 'miscegenation' (racial mixing) has often obscured the uniform presence of racism in this region.[3] Caste distinctions have caused much social conflict in South and East Asian democracies.[4] Similarly, ethnic differences on the African continent have been the cause of unending conflict often fuelled by the legacies of colonialism, political mismanagement, economic decline and dire poverty.[5]

There is no region, no continent and no ideology that has automatically insulated itself from racism. Despite its insidious presence in all societies, however, the practice of ignoring and diminishing race remains an irritant to the many people affected by it. Race blindness denies contemporary forms of racism and racial discrimination. It is an invitation to turn a blind eye to history rather than face up to its legacies. It has led to a toleration of the horror of genocide and to collusion with the most contemporary forms of racial oppression.

The gender-related aspects of racism and racial discrimination and the racial aspects of gender discrimination remain marginalized. Despite the important gains women's human rights have made in recent years these dimensions are not fully comprehended within human rights discourse.[6]

Against this sobering reality, this chapter will offer an account of how over the years the international community, through the United Nations, has worked to agree and to implement legal measures to eliminate racial discrimination. The centrepiece of the United Nations legal approach is the International Convention on the Elimination of Racial Discrimination (ICERD), 1966. This account will therefore lay emphasis on this anti-racism treaty, which has been ratified by the great majority of the world's States, as well as the work of the committee that oversees its implementation, the Committee on the Elimination of Racial Discrimination (CERD). It will also introduce other approaches, including the work of the Special Rapporteur or independent expert appointed by the United Nations to supplement the work of CERD.

One technique used by the United Nations to mobilize Governments, but also every one of us, to do more to tackle racism has been the dedication of decades to the global struggle against racism. The Third Decade against Racism concluded in 2003. A further initiative linked to these decades, has been the holding of world conferences against racism. The third such conference, and undoubtedly the most important, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa, in 2001.[7] The impact of the Durban Conference and the continuing efforts to implement its extensive Programme of Action is reflected throughout this book.

1. Equality and non-discrimination in international law

Throughout it history the United Nations, as part of its universal human rights mission, has always pursued the struggle for the elimination of all forms of racism and racial discrimination from our world. Indeed, the struggle for equality of treatment of human beings, of which anti-racism is a large part, has been the human rights cause into which more international effort has been concentrated than any other.[8]

The Charter of the United Nations

The Charter of the United Nations was adopted in San Francisco, United States, on 26 June 1945, a new beginning after two devastating world wars. The Charter asserted the binding principle of equality and non-discrimination as its core commitment in the field of human rights. It prohibited the use of race, sex, language or religion as excuses for differential treatment in the recognition of human rights.[9] Human rights were to be enjoyed by all without distinction.

The Charter does not only address political and civil rights but also calls for international economic and social cooperation. Article 55 declares that:

> "…with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote (a) higher standards of living, full employment, and conditions of economic and social progress and development."

In other words, all human beings are entitled to enjoy all their rights and to enjoy them without any discrimination. This commitment of the international community was reflected even earlier by the International Labour Organization (ILO) in the Declaration of Philadelphia (1944). This affirmed that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation transformed this principle into an international treaty.[10]

The Universal Declaration of Human Rights

The grounds of discrimination mentioned in the Charter of the United Nations – race, sex, language and religion – were considerably enlarged by the 1948 Universal Declaration of Human Rights (UDHR), the most important document of humankind's aspirations for rights, freedoms and justice ever proclaimed. The Universal Declaration added colour, political or other opinions, national or social origin, property, birth or other status to the list of unacceptable distinctions in the enjoyment of rights. The Universal Declaration further emphasizes the equality of all persons before the law and their entitlement to full protection of the law without discrimination. It recognizes the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.[11]

Together, therefore, the Charter and the Universal Declaration of Human Rights recognize that equality and non-discrimination form the bedrock of the values of the United Nations and hence of the international community. The Charter's founders and the General Assembly implicitly endorsed the role of the United Nations as the body that would act as a venue for fighting causes; that would act as a moral platform for the pro-

tection of human rights; that would encourage, through international cooperation, policies that would bring about the goals of equality, justice and non-discrimination for everyone.

2. International action against racial discrimination

The consolidation of apartheid in South Africa in the 1950s, and the anti-colonial struggles for political independence for Non-Self-Governing and Trust Territories, stirred the United Nations to move against manifestations of racial intolerance reminiscent of the atrocities of the Nazi era prior to and during the Second World War. Those atrocities, in particular the Holocaust, had led the international community to adopt the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention defines as a crime any act aimed at destroying a national, ethnic racial or religious group.[12]

As more countries of the South joined the United Nations during the 1950s and 1960s, the support for more specific anti-discrimination international law increased. Several such United Nations conventions enshrined the prohibition of racial discrimination in their articles. These included the Convention relating to the Status of Refugees (1951); the Convention relating to the Status of Stateless Persons (1954); the Convention against Discrimination in Education (1960) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).[13]

The Declaration on the Elimination of All Forms of Racial Discrimination

In 1963, reacting to renewed acts of anti-Semitism in Europe and to the Sharpeville massacre in South Africa, the General Assembly adopted a declaration that was to be the beginning of a concerted campaign to tackle racism in all its manifestations.[14] The Declaration's first target was racism as ideology. It asserts that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous. Thus, there is no justification for racism in theory or practice. It also set out the moral path for the future by affirming that:

> "Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, [and] as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights…"[15]

The Declaration committed the world to the elimination of racial discrimination. In particular, it called on all States to revise governmental and other public policies and to rescind laws and regulations that have the effect of creating and perpetuating racial discrimination. It urged all United Nations institutions, States and non-governmental bodies to do everything in their power to work towards the abolition of all forms of racial discrimination.

3. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Building on the 1963 Declaration it proved relatively easy for countries to reach consensus on the adoption of a convention. ICERD was adopted on 21 December 1965 and came into force in January 1969. For the first time the world had a binding international legal instrument directed at the elimination of racial discrimination and racism. Some 162 States have now agreed to be bound under international law by ICERD.[16]

Main elements of ICERD

Article 1 of the Convention defines "racial discrimination" as:

> "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 wide definition that has proved durable. While intended to apply to the treatment of the black population under apartheid in South Africa, it was not confined to such notorious institutionalized discrimination. It also covered and covers all acts of racially motivated discrimination in any country, whether based on race, colour, descent or national or ethnic origin, whether intentional or that might unintentionally lead to discrimination and have the "purpose or effect" of nullifying or impairing a person's dignity.

The Convention allows for distinctions to be drawn between nationals of a State and non-nationals (article 1(2)) reflecting the sovereign rights of States to determine their own laws of citizenship. The justification for any distinction between citizen and non-citizen must not, however, be racially based or discriminate in respect of particular nationalities.[17] The Convention allows for the taking of special measures, such as policies of affirmative action, to allow correction of the effects of past experience of racial discrimination. This is sometimes called 'reverse discrimination', and while it has proved a controversial idea in some countries,[18] it has been embraced as necessary in others. For example, in 2003, Brazil adopted a national affirmative action plan.[19] The Convention permits such measures for the sole purpose of securing advancement of certain racial or ethnic groups or individuals requesting such protection as may be necessary in order to ensure their equal enjoyment or exercise of human rights and fundamental freedoms. Policies and programmes intended to reverse the effects of past discrimination are not to be deemed discriminatory if they do not lead to the maintenance of separate rights for different racial groups and cease after the objectives for which they were taken have been achieved (article 1(4)).[20]

Legal duties of States

States that agree to be bound by the Convention not only have a duty to refrain from acts of discrimination, but they are also required to take positive steps to eliminate racism from all aspects of public and private life.[21] Article 2 of the Convention requires States parties to ensure that public authorities and institutions, both national and local, do not engage in any practice of racial discrimination. States should also review governmental, national and local policies and "amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination". In addition, States are required to "prohibit and bring to an end, by all appropriate means, … racial discrimination by any persons, group or organization;" this applies to the public sector, and also to the actions of individuals, groups and organizations.

Article 3 of ICERD prohibits all forms of racial segregation in all countries and makes specific reference to apartheid. It prohibits any formal segregation and cautions against any 'unintended' or indirect policies that have the effect of segregating peoples of different races, ethnicities, cultures and countries.

Article 4 prohibits racist propaganda and encourages States parties to adopt legislation which penalizes acts that disseminate ideas based on racial superiority and racial hatred; incite racial discrimination; inflict acts of violence on any race or groups of persons of another colour or ethnic origin; or provide financial or other assistance to groups that incite racial hatred. It encourages States to declare any organization that promotes racial discrimination illegal and to criminalize their activities.[22]

Article 5 of ICERD focuses on the principle of non-discrimination in the exercise of political, civil, economic, social and cultural rights. It identifies, in particular, rights that victims of racial discrimination are often denied or need for their protection. These include rights to equal treatment before tribunals and all other bodies concerned with the administration of justice, and the right to be free from violence. States are also required to ensure everyone has the right of access to any place or service intended for use by the general public, including those privately owned, such as hotels, restaurants, theatres and parks.

Article 6 concerns the individual's right to a remedy where he or she has been a victim of racial discrimination. States must provide effective protection and remedies against acts of racial discrimination through effective and competent "national tribunals and other State institutions". Victims are entitled to just and adequate reparation or satisfaction for material and moral damages suffered as a result of any experience of discrimination.

The final duty of States, a duty that has been much neglected in practice, is to deal with the prejudices that generate intolerance, racism and xenophobia.[23] Here the ICERD envisages States adopting policies "in the fields of teaching, education, culture and information" that can prevent the transmission of such prejudices.[24]

Implementation

The second part of the Convention sets out a comprehensive scheme for its implementation. This includes external review of the fulfilment of States' obligations and of procedures that allows for complaints over acts of racial discrimination. The inclusion of such an implementation system was regarded as essential if the Convention was to prove effective. It was also an important precedent in building international human rights legal protection. ICERD was a prototype for later international human rights instruments. The main features of the implementation system of the Convention will now be briefly set out.

4. The Committee on the Elimination of Racial Discrimination (CERD)

At the heart of the implementation system is the Committee on the Elimination of Racial Discrimination (CERD) established under the Convention. This body is responsible for overseeing the implementation of the Convention. The primary duty of Governments is to ensure that the Convention is applied within their countries but, in addition, they also undertake to submit periodic reports to CERD outlining their actions to tackle racial discrimination. This reporting process and the insights and recommendations flowing from discussion between Governments and the Committee have proved to be the most important contribution of the Committee to the struggle against racism.

Composition of CERD

CERD consists of 18 members elected by the States parties to the Convention. It began to function in 1970. Members are expected to be experts in the field of racial discrimination, to be of "high moral standing" and "acknowledged impartiality" and to serve in their personal capacity. The Committee meets twice annually, during March and August, in Geneva for a period of three to four weeks. It is serviced by a secretariat provided by the Office of the High Commissioner for Human Rights.

The Convention regulates election procedures. Members are elected for a period of four years during meetings of States parties at the United Nations in New York. Elections are held for half of the members at two-year intervals to ensure a degree of continuity in the activities of the Committee. To ensure fair representation of States, the election process attempts to achieve representation based on geographical spread and diversity of culture or civilization. The current composition of 17 men and one woman, however, leaves much to be desired in respect of gender equality. One can only assume from this dismal statistic that few Governments willingly nominate women to sit on the Committee.

The reporting process

It is the monitoring of national action to eliminate racial discrimination, and the experience and expertise that it has accumulated of racial issues around the world that have given the Committee its authority and credibility. Within a year of ratifying the

Convention, a State party is required to submit an initial report, providing information on existing legal, administrative and other instruments that give effect to the provisions of ICERD. Comprehensive reports every four years thereafter are expected to include:

• Information on developments after submission of the initial report;

• Specific information requested in advance by CERD;

• Answers that may not have been adequately dealt with in previous reports or submissions.

In the intervening two-year period the Committee expects brief reports to update information in the comprehensive report. The Committee may request special reports, for example in situations where the early warning measures and urgent procedures have been applied (see below).

The Committee designates 'country rapporteurs' to lead its members in the examination of country reports. A country rapporteur is also responsible for preparing draft 'concluding observations' on each report.

After extensive consideration of a report with the delegation from the reporting State, the rapporteur, with the assistance of the secretariat, prepares draft concluding observations which typically consist of a commendation on any positive developments in the country as well as identifying issues of concern and setting out recommendations for further action by the country. The text of the concluding observations is discussed in open plenary sessions often in the presence of the delegation from the State and NGOs (although their presence is contentious) before being adopted by consensus. States parties may respond to the report if they so wish and any responses may be included in the final report that the Committee submits to the United Nations General Assembly.

Participation in the reporting process by NGOs and others

Human rights NGOs play an indispensable role in the movement for human rights and social justice all over the world, not least in the struggle against racial discrimination. Although CERD as an independent entity has no formal relationship with NGOs, it has valued the contribution they make to its work. It is taken for granted that the official report submitted by the States parties to the Committee is the main and principal source of information available to the Committee about the situation in a particular country. While using other sources remains contentious, the use of supplementary documents compiled by other United Nations experts and agencies, and national human rights institutions, as well as NGO material, is increasingly accepted and valued. The Anti-Racism Information Service (see box) offers invaluable information and the opportunity for the Committee to link with important NGOs. CERD has acknowledged the work of NGOs and other actors, such as United Nations agencies and national human rights institutions, and has encouraged their continued participation in United Nations activities to combat racism and racial discrimination.

Anti-Racism Information Service (ARIS)

The Anti-Racism Information Service (ARIS) is located in Geneva and was set up to make the Convention better known and to publicize the work of the Committee on the Elimination of Racial Discrimination (CERD). It is staffed by volunteers from national and regional NGOs and human rights groups that are not represented at the United Nations. These groups are often unaware of the fact that their own country has been or will be discussed by the CERD expert panel and that they have the right of access to the work of CERD.

ARIS serves human rights groups and individuals by :

1. Making official United Nations documents available to them ;
2. Circulating information on which country reports are to be discussed at a forthcoming session of CERD and on the possibilities of submitting information to the expert members of the Committee ;
3. Assisting with lobbying efforts to Governments in the countries that have ratified the Convention and are overdue in presenting reports to CERD ;
4. Reporting on the discussion of their Governments' reports and supplying on request the official report adopted by the United Nations General Assembly ;
5. Encouraging human rights groups in the countries that have not done so to exert pressure on their Governments to accept article 14 of the Convention ;
6. Making information available on the procedures to be followed in filing individual complaints with the Office of the High Commissioner for Human Rights (for human rights groups in those countries that have accepted article 14 of the Convention) ;
7. Distributing United Nations press releases, promptly.

Internet : www.antiracism-info.org

Complaint procedures

The Convention's implementation system provides for the possibility that one State may complain to CERD about another State where the latter has failed to fulfil the requirements of the Convention. This procedure has never been used. There has, however, been some modest progress towards States agreeing to the other complaint mechanism (which is optional), whereby an individual can complain to CERD of violations of the Convention by his or her Government.

Forty-five States, or one quarter of the countries bound by the Convention, have recognized the Committee's competence to receive such individual complaints but the mechanism is not in any event much invoked even in countries that have accepted it.

Few individuals are aware of ICERD in most countries, and even fewer know whether their Governments have ratified it. In addition, the cost involved in exhausting all local domestic anti-discrimination and other legal remedies before complaining to the Committee is very high, and many complaints reaching the Committee have to be rejected for failure to exhaust such national remedies. The difficulty of proving racial motives in cases begun at national level can also present complainants with real challenges. For these and other reasons both procedures are regrettably underutilized.

Other activities of CERD

CERD also takes decisions, issues statements and makes general recommendations. These serve the function of addressing issues encountered in the application of ICERD by States parties, in the examination of country reports and in the application of its own rules of procedure. General recommendations serve to clarify ambiguities in ICERD, make concepts in the Convention clearer and fill gaps that would otherwise hinder the application of ICERD. For example, a significant recommendation made by CERD, in 2000, concerned the recognition of the gender dimensions of racism and the need for States parties to acknowledge that women often experience racism differently from men and can suffer worse consequences.[25] Explicitly addressing the impact of racial discrimination on women was directed at the application of ICERD.

In 2000, CERD also held its first thematic discussion on the subject of discrimination against the Roma in Europe at which States, United Nations institutions and NGOs shared knowledge and experience with a view to reaching consensus on how to tackle racial discrimination against this minority. A general recommendation on measures that States parties could take to address discrimination against Roma peoples was adopted.[26]

In March 2002, a similar discussion on descent-based discrimination led to a general recommendation on article 1 of the Convention that analysed the concept of discrimination based on descent and confirmed that the Convention was applicable to caste-based discrimination:

> "…discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights…"[27]

Early warning and urgent procedures

In 1994, in response to regional conflicts in the former Yugoslavia, Somalia and Rwanda, which had clear ethnic dimensions, CERD adopted a new preventative measure to combat racial discrimination, whose 'early warning and urgent procedures' enable it to act to prevent critical problems from escalating into conflicts and to respond when problems require immediate action to prevent or limit violations of the Convention.[28]

5. The positive impact of ICERD

From the perspective of the Committee, the Convention has had a number of positive impacts, including:

• Some States have amended their national constitutions to include provisions prohibiting racial discrimination;

• States have adopted and amended existing laws to comply with the principle of non-discrimination and other provisions of ICERD. Others have put into effect in law the entire Convention;

• Incitement to racial hatred has been designated by the Committee as a criminal and punishable offence (article 4(a));

• States parties have been encouraged to provide legal guarantees and enforcement procedures against racial discrimination relating to all categories of rights, from security of the person, political rights, employment, housing and education to access to social facilities, such as clubs, pubs and other facilities;

• The use of education (article 7) as a tool to promote tolerance between racial and ethnic groups has become fully accepted;

• States parties have been encouraged to create institutions and agencies to address problems of racial discrimination and this has resulted in more national anti-racism programmes and information exchange with other countries;

• ICERD has also prompted Governments to seek technical assistance from the Office of the High Commissioner for Human Rights in drafting anti-discrimination legislation and in ensuring adequate national remedies for victims of racial discrimination;

• The accumulation of valuable experience on the challenges of eradicating racism in different societies and cultures by the Committee as reflected in its reports, decisions and recommendations has made ICERD a dynamic resource for addressing racism worldwide;

• The 'early warning' measures and 'urgent procedures' agreed by CERD as anticipatory measures for the prevention of serious conflict were innovative and have considerable potential for the future.

The challenges for ICERD

The Convention faces a number of challenges, some of which stem from its history:

• The consensus procedure for making decisions in the Committee often results in agreement on the lowest common denominator;

• The Convention reflects the caution that informed its wording when it was adopted – for example the exclusion of the private sector in article 1, at times, hinders the work of the Committee;

- Institutional racism, or the more structural characteristics of racism, is under emphasized in the Convention[29] so that racism is thus depoliticized, when often it is integral to the political scene;

- Treaty bodies such as CERD are as effective as their members. For example, the inclusion of the gender-related aspects of racism was the direct result of an individual who was personally driven by her absolute commitment to race and gender equality and the realization that human rights discourse has not, in the past, fully understood or addressed the gender dimensions of racial discrimination and the racial dimensions of gender discrimination. Reaching consensus on the general recommendation on racism and gender was a real struggle in the Committee;

- CERD members are all part-time members and most have other jobs. They often lack the time to reflect on the volume of information they have access to, as well as the time to prepare reports. The challenge for the Committee is how to prevent compromising quality for quantity in the examination of country reports;

- Sessions in Geneva present only a limited opportunity for exchange between the Committee and NGOs. There is the need to maximize the invaluable contributions that NGOs can make.

6. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

The appointment of independent experts or thematic rapporteurs tasked with the investigation, analysis and, in some cases, with the authority to respond to violation of human rights is an innovative step by the United Nations Commission on Human Rights to improve the protection of those rights. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance was first appointed in 1993.[30] The contribution of this expert, alongside the functioning of the global reach of ICERD, has strengthened the international community's efforts to understand and to respond to changing dimensions of contemporary racism and xenophobia. He submits annual reports to the Commission and to the General Assembly and discusses his findings with these bodies.

The creation of the position of Special Rapporteur was a result of growing awareness of the rise of anti-Semitism, as well as racism and extreme nationalism, in Europe and the developed world as a whole. The Special Rapporteur's concerns are especially directed at minorities, indigenous peoples, migrant workers and other vulnerable groups. One part of the mandate is to undertake visits to countries where the Special Rapporteur can study problems at first hand. In so far as one purpose of such visits is to inform the international community in more depth of the issues related to both racial discrimination and the efforts to eliminate it, the country studies undertaken to date have certainly succeed in that goal. Although the Special Rapporteur's mandate was created primarily to focus

on racism in the developed world, he has in his country missions as in his annual reports chosen countries from different world regions. Several experts have served in the post. The current Special Rapporteur is Mr. Doudou Diène from Senegal.[31]

7. Decades and World Conferences against Racism

The idea of a year and then a decade against racism was intended to raise consciousness all over the world about the problem and to encourage everyone to renew their efforts to tackle it. The three United Nations Decades for Action to Combat Racism and Racial Discrimination have proved an important initiative in the struggle for racial justice.

The first Decade (1973-83) stressed the need to promote fundamental freedoms for all without distinction of any kind on the grounds of race, colour, descent, or national or ethnic origin and to eradicate racial prejudice and racism. The first World Conference in 1978, in the middle of the Decade, reaffirmed the inherent fallacy of racism and the threat it posed to peoples and nations. It condemned apartheid as a crime against humanity.

The second Decade (1983-93) focused on the elimination of apartheid and requested the Security Council to consider the imposition of mandatory sanctions against the apartheid Government in South Africa. It also identified a role for the media in challenging racial discrimination, racism and apartheid.

The third Decade (1993-2003) took a much broader view of the problem, recognizing that racism was a scourge far from defeated even as apartheid was dismantled. It called for further study of the roots of racism and racial discrimination with a view to preventing the many conflicts that it causes.

The Durban World Conference

Ethnic cleansing, genocide and widespread institutional racism formed the background to the most successful of the three world conferences held during the United Nations Decades, the Durban Conference, in 2001. The Conference agreed and adopted the most comprehensive statement on the subject of racism ever achieved by the international community, both as regards the understanding of the past and actions for the future. It was an event to which, alongside States, global civil society flocked and it also brought together a unique Youth Forum, at which young people from all regions demonstrated solidarity with the victims of racism and planned to change things forever on returning home. The Programme of Action, if consistently pursued, will bring the world nearer to its goal of the elimination for future generations of all forms of racial prejudice and discrimination. The Conference documents must remain the inspiration and the guide to action for the world community, and especially young people. Equally, they give guidance for action to the international and regional legal machinery against racism and racial discrimination.

Political commitment to implement the Durban Programme of Action remains paramount. Political momentum is being maintained through the work of bodies established to follow up the World Conference. The Intergovernmental Working Group monitors implementation on a global basis. The Eminent Persons Group ensures international public attention to the goals of eliminating all forms of racism. And an important third body, the Expert Group on People of African Descent, studies and makes recommendations on problems of racial discrimination experienced by Africans living in the diaspora.[32]

The Durban Conference also led to the establishment of the Anti-Discrimination Unit (ADU) within the Office of the High Commissioner for Human Rights (OHCHR), reporting directly to the High Commissioner (see box). It services the groups mentioned above; monitors progress on the commitments made by States at the Conference and encourages anti-racism research and policy development through regional seminars. The ADU will also provide technical advice and assistance to States on anti-racism measures and develop a database on best practice in anti-discrimination measures. An especially important role for the ADU is to help sustain the enthusiasm of civil society, including youth groups in all parts of the world, and to encourage them in their efforts to see Governments and societies implement the Durban Programme of Action.

All human rights treaty-monitoring bodies have been asked to consider adopting appropriate measures to ensure the follow-up to the Durban Conference. One suggestion is that they insert in their concluding observations, after examining a State's report, a standard paragraph to encourage Governments to focus their attention on their commitments under the Durban Declaration and Programme of Action.

CERD is certainly committed to building on the Durban Conference.[33] It has echoed the call in the Durban Programme of Action for the minority of States in the world that have not become bound by the ICERD to do so. It has also called upon existing States

The OHCHR Anti-Discrimination Unit (ADU)

[The World Conference] welcomes the intention of the United Nations High Commissioner for Human Rights to establish, within the Office of the High Commissioner for Human Rights, an anti-discrimination unit to combat racism, racial discrimination, xenophobia and related intolerance and to promote equality and non-discrimination, and invites her to consider the inclusion in its mandate of, inter alia, the compilation of information on racial discrimination and its development, and on legal and administrative support and advice to victims of racial discrimination and the collection of background materials provided by States, international, regional and non-governmental organizations and national human rights institutions under the follow-up mechanism of the Conference.

Durban Programme of Action, para. 191 (c).

parties that have not accepted the individual's right to petition the Committee to grant that right and to make their citizens aware of this complaint procedure. Through the reporting procedure the Committee will continue to press Governments to fulfil their many undertakings at Durban. Consistent efforts to implement the Durban Programme of Action are needed to eliminate what should be an anachronism but is not – any form of racial discrimination or related intolerance suffered by human beings.

Further reading

Boyle, K. and Baldaccini, A., 'A Critical Evaluation of International Human Rights Approaches to Racism', in S. Feldman (ed), *Discrimination and Human Rights – The Case of Racism*, Oxford University Press, 2001.

Amnesty International, *Using the International Human Rights System to Combat Racial Discrimination*, AI Index: IOR 80/001/2001.

Issues for discussion

Has your country ratified the ICERD? If it has, find its latest report and read it along with the Committee's concluding observations as the basis for class discussion. If it has not ratified, can you find out why it has not? What is meant by 'institutional racism'? How, if at all, can the law address it? What can NGOs and youth groups contribute to the fight against racism, racial discrimination and xenophobia?

References

1 Efforts to identify, understand and address these consequences are a major theme of the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001.

2 The expression 'racial democracies' refers to Latin American countries which considered themselves to have overcome racism through generations of intermarriage, and where renewed attention to racism confirmed that colour discrimination was still a major factor in all areas of life for people of darker skin.

3 For more on the struggle against racism in the Latin American-Caribbean region, see the papers prepared for the Regional Seminar of Experts on economic social and legal measures to combat racism with particular reference to vulnerable groups, Santiago, Chile, 25-27 October 2000, available on the OHCHR website: www.unhchr.ch.

4 See the work of the International Movement Against All Forms of Racial Discrimination (IMADR), a Tokyo-based NGO that campaigns on caste and related issues in Japan and worldwide.

5 See generally, Report of the seminar of experts for the African region on the implementation of the Durban Programme of Action: An exchange of ideas on steps to move forward, Nairobi, 16-18 September 2002, E/CN.4/2003/18/Add.2.

6 On gender and racism, see chapter 12.

7 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration and Programme of Action, United Nations, 2002, A/CONF.189/12.

[8] For a detailed account see, Boyle, K. and Baldaccini, A., 'A Critical Evaluation of International Human Rights Approaches to Racism' in S. Feldman (ed.), *Discrimination and Human Rights – The Case of Racism*, Oxford University Press, 2001, pp. 135-191.

[9] Charter of the United Nations, articles 1, 55 and 75.

[10] Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation adopted on 26 June 1958 and entered into force on 15 June 1960. See also Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted on 29 June 1951 and entered into force on 23 May 1953.

[11] UDHR, articles 1, 2 and 7.

[12] See Schabas, W., *Genocide in International Law*, Cambridge University Press, 2000.

[13] The texts of these and other international human rights agreements and treaties can be found in *Human Rights – A Compilation of International Instruments*, United Nations, Geneva, 2002, or they can be accessed on the website of the Office of the High Commissioner for Human Rights: www.unhchr.ch/html/intlinst.htm.

[14] United Nations Declaration on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 1904 (XVIII), 20 November 1963.

[15] Declaration, article 1.

[16] For the list of countries that have ratified the Convention, see www.unhchr.ch (at index and status of ratification of human rights treaties).

[17] The vulnerability of non-nationals, such as migrant workers, to racial discrimination is considered further in chapter 8.

[18] See further chapter 4.

[19] The plan was launched by decree signed by President Fernando Henrique Cardoso on 13 May 2002 and is aimed at achieving diversity and pluralism in recruitment for the federal public administration and in the provision of services to governmental agencies.

[20] Positive discrimination on ground of gender is discussed in chapter 12.

[21] Wolfrum, R., 'Discrimination Xenophobia', in J. Symonides (ed.), *Human Rights – New Dimensions and Challenges*, UNESCO, Dartmouth, 1998, p. 187.

[22] The significance of this provision for controlling racist propaganda is discussed in chapter 11.

[23] Farrior, S., 'The Neglected Pillar: The "Teaching Tolerance" Provision of the International Convention on the Elimination of All Forms of Racial Discrimination', 5 *Journal of International and Comparative Law*, 1999, p. 291.

[24] The enormous importance of education in combating racism was discussed in chapter 1 and is further examined in chapter 3.

[25] General recommendation No. XXV (2000).

[26] General recommendation No. XXVII (2000).

[27] General recommendation No. XXIX (2002).

[28] See, for further discussion, Boyle, K. and Baldaccini, A., 'A Critical Evaluation of International Human Rights Approaches to Racism', supra note 8.

[29] 'Institutional racism' is defined domestic practice in the United Kingdom as "the collective failure of an organization to provide an appropriate professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people." The Stephen Lawrence Inquiry, Report by Sir William Macpherson of Cluny, February 1999, Cm 4262-I, at para. 6.34.

[30] See Schaefer, B., 'The United Nations Struggle against Racism and Racial Discrimination – The Contribution of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance', *Papers in the Theory and Practice of Human Rights*, University of Essex, 2001.

[31] See chapter 1.

[32] See the second Report of the Intergovernmental Working Group, E/CN.4/2004/20, 10 March 2004; Third Report of the Working Group of Experts on People of African Descent, E/CN.4/2004/21, 19 December 2003.

[33] See general recommendation No. XXVIII (2002), in which the Committee outlines its policy towards the follow-up to Durban.

3. Racism and education

Katarina Tomaševski

*We recognize that education at all levels and all ages, including within the family,
in particular human rights education, is a key to changing attitudes and behaviour based
on racism, racial discrimination, xenophobia and related intolerance and to promoting
tolerance and respect for diversity in societies; we further affirm that such education
is a determining factor in the promotion, dissemination and protection of the democratic
values of justice and equity, which are essential to prevent and combat the spread
of racism, racial discrimination, xenophobia and related intolerance.*

(Durban Declaration, para. 95)

Introduction

Education can be a means to retain as well as to eliminate inequality. As it can serve
two contradictory purposes, two opposite results may ensue. Education can reinforce
or diminish inequality. Purposeful government strategies are necessary for diminishing
inequality because, without them, "a family's social, cultural and economic status tends
to act as a rifle-barrel setting an educational trajectory from which it is difficult for a child
to escape."[1] Controversies surrounding affirmative action in education in the United
States epitomize the choices to be made through its description by some as reversing
discrimination, by others as reverse discrimination.[2] The prohibition of discrimination
has been attained almost all over the world, but this is not the same as the obligations
to *eliminate* discrimination. These obligations are accepted by some Governments,
rejected by others, and – where accepted – are implemented in different ways. Aiming
at equal enjoyment of human rights, the obligations span the individual and the struc-
tural level, and they necessarily trigger controversy.

Strategies aimed at eliminating racial discrimination in education are globally an excep-
tion rather than a rule. Few countries in the world statistically monitor race. Indeed, in
many, race has been obliterated from national statistics in the hope that it would not
count if no longer counted.[3] Hopes that making race statistically irrelevant would also
make it socially and politically irrelevant have not materialized, on the contrary.
Nevertheless, the prerequisite for strategies to eliminate racial discrimination, statistical
monitoring of discrimination on the grounds of race, colour, ethnicity or provenance,
has yet to become part of internationally comparable education statistics.[4] This shows a
continuing prevalence of 'rejectionism' in many countries, which denies that a policy to
eliminate racial discrimination is needed.[5]

Realization of the right to education is a continuing process. Progress can be depicted
through two overlapping and broadening concentric circles, the first showing an incre-
mental inclusion of those previously excluded from education, and the second an

extension of the right to education and its gradual conversion into rights-based education. The principle of indivisibility of human rights requires conformity of the right to education with the entirety of human rights law. Thus, government human rights obligations encompass making education available, accessible, acceptable and adaptable.[6] Mere access to educational institutions does not amount to the right *to* education. Rather, it requires enforceable individual entitlements to education, safeguards for human rights *in* education and 'instrumentalization' of education to the enjoyment of all human rights *through* education.

The extension of the right to education to previously excluded categories has undergone four stages. The first entailed overcoming legalized and institutionalized exclusion from education, a prominent feature of pre-human-rights education laws and a prominent feature of colonialism regarding racial exclusion. The second stage involved dismantling racially segregated educational institutions, the first step towards overcoming exclusion. The third has involved a transformation of education from segregation and assimilation towards integration, an ongoing process that is gradually restoring human rights to previously excluded categories in education and through education. The fourth, most challenging stage necessitates adaptation of education to the equal rights of all diverse learners and its 'instrumentalization' to enhance equal enjoyment of all human rights through education.

1. The heritage of racial exclusion

The first recognition of education as a right did not necessarily mean its affirmation as a *human* right. Race and sex were frequent exclusionary criteria embodied in domestic laws. Today, non-citizens are often explicitly excluded,[7] and the racial or ethnic profile of the excluded is routinely a cause of deep concern, albeit not recorded or monitored. Domestic servants or children without identity documents may be implicitly excluded, especially where such documents are required for school enrolment. Again, the racial *or ethnic* profile of the excluded is neither formally recorded nor statistically monitored, hence it does not inform education strategies.

International mobilization against racial discrimination emerged as a response to apartheid in South Africa that was institutionalized and legalized in the form of Bantu education. The pillar of education was segregation. Its origin was traced to the system of religious education in the Netherlands, which had been transposed to South Africa. In 1948, it was explained as the need for "separate schools for non-believers and for Christians, separate schools for Roman Catholics and for the Protestants, separate schools for each of the great religious groups, e.g. Anglican, Lutheran and Calvinistic, and separate schools for each of the national groups."[8] The Bantu Education Act (1953) rapidly became notorious worldwide as the embodiment of apartheid. One of its aims, as explained by Hendrik Verwoerd of the Ministry of Native Affairs, was to reverse an unintended consequence of the previous openness of educational institutions to the

black population. This had created "the class which has learned that it is above its own people and feels that its spiritual, economic and political home is among the civilized community of South Africa, namely the Europeans" and should be prevented for the future by not allowing the black population any aspirations except "having to earn their living in the service of Europeans."[9]

An endless stream of studies accompanied and strengthened global mobilization against apartheid and, on education, triggered the first international treaties outlawing racial discrimination. Although the focus was on South Africa, racism and educational apartheid was a corollary of colonialism. Reports to the United Nations by colonial administrations in the 1950s illustrated this well.

Portugal:

"In Portugal a distinction is drawn in the census data of certain Overseas Provinces (Angola, Mozambique, Guinea, São Tomé and Principe, and Timor) between the non-civilized and civilized population, the latter consisting of those who follow the European way of life. In the three provinces of Angola, Mozambique and Guinea the indigenous population is still subject to a special regime … In the province of Angola there were 4,009,911 persons in the non-civilized population and 135,355 persons in the civilized population, including 78,826 whites, 26,335 of mixed blood, 30,089 Negroes and 105 others, in 1950. The total school enrolment in primary schools in that year was 16,118, including 3,163 Negroes…in secondary schools 2,582, including 91 Negroes … in technical and vocational schools it was 1,204, including 50 Negroes.[10]

The United Kingdom for Tanganyika:

"…the suggestion that there should be racial unification in primary schools runs counter to the opinion of the majority of educationalists who, throughout the world, emphasize the necessity, in the case of primary education, for schools to be related to social and home environments and the advisability of teaching the very young in their mother tongue or in the language they use in their home environment. It is only at later stages that persons from different environments can and should be mixed. There are therefore good grounds for maintaining that the Government's policy with regard to primary education is right and that gradual development towards unification in education from the top is less likely to impede the advance of African education and more likely to be successful than any sudden change or attempt at speeding up this development."[11]

The United Kingdom for Kenya:

"Why not provide schools as far as your resources will permit, to be attended equally by children of all races? This idea of the multiracial school is very attractive. It suggests a solution of the political problem of the plural society: children, it is said, have no race feeling, and if you educate them side by side on the same

> benches they will remain free of it when they grow up. Such schools exist in the United States, and in cosmopolitan cities like Cardiff or Liverpool ; why should they not exist in Africa ?
>
> We admit the attractiveness of the idea, and we hope to show that some educationists in Kenya are working towards it. But the case of the United States or the cosmopolitan city in Britain is not a parallel. There, you have a country with a well-established civilization and language of its own, and the problem is to assimilate the alien immigrant – to make the Pole, Chinese or Scandinavian a good American or good Englishman. This is not the problem in Kenya. Nobody suggests that the aim of education there should be to make the European child or the Asian child into a good African. "[12]

The inevitable effect of exclusion from education was – still is – the lack of formal educational accomplishments, exclusion from the labour market due to their absence and the consequent intergenerational transmission of deprivation. The previous denial of rights of the victims of racial discrimination is easily converted into factual evidence of their inferiority, feeding the perpetuation of discrimination and underlying prejudice. As pastor Visser't Hooft has pointed out, tackling prejudice is much more difficult than generally acknowledged :

> " In order to combat prejudices which have entered so deeply into the structure of society and the attitudes of men, knowledge and reason are not enough. They can render great help by exposing the rationalization of prejudices, and supply much-needed ammunition in the battle for racial understanding, but they cannot supply the dynamism required to replace prejudice by a positive attitude towards those of different race. In other words racial prejudice is not just a form of ignorance which can be progressively dispelled by enlightenment or by the proclamation of the idea of racial understanding. "[13]

Literature on discrimination abounds with assertions that prejudice breeds discrimination, yet the reverse is also true. Discrimination as a medium of indoctrination breeds prejudice ; it is meant to do so. Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices long before they learn the word discrimination. By the time their curriculum includes the term discrimination they are likely to have internalized the underlying prejudice. Prejudice is formed in late childhood and adolescence and sustained from one generation to another through social usage. When it favours individual and group self-interest, it is easy to rationalize. Discriminatory practices are often countered by changing the rules of behaviour, but their underlying rationale remains unexplored. It is customary to label that underlying rationale as irrational and believe that its cause is ignorance, to be eliminated through education. That rationale, however, often includes preservation of assumed superiority, keeping privilege, or fear of competition. As early as 1957, the first United Nations study into discrimination in education highlighted the underlying rationale thus :

"A policy based on fear of losing a privileged position necessarily entails measures to deny education to an entire population group, or to allow it access only to education at a lower level."[14]

2. Surmounting segregation

When the right to education was first recognized, the second stage routinely involved segregation, whereby girls, indigenous people, children with disabilities or members of minorities were given access to education, but confined to separate, routinely inferior schools.

A look back at the past half-century shows that powerful movements have opposed racial segregation. Their success was marked by prohibitions of racial discrimination and government obligations to eliminate it. Segregation has been, however, altered rather than eliminated. The boundaries of belonging are no longer laid down in law, but are determined by the power of the purse and evidenced in the racial profile of residential segregation and the intake of private schools in many countries.

In the 1960s, the principal targets in the United States were inequalities in education, merging racial desegregation with rupturing intergenerational transmission of advantage and disadvantage. A child's family background impeded disadvantaged categories from an educational attainment comparable to those who were born with advantages.[15] The pattern of advantage and disadvantage was not colour-blind. The Supreme Court had set the tone by its historic *Brown v. Board of Education of Topeka* judgement (see box), which triggered a forceful pursuit of racially integrated schooling grounded on the Court's finding that "separate is always unequal." The Court, however, refrained from tackling poverty. Race was addressed by civil rights litigation and law reform, poverty through federal subsidies for the schooling of poor children.

Brown *versus* Board of Education of Topeka

In 1951, Topeka had 4 primary schools for black and 18 for white children. Linda Brown, nine-year-old daughter of the Reverend Oliver Brown, attended Monroe School, five miles away from her home by bus and then on foot through a dangerous part of the town. Moving her to the closest school, just four blocks from home, was impossible because the little girl was black.

Her father sought the assistance of the National Association for the Advancement of Colored People (NAACP), which had started legal challenges of racially segregated schools elsewhere in the United States, and filed the suit before the District Court for Kansas on 28 February 1951. Hearings began about the free bus service provided by the Board for black, but not white children, and the food for

undernourished black children. The slant turned with a witness saying: "The only way to reach the light is to start our children together in their infancy and they come up together", with psychologists and psychiatrists explaining the impact of segregation on children, especially its demotivating effects on black children. The verdict was that separate was equal but the question whether segregation itself could constitute inequality was left open.

The judgement was appealed and five similar cases were pending before the United States Supreme Court in 1952, with *Brown* first in the alphabetical order. A year passed in which Earl Warren became the new Chief Justice; the NAACP's team included Thurgood Marshall, later to become the first black judge of the United States Supreme Court. Another year passed, filled with intense negotiations within the Supreme Court.

On 17 May 1954, the result was made public: separating black children solely because of their race generated a feeling of inferiority, whose effects were "unlikely ever to be undone." This explicit opinion declaring racially segregated schools unconstitutional was not to be enforced immediately. Rather, it was subjected to a lengthy process of translation into practice. A forceful pursuit of racially integrated schooling was resisted with equal force. The Supreme Court had, however, refrained from tackling poverty. The two have remained separated in governmental policies ever since, although they cannot be dissociated in practice.

The 1964 Civil Rights Act prioritized education, as did the 1965 Elementary and Secondary Education Act, which reinforced civil rights guarantees by mandating federal aid to children from poor families. These parallel efforts to tackle race and poverty foundered because they were two sides of the same coin and could not be disentangled. In what became known as 'the white flight', white-and-wealthy families voted with their feet, left cities for suburbs, leaving non-white and poor children in inner-city schools. Racially inclusive schooling included bussing, whereby children were transported from one school into another to implement desegregation. Forty years later, the Civil Rights Division of the Department of Justice was involved in more than 200 desegregation cases as well as monitoring the translation into practice of desegregation orders in 500 school districts.[16] The aim of racially integrated schools was thus undermined by the purchasing power, which made 'the white flight' possible. The problem is openly acknowledged:

> Largely because of the persistence of residential segregation and so-called 'white flight' from the public school system in many larger urban areas, minorities often attend comparatively underfunded (and thus lower-quality) primary and secondary schools.[17]

3. 'Assimilationist' and integrationist policies

The third stage in strategies aimed at educating all children together involves shifting from segregation to assimilation and towards integration. Categories newly admitted to mainstream schools have to adapt to the model of education that previously excluded them, abandoning their mother tongue or religion, or their usual residence if they are enrolled in boarding schools. Girls are admitted to schools whose curricula were designed for boys, indigenous and minority children placed in schools that provide instruction in an alien language and, often, teach them history that denies their very existence. This process may be underpinned by non exclusionary goals, but these tend to be interpreted differently. Assimilation entails imposition of uniformity; integration acknowledges diversity but only as departure from the 'norm'. Hence, newcomers have to adjust to the 'norm', which routinely extrapolates key features of the earliest self-granted bearers of rights, favouring male over female, or speakers of the dominant national language over those speaking a vernacular.

In this area, our knowledge is inversely correlated with the importance of the object of our study. We know a great deal about the wording of education policies and laws worldwide since these are available in a codified form, and have been translated. We know less about the process of teaching and least of all about learning. Whether these two parallel processes, teaching and learning, translate human rights objectives for education into reality depends on the congruence between these objectives and the operative guidance for teaching and learning as well as the concordance – or discord – between in-school and out-of-school learning.

In 1975, David Milner published in England his findings on preschool children's racial preferences.[18] He used white and black dolls to find that all white five-year-olds preferred a white over a black doll, 80 per cent of African-Caribbean children showed the same preference, as did 30 per cent of children of South Asian origin. He repeated the experiment two years later, after the children had undergone two different types of education. One group had a mixture of teachers and students from all three categories, including as diverse a curriculum as could be mustered at the time. The second one, the control group, had none of this. After two years, the repeated experiment showed that half of Afro-Caribbean pupils retained their preference for the white doll, while the preference by Asian pupils for white dolls also diminished by half. What would have happened if children had been exposed to inclusive education for ten, fifteen or twenty-five years was a question which David Milner would have liked to explore. He could not do so because his experiment created as much of a stir at the time as it would today. Fear, and its corollary self-censorship, impedes tackling questions which are crucial – what children learn and how they learn.

At the highest level of abstraction, national education policies include the language of human rights, peace, tolerance, sustainable development, social inclusion, gender equality and environmental protection. There is, however, an abyss between objectives

and outcomes when analysing products of national education systems. A good example is that of the European Union. While "all European education systems aim to be inclusive",[19] Eurobarometer surveys in the past two decades have shown an increase in the proportion of Europeans self-declared as 'quite racist' or 'very racist'.[20] The fact that this proportion has increased in the past two decades and has reached one third of Europeans highlights the necessity of asking why there should be such a gap between the inclusiveness in national and European policies and self-assessments by the 'products' of education. Translation of abstract commitments to human rights, tolerance and to cherishing diversity apparently fails to guide education effectively in the desired direction.

Conflicting demands upon education affect the distortion of general commitments to human rights, diversity and tolerance by prioritizing competition and income-earning skills. It would be difficult, if not impossible, for children to learn to compete and to cooperate at the same time. As they compete against each other for better test results and/or higher grades, as do their schools and their countries, cooperation remains an abstract notion because children learn by example, not exhortation. Although it is difficult to find many teachers who enjoy teaching-to-test, and most learners intensely dislike it, measuring learning outcomes is growing in scope and importance. The pressure of standardized testing turns children into "cookie-cutter test takers",[21] omitting from the operative definition of education all subjects that are not tested, most importantly the values that education promotes through both its formal and invisible curricula.

Few people are at ease when addressing differences in race, colour or provenance. We are taught *what* we should think, or at least say in public, but shy away from asking how and why so many children and young people in countries with all-encompassing and well-funded education systems exhibit self-professed racism and xenophobia. A pupil observed that anti-racism messages start too late: "If you start to teach them when they are very young it would be better than to start giving them information by Year 11 when they already have their minds made up about it."[22] How their minds have been made up for them is a question asked when the outcome looks something like this:

> Early in September [2001] I listened as a group of Australian students in an upper high school class in Perth talked about the recent movement of asylum-seekers towards this country. A girl was loudly declaring; "I wish we had nuclear bombs 'cause then we could bomb 'em all and that'd be the end of it. It'd serve 'em right. They should just all go to hell. I don't want them and their diseases and violence in our clean country." Most students in the group were vocal in support. One who appeared to have some sympathy for the asylum-seekers was abused and ended up defending himself with, "well, don't get me wrong: it's not like I want the boat people or anything." Curiously, a Muslim was in the group. When asked about her own family, she replied: "We came here legally, not like those scums."[23]

Although often introduced as the functional equivalent of human rights education, citizenship education undermines human rights as properties of *all* members of humanity and substitutes "involvement in public affairs by those who have the rights of citizens."[24] Ultimately, citizenship education may underpin xenophobia.

Where diversity and tolerance are explicitly addressed in educational curricula, the messages may be self-contradictory. It is as difficult as it is necessary to expose schoolchildren to abuses of power that have led to the development of human rights protections. Individuals and countries tend to remember the pain they have suffered, not the pain they have inflicted on others. Victimhood is one-sided in history textbooks, epitomizing what David Tyack has called "the pedagogy of patriotism."[25] School textbooks rarely describe abuses committed by one's own Government against populations of other countries or the people in one's own country, although history abounds with such examples.

4. Adaptation to diversity

In 1978, UNESCO forged the concept of a right to be different, stating that "all individuals and groups have the right to be different, to consider themselves as different and to be regarded as such."[26] This concept was revisited by Justice Albie Sachs in 2000 when, in delivering a judgement in the name of South Africa's Constitutional Court, he took the argument one step further, affirming "the right of people to be who they are without being forced to subordinate themselves to the cultural and religious norms of others."[27]

International human rights law demands that the previous requirement upon children to adapt to whatever education was available be substituted by adapting education to the best interests of each child. In our imperfect world, the right of each child to be regarded as different remains a distant dream. In practice, children are reduced to the few denominators that are monitored and thereby inform education laws and policies. These are often only sex and age, rarely disability, and only sometimes the child's mother tongue, religion, race or provenance. Because education encompasses huge numbers of learners and teachers, the emphasis is on numbers and, thus, statistical averages. Education involves a larger number of people than any other institutionalized activity and this may well be the reason for emphasizing its *hardware* at the expense of *software*. Because school reaches the largest number of children and young people at their most impressionable age, the purpose of schooling is more often to instruct children in what they should think rather than teaching them how to think. Moreover, the values underpinning education may be classified as 'technical' issues if only quantitative targets are defined and monitored.

As a consequence, diverse children are reduced to the minimum common denominator, the individual child forced "to sink or swim within the mainstream environment."[28] Diversity as a value clashes with the 'assimilationist' tendency of most education sys-

tems through the teaching of one language, one version of history and geography, and one vision of the future. Much as national education policies may demand adaptation of education to diverse society, in practice it is those who do not conform who have to adapt. Immigrants, minorities and indigenous people have to shed large parts of their identity – the language, name, dress code – to conform to the mainstream model.[29]

In most countries, domestic law protects individuals against being publicly insulted but prohibitions of group defamation are rare. Maligning 'foreigners' can be deemed an expression of patriotism and is often a vote-winner. This has often been emphasized by the European Commission against Racism and Intolerance (ECRI), which, in the case of Denmark, has pointed out that negative stereotypes and prejudices "are promoted by public opinion leaders, including political elites from across the political spectrum."[30] Their inevitable influence on children and young people undermines human rights messages in school-based education. Referring to Eastern Europe, David Coulby pointed out that schools and universities "are being involved in the encouragement of xenophobia as a mode of State-building."[31] Eliminating obstacles to rights-based teaching and learning is therefore necessary, from the local to the global level, throughout the world.

The term social exclusion was developed within the European Union to denote the marginalization of individuals through economic deprivation and social isolation. The emphasis on *social* – as different from *statal* – typifies the diminished role of the State and questions the assumed inclusiveness of social policies. Social exclusion could be defined as a denial of human rights but human rights language is avoided in favour of terms such as disadvantage, deprivation or vulnerability.[32]

One typical feature of the victims of exclusion is their provenance, another, their race or ethnicity. George Mikes described how discrimination is created in his 1975 best-seller:

> "The technique – in all cases – is simple:
> (1) Bring in a large number of people when they are needed and subsequently complain that they are here.
> (2) Push them into inferior jobs (jobs which the natives refuse) and then complain that they are inferior; the jobs they do are clear evidence of that.
> (3) Keep them down and condemn them for being incapable of rising.
> (4) Deprive them of education and condemn them for being uneducated.
> (5) Force them into overcrowded houses and condemn them for creating slum conditions."[33]

5. Retrospect and prospects

The objective towards which education should be moulded is often defined as tolerance. Setting the limits of the intolerable is the first necessary step towards creating space for teaching and learning tolerance. Tolerance implies acceptance, albeit passive, of 'the other', and 'the other' is constantly created and recreated. Shared

humanity yields to the emphasis of differences in provenance, lifestyle or status. The internationally prohibited division of humanity by race, sex or colour has been expunged from educational curricula. An emphasis on provenance, however, defines 'the other' as immigrants, for example, and race is routinely the principal denominator.

In 1947, the first United Nations report on discrimination emphasized that "the whole field of action to prevent discrimination requires a vast programme of education."[34] Law cannot be effective, and may be counterproductive, unless it enjoys support from those whom it addresses. Hence the emphasis placed on education to engender such support. Looking back to 1947, it is worthwhile to recall that education is a capacious term and its outcomes can be both positive and negative:

> "Forcing a prejudiced person to read or hear exhortations on tolerance may only increase his prejudice. Over-enthusiastic appraisals of the contributions of a minority may create a reaction of distaste for members of that minority; and programmes improperly presented, even with the best intentions, may create an awareness of group difference that did not previously exist."[35]

School reflects its surroundings and tends to reinforce prejudicial portrayals of victims of discrimination. Education is embedded in the existing values, but it also helps create new values and attitudes. Hence, human rights law mandates its deliberate use to eliminate discrimination, and that requires a permanent process so that education can be adjusted to change in society and foster its further change.

Further reading

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Issues for discussion

The author as Special Rapporteur on the right to education had called for education to meet the 'four A's' test – that it be "available, accessible, acceptable and adaptable". Do you find this a helpful way to think about education as a right? What does the author mean by a 'rights-based' education and how would this approach contribute to the ending of racism in education?

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4. Racism and employment

Julio Faundez

[The World Conference] urges States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law, and further urges States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions.

(Durban Programme of Action, para. 29)

Introduction

Racial discrimination in employment has a long history. Yet, surprisingly, efforts to eradicate it are relatively recent. Not long ago, discrimination in employment was allowed to thrive in most industrialized countries. In the United States, for example, the Federal Government began to take administrative measures to combat discrimination only in the late 1940s and legislation was enacted and the fight against discrimination began to be taken seriously only in the 1960s, as a consequence of the civil rights movement. Today, discrimination in employment is prohibited in the United States, as it is in every industrialized country. Yet, although blatant forms of discrimination have significantly diminished, discrimination in these countries persists and Governments still have to devote considerable resources to the struggle to eradicate it.

Discrimination in employment, however, does not only affect rich countries. It is widespread in many poor countries where powerful local groups, often with the complicity of Governments, subordinate members of weaker groups. Foreign investors are often the passive beneficiaries of these discriminatory practices. Indeed, it was not so long ago that many foreign companies indirectly boosted the apartheid regime in South Africa through their presence and thriving business. Moreover, today in many parts of the globe both foreign and local investors take advantage of discriminatory laws and practices to abuse and take advantage of indigenous communities and other vulnerable groups. Although most countries have endorsed the battery of international legal instruments condemning discrimination, racial prejudice – boosted by the prospects of large profits – prevails over principles and legal obligations.

The persistence of racial discrimination suggests that the struggle to overcome it is not easy but the record shows that it is not futile. We are now aware that merely enacting legislation, or ratifying international treaties that prohibit it, will not eradicate racial discrimination in employment. But we also know that doing nothing and allowing a free rein

to market forces is not an option, since it would only make a bad situation worse. Policy intervention to combat discrimination, however, has to be finely tuned. It must consider underlying economic realities, especially the challenge of globalization. It must also take into account the experience of countries that, over the years, have made progress against racism in employment.

This chapter gives an overview of the policies used mainly by industrialized countries to eradicate racial discrimination in employment in a bid to identify their strengths and weaknesses. It also aims to suggest ways in which these can be complemented to take into account the political and institutional conditions prevailing in most developing countries, as well as the realities of the contemporary world economy. The chapter first explains basic concepts and sets out some theoretical perspectives on employment discrimination. The second part describes the institutional mechanisms used to combat racism in employment. The third section discusses whether these mechanisms can be transplanted to developing countries, especially in view of the impact that globalization has on the capacity of States to regulate labour and economic policies.

1. Concept and theoretical approaches

Discrimination and equal opportunities

It is generally accepted that employment decisions are fair when there is equal opportunity for all. What, however, does equal opportunity mean? It means that employment decisions – such as appointments, promotions or selection for special training schemes – are taken purely on the basis of merit. In other words, it means that factors such as race, ethnic or national origin are then irrelevant, and not to be taken into account when making employment decisions. Only factors such as qualifications, ability to do the job and relevant experience should be used in the selection and appointment of candidates. This ensures that all candidates for jobs are treated equally and hence that the principle of equal opportunity is respected.

International Labour Organization (ILO) Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (1958) reaffirms the paramount role of equal opportunity. Its definition of discrimination reads as follows:

> For the purpose of this Convention the term "discrimination" includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Main forms of discrimination

Discrimination can be direct or indirect. Direct discrimination occurs when an employer denies employment to a person because of her race, colour or national origin. It presup-

poses intention. Intention is easy to establish when the employer has explicitly or implicitly stated an unwillingness to hire members of a particular race. Intention, however, can also be inferred from the behaviour of the employer. Such inference could be drawn where an employer refuses to hire a qualified individual who is a member of a particular race and the job still remains open to candidates with similar qualifications from a different race. Unless the employer can justify that decision on legitimate grounds, such behaviour would constitute direct discrimination.

Discrimination can also be indirect as when institutional policies or practices have the effect of systematically excluding members of certain groups from job opportunities. This form of discrimination is perhaps the most prevalent and it is also the most difficult to eradicate. It occurs when seemingly neutral job requirements consistently exclude members of a particular racial or ethnic background. Such requirements include height or weight restrictions, and diploma or other formal requirements that are unrelated to the specific job. The Supreme Court of the United States declared this type of discrimination unlawful in 1971, in its celebrated decision in the case of *Griggs v. Duke Power Co.*[1] In that case, the employer required a high school diploma and a minimum score in intelligence tests for a job that objectively did not require these qualifications. The Court found that, even though the employer may not have intended to discriminate, the behaviour was unlawful because it had the effect of excluding black applicants, who were otherwise qualified for the job. Indirect discrimination was held unlawful, even though not proved to be intentional.[2]

Lingering effects of discrimination

Legal remedies against discrimination are meant to reaffirm and restore the principle of equal opportunity. Yet, the principle of equal opportunity has an important limitation. It does not take into account the contemporary consequences of past discriminatory policies. For example in South Africa during the apartheid regime barriers that excluded blacks from certain jobs were an essential component of the regime. Today, although discrimination in South Africa is unconstitutional, blacks still endure the consequences of past discriminatory practices. Thus, for example, when today blacks in South Africa compete for jobs they are at a disadvantage because they do not always have the required experience since under apartheid they could not acquire it. They probably also lack formal qualifications because in the past they were denied educational opportunities. Even when they have formal qualifications, employers may reject them on the grounds that the qualifications were not achieved from institutions with which they are familiar or from which they have previously recruited. Indigenous peoples in Latin America and other parts of the world face similar problems. They have endured racial discrimination for such a long time that today they are unable to compete as equals with those who, in the past, benefited from those practices.

A strict application of the principle of equal opportunity does not take into account historical factors that today place members of certain groups at a disadvantage. The

concern is solely to ensure that the best qualified candidate obtains the job, promotion or other employment benefit. In this scenario, equal opportunity is static. It only looks at candidates' qualifications as they are on the day the employment decision is taken but does not examine the bearing that past discriminatory policies have on those competing for positions in the labour market. Yet, since societies are not static, equality in the labour market cannot be achieved unless the present consequences of past discriminatory practices are also considered. There are, however, powerful arguments that caution against taking this route and they ought to be carefully considered.

Equal treatment and equal outcomes

An equal opportunity system is said to guarantee equal treatment, not equal outcomes. In this system, all participants are deemed to have the same basic means to achieve the desired goal, but not all manage to reach it. Only the better qualified do so because not all the competitors deploy their abilities in the same way. Equal opportunity is thus consistent with the model of a market system under which unequal outcomes are seen as the engine that motivates people to compete. Because in an ideal market system competition is a continuous process, those who today fail to achieve their objective know that they will always have another chance.

This otherwise reasonable justification for unequal outcomes faces a major difficulty when used to explain inequalities that stem from a historical pattern of racial discrimination. Why is it that blacks, or other members of minority groups or economically weak groups, never seem able to catch up with members of economically or socially dominant groups? In the United States, for example, despite enormous efforts to ensure that equal opportunity is observed, racial and ethnic minorities continue to be underrepresented in higher levels of occupation and continue to be over-represented among the unemployed.[3] This is partly because members of groups who have been victims of racial discrimination in the past are unable today to compete in the labour market under conditions of equality. The unequal distribution of the means to compete is often a direct consequence of an unequal distribution in previous rounds of allocation of goods. This leads to the development of a vicious circle of discrimination. Unequal results today are the consequence of yesterday's unequal outcomes and will, in turn, become a factor in determining unequal outcomes tomorrow. How then can this vicious circle be broken?

One alternative would be to encourage victims of discrimination to work a little bit harder so as to improve their qualifications and thus be in a better position when competing for jobs. This strategy has undoubtedly enabled some victims of racial discrimination to achieve remarkable outcomes but these are exceptional cases. The evidence suggests that, in societies where historical patterns of discrimination linger on, individual efforts by members of ethnic or racial minorities to overcome employment barriers are often futile. In the United States, for example, there is more unemployment among black college

graduates than among white, and blacks workers who improve their qualifications often fail to achieve promotions. There is evidence that suggests that when older black workers improve their qualifications their salaries tend to decline, rather than improve.[4]

Stereotyping and taste for discrimination

Stereotyping is one of the reasons why discrimination persists and why, despite individual efforts, victims of discrimination find it so difficult to overcome employment barriers. In the employment context, the most familiar and depressing illustration of stereotyping is where equally qualified persons compete for the same job and the only difference between them is that one belongs to a minority race or ethnic group. In these situations, employers will usually decline to appoint the member of the minority group because of the assumptions they make about their character and other attributes. Such assumptions include the notion that they are lazy, dishonest, unstable, prone to alcoholism or violent. The European Court of Justice has recently acknowledged – in the context of gender discrimination – that stereotyping can have unlawful consequences in the area of employment and, hence, special measures to prevent it are justified.[5]

Employment decisions based on such stereotypes have the effect of supporting and prolonging prevailing patterns of discrimination. Stereotyping is especially insidious because those who rely on it are often unaware of their own prejudices. Stereotyping as a factor in employment decisions also contradicts the view put forward by some economists that market forces left on their own can bring discrimination to an end. This particular economic interpretation of discrimination deserves careful consideration because it is very influential and, on the surface, quite persuasive.

The argument, albeit in a schematic form, is that discrimination in employment exists because some employers who have a taste for discrimination may be willing to bear the costs of refusing to hire individuals with whom they do not wish to associate.[6] Since indulging in discrimination is expensive, employers will only do so if market conditions are imperfect, that is, if the employers wield sufficient market power so that they can make a profit, despite the additional costs incurred as a consequence of their discriminatory preferences. Employers will thus only be able to indulge in their taste for discrimination where there is market failure. By contrast, however, where free competition prevails, employers who practise discrimination would soon be eliminated from the market, as their production costs would increase because in order to satisfy their taste for discrimination they would have to raise the salaries of members of the dominant race or ethnic group. The policy prescription underlying this theory is that market liberalization is the most effective way of eliminating discrimination. Market forces and the profit motive would thus bring employment discrimination to an end.

There is no doubt that market forces often contribute to promoting equality of treatment and can contribute towards eliminating the most blatant forms of discrimination. Yet, the available evidence suggests that, even under conditions of open competition,

discrimination in employment tends to persist. The explanation as to why this should be so is related to the problem of stereotyping. According to Kenneth Arrow, discrimination persists because employers' perceptions about the relative productivity of workers are not based on objective criteria, but on subjective evaluation that, in turn, is based on prevailing stereotypes. Thus, because employers regard white workers as more dependable, efficient and hardworking than their counterparts from minority groups, they will hire more white workers and in doing so will reproduce prevailing patterns of discrimination.[7] The foregoing suggests that the only reasonable way to break the vicious circle of discrimination is to require employers to take positive action so as to ensure that visible and invisible barriers that reproduce prevailing patterns of discrimination are promptly eliminated.

2. Action through institutions

The Durban Agenda

If the principle of equal opportunity were self-executing there would be no need to consider policies to eliminate racial discrimination in employment. Discrimination in employment does not, however, wither away simply because labour laws and regulations are based upon the principle of equal opportunity. It will not disappear either by virtue of the free operation of the market. Every industrialized country acknowledges this and, accordingly, they all have designed complex legislative and regulatory frameworks to combat discrimination in employment. The most rigorous example is that of the European Union.[8] Among developing countries, however, the idea that positive steps are necessary to combat discrimination has not yet taken root. There are, of course, some exceptions, as is the case of South Africa and Namibia, which have established comprehensive legislative programmes to eradicate discrimination in employment. But, on the whole, positive action in developing countries is rare. In this respect, the Programme of Action, approved by the Durban Conference, is a landmark as it contains detailed recommendations on how to overcome discrimination.[9]

In a holistic approach, the Programme of Action links the struggle to end discrimination in employment with efforts to eliminate discrimination in education, health, housing and access to social services. This is a helpful perspective since victims of discrimination in employment are also discriminated in other areas of social life. The Programme of Action is aimed both at States and non-State actors, such as trade unions, business enterprises and non-governmental organizations. The specific measures contained in the Programme are based upon the practice and experience of States with a long-standing experience in the struggle against employment discrimination. These measures include strict enforcement of national and international labour standards, financial and other support to enterprises owned by individuals who are victims of racial discrimination and action to improve the position of victims of discrimination within the labour market.

Action to improve the labour market position of victims of discrimination can be grouped in two main categories: the removal of barriers and positive action. The removal of barriers aims at ensuring a level playing field for the operation of the principle of equal opportunity. The means used to do this include ensuring that job advertisements, interviewing and testing procedures are free of bias; reviewing qualifications and experience requirements to ensure that they are relevant to the jobs; training senior and middle management to become aware of the many ways that racial discrimination can be manifested in the workplace; and cooperating with unions and other workers' representatives to develop procedures to deal with racial harassment and other forms of discrimination.

Positive, or affirmative, action includes taking steps to broaden the pool of candidates for jobs from among victims of discrimination; to increase the rate at which suitably qualified members of discriminated groups are hired; and speeding up their promotion prospects. All these positive measures involve, in one way or another, preferential treatment – a point acknowledged and endorsed by the Programme of Action.

The following paragraphs offer an overview of the institutional mechanisms that are used to implement measures designed to further the struggle against racism in employment.

Non-binding codes – voluntary action

An option, favoured largely by the private sector, is to fight discrimination through non-binding codes of conduct and voluntary action, on the basis that legislative intervention in this area of policy is counterproductive as it is likely to become bureaucratic, inefficient and costly. This view is attractive because it highlights the economic dangers of misguided State intervention in the area of public policy. Given the seemingly permanent economic instability and uncertainty brought about by globalization, the view that advocates legislative abstention is especially appealing.

Voluntary action by employers is crucially important. Racism in employment will only be eliminated when employers realize that equal treatment is a rational way of managing human resources and is also good for business. Indeed, most of the legislative initiatives designed to combat racism in employment require employers to prepare statistical reports, to carry out self-assessments and to establish grievance procedures to deal with complaints of discrimination. Since it is virtually impossible for State institutions adequately to police these obligations, voluntary cooperation is essential. Yet, as most industrialized countries have found, voluntary action, by itself, does not eradicate racism.

Voluntary cooperation from trade unions is also important. On the whole, the union movement is overwhelmingly committed to the struggle against discrimination and is thus an indispensable partner. Unfortunately, however, in some countries unions are some of the main offenders. In the United States judicial remedies have been sought to eliminate obstacles erected by unions that restrict the employment opportunities of members of racial minorities.

Legislating against racism

The constitution of most States recognizes the principle of equal treatment. Yet, the application of this principle in the area of employment is not often spelled out in national legislation. Moreover, even countries that have incorporated elaborate anti-discrimination clauses into their labour codes are unable, or unwilling, properly to enforce them.

If the struggle against discrimination is taken seriously, it is essential to establish a clear legislative framework. Such a framework has the advantage of offering stability and predictability so that employers and employees are aware of their respective rights and duties. It is also useful since, by creating obligations that apply equally to all firms, conditions of competition are not altered. Legislation also has the advantage of enabling Governments to establish procedures to monitor compliance and measure progress in the struggle to eliminate discrimination.

Limits of legislation – independent agencies

Legislation is a necessary component in the struggle against discrimination, but it is not sufficient. Because discrimination is a societal and not just a political problem, the top-down approach implicit in legislation has limitations. This is why the Durban Programme of Action calls upon both Governments and civil society to take action against racism. Thus, legislation has to be complemented with other mechanisms so as to ensure that there is close cooperation among stakeholders, such as an independent agency to facilitate communication and deliberation between representatives of discriminated groups and representatives of workers and employers. Such an agency exists in Namibia and is playing an important role in bringing about the peaceful dismantling of former apartheid policies as well as furthering the process of national reconciliation.

Independent agencies that are not directly controlled or identified with the Government of the day can play a crucial role in the implementation of policies to combat racial discrimination in employment. They can create awareness among employers and workers about discrimination; they can disseminate information about programmes and strategies to eliminate it; they can provide support to individual victims of discrimination; they can attempt to resolve, through mediation or conciliation, disputes relating to employment discrimination and, if everything else fails, they can provide legal aid to workers who wish to enforce their rights through the courts.

Independent agencies can, of course, take many forms. In some countries human rights commissions or ombudsman offices (national human rights institutions) may perform some of the functions enumerated above. Because of the nature of the problem, such an institution is essential as it provides a bridge between the State and civil society.

Courts

Courts occupy a central role in eliminating discrimination in employment. It is self-evident that, in any properly functioning democracy, the role of courts is to ensure that rights, individual and collective, are respected and enforced. Since racial discrimination in employment is a breach of elementary constitutional and legal principles, it is natural that courts should participate in the process to eradicate it. This has been the experience of the United States, where courts have often granted remedies requiring employers or unions to adopt positive measures to bring to an end discriminatory practices against racial or ethnic minorities.[10]

The role of courts also has limitations. Because courts do not make law, but interpret it, their efficacy is dependent on the extent to which the legislature is capable of establishing clear rules and procedures against discrimination. The interminable debate about the scope of affirmative action measures in the United States illustrates this problem.[11] Because the political organs of the State have failed to take a decisive position in the struggle against discrimination, the courts' response has also been ambiguous. In any event, we should not expect courts to take political decisions that our legislators are unwilling to take.

3. Racial discrimination and development

This section addresses the question as to whether the institutional framework and strategies outlined in the preceding section could be successfully applied in developing countries, where political, legal and economic conditions are markedly different from those prevailing in the countries where these institutions and strategies originated. On the surface, this question may seem pointless. After all, in recent years most developing countries have adopted regulatory frameworks inspired by models based on the experience of industrialized countries. Why should they not do so in the area of employment discrimination?

It is generally accepted that anti-discrimination policies will have a greater chance of success if those in charge of designing them are aware of, and draw from, best international practice. Seeking inspiration and ideas in this way is, of course, not the same as uncritically copying institutions from other countries. To ensure that institutions and programmes are suited to the local context, it is important realistically to assess prevailing conditions. At least three factors should be considered: the relative strength of institutions, the impact of widespread poverty and unemployment, and the impact of globalization on the capacity of States to regulate employment practices.

The institutional question

If racism is a societal as well as a political problem, an effective anti-discrimination policy should be capable of mobilizing and coordinating both States and non-State institutions, such as trade unions and business associations. This policy assumes that State

institutions are willing to engage with representatives of racial or ethnic minorities. In other words, what this policy requires is a political regime that is open to participation and democracy. This policy also requires a Government that is confident enough to entrust an independent agency with some of the responsibility for the implementation of anti-discrimination policies. Finally, the establishment of an independent judiciary is vital, since courts have the ultimate responsibility for ensuring that anti-discrimination policies are implemented within the framework of the constitution and the law. An independent judiciary is thus crucial since anti-discrimination policies are often seen as inconsistent with the fundamental principle of legal equality. Courts are there to guarantee that the rights of all citizens – members of both minorities and dominant groups – are duly respected.

These conditions are difficult to meet. This is especially so in developing countries where institutions are weak and the democratic process is fragile. Indeed, in some of these countries, ethnic intolerance and racism are often factors that explain why the democratic process and institutions are so fragile. It thus seems that we are caught in a vicious circle: imperfect and weak State institutions underpin racism and the weaknesses of these institutions seem to make it impossible to overcome racism.

This vicious circle, however, can be broken. The experiences of South Africa and Namibia prove the point. Both countries endured apartheid for many years and upon their liberation have, through constitutional means, managed to adopt and implement comprehensive anti-discrimination policies in employment that are contributing towards improving the position in the labour market of groups that in the past were racially oppressed. These experiences may rightly be regarded as unique – since in both countries the formerly oppressed majority now controls Government. Nonetheless they offer interesting lessons, of which perhaps the most important is that the fight against racism cannot be separated from the process of widening democracy. It is important to remember that most racial and ethnic groups that are victims of discrimination are also generally excluded from the political process and cannot fully exercise their rights as citizens. It is thus imperative that, together with removing barriers to employment and other public goods, the political system should open up so that victims of discrimination have a voice and are adequately represented. This approach will not only enhance the democratic process, but it will also ensure the sustainability of policies aimed at eradicating discrimination.

Poverty and unemployment

Anti-discrimination policies in industrialized countries are based on the assumption that there exists a relatively normal labour market that can absorb suitably qualified individuals who are excluded because of racism. The situation is different, however, in most developing countries, where a large proportion of victims of discrimination live in extreme poverty, have little hope of securing qualifications and have virtually no chance of ever acceding to the formal labour market. In addition, as in the case of indigenous peoples, many live in remote areas and hence joining the formal labour market often

entails a break with their cultural roots. Those capable of getting jobs tend to be locked to poorly paid jobs in the service sector, where employers pay little heed to the rights of workers. This is especially true of women employed in domestic services, who are victims of both racial and gender discrimination.

Unable to find suitable employment, members of racially discriminated groups are forced to find alternatives. These are found mainly through self-employment in what is generally known as the informal sector. The importance of this sector as a source of employment is enormous. In Latin America, for example, the informal sector accounts for more than a quarter of employment in the region.[12] A common form of organization within the sector is the micro-enterprise – that is an enterprise with fewer than five workers. In many countries, these enterprises are owned by members of groups that are victims of racial discrimination. The Durban Programme of Action calls for technical and financial support for such enterprises as a means of increasing job opportunities for members of these groups. While these are, undoubtedly, important objectives, it is important to bear in mind that in most developing countries micro-enterprises are essentially unstable because they are little more than temporary safety nets used as means of weathering economic crises.

Extreme poverty, unemployment and informality are major challenges that need to be considered when designing and implementing policies to overcome racial discrimination in labour markets in developing countries. These challenges require policies that take into account local conditions. Such policies might include:

- Proper and fair enforcement of labour law. Although this recommendation may seem obvious, it is essential that the rights of all workers are respected and enforced and that labour ministries and other agencies have the necessary resources;
- Removal of barriers that prevent disadvantaged workers – such as domestic servants – from forming unions and exercising other basic rights;
- Anti-discrimination programmes giving priority to those who are worst affected and most vulnerable – such as children and women;
- Decentralized administration of anti-discrimination programmes that includes the active participation of representatives of ethnic and racial minorities.

Globalization

Although globalization is inescapable, opinion is divided regarding its benefits. Some claim that globalization promotes efficiency by removing the artificial barriers that constrain markets. Others see it as merely a device to export jobs to countries where working conditions are poor and labour costs low. Despite the disagreements, there are two propositions on which most agree: first, that globalization has significantly empowered transnational corporations; and second, that, as a result, the power of national Governments to regulate economic processes has diminished.

In the area of employment, globalization has had some significant consequences. It has weakened the rights of workers, since flexible labour markets have eroded the protection that vulnerable workers get from labour law. The bargaining power of workers has also greatly diminished since investment liberalization has made relocation to another country a credible threat. Moreover, efforts to attract foreign investment, and the intense competition for investment, have created incentives for Governments to lower labour standards, thus bringing about what is often called a 'race to the bottom'.

Given this gloomy picture, it should not be surprising that in some parts of the world racial discrimination in employment has intensified. The members of racial and ethnic minorities who are most vulnerable include those working in export processing zones, where the lowering of labour standards is often a precondition for investment; those working for a pittance in sweatshops around the world; and those in the agricultural sector working long hours without the protection of labour law.

These challenges are not insoluble, but so far the international community has been unable to confront them. The inconclusive World Trade Organization (WTO) debate about the linkages between trade and labour standards has exposed divisions and uncertainties, but has not led to action. It has opened rifts among poor countries since some regard the enforcement of basic labour standards as disguised protectionism. It has also split industrialized countries, since some remain uneasy with any form of multilateral action, preferring to rely on bilateral measures that can be manipulated to serve national interests.

Perhaps the most hopeful development at the international level arises from the consensus that there are fundamental labour standards that should be observed worldwide. The International Labour Organization (ILO) has declared these standards to be binding on all Member States. They are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.[13] Although anti-discrimination is acknowledged as one of the core labour standards, it is only a starting point. We are still a long way away from developing international mechanisms to ensure that these core labour standards are enforced as efficiently and promptly as free trade and investment liberalization. The recent report of the ILO Commission on the Social Dimension of Globalization offers important ideas and opportunities for progress towards this goal.[14]

Further reading

Sub-Commission on the Promotion and Protection of Human Rights, *Prevention of Discrimination – The concept and practice of affirmative action*, Final report submitted by Mr. Marc Bossuyt, Special Rapporteur, E/CN.4/Sub.2/2002/21.

International Labour Organization, *Time for Equality at Work*, Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work, 2003.

Issues for discussion

Do you consider that affirmative action or special measures for groups that have experienced racial discrimination in the past can be justified? Can you identify work-related affirmative action programmes in your country? Is poverty a relevant factor in understanding racial discrimination in employment? The author states that: "the fight against racism cannot be separated from the process of widening democracy". Do you agree?

References

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[3] Gill, A., 'The Role of Discrimination in Determining Occupational Structure', *Industrial and Labour Relations Review*, Vol. 42, 1989, pp. 610-623.

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[8] See Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43 of 9 June 2000 implementing the principle of equal treatment irrespective of racial or ethnic origin.

[9] See Part III of the Programme of Action and especially paras. 103-108. A/CONF.189/12.

[10] Faundez, J., *Affirmative Action International Perspectives*, ILO, Geneva, 1995.

[11] Ibid.

[12] Comisión Económica para América Latina y el Caribe (CEPAL), *Equidad, desarrollo y ciudadanía*, Santiago, 2000.

[13] ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up, adopted by the International Labour Conference, Geneva, 18 June 1998.

[14] ILO, *A Fair Globalization – Creating opportunities for all*, 2004.

5. Racism and health

Cristina Torres Parodi

[The World Conference] urges States, individually and through international cooperation, to enhance measures to fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with a view to eliminating disparities in health status, as indicated in standard health indexes, which might result from racism, racial discrimination, xenophobia and related intolerance.

(Durban Programme of Action, para. 109)

Introduction

This chapter examines the impact of racial discrimination on the health status of individuals, communities and peoples of different ethnic origins, including immigrants, and barriers to accessing health care, health promotion and disease prevention services. Although the focus is on the Americas, this dimension of racial discrimination is a concern in all regions.

Advances in medical science have made it possible to refute the ideas that had been used to rationalize racism. It is now agreed within the scientific community that phenotypic variations do not constitute significant differences between human beings. Consequently, it is incorrect to speak of races on grounds of biology or genetics. The main differences between individuals and peoples are rooted in culture.

Race is a social, political and cultural concept. Ethnicity as a concept refers to the shared myths, ancestors, religion, territory, clothing, language and memories of a collective past that regulate a human community's relations. Although both ultimately refer to the same social phenomenon, scholars prefer to use the term *ethnic group* to refer to all human groups that identify with a specific culture. Some social communities and organizations are not always comfortable with these generic designations and prefer more specific terms. In the Americas, for example, the term *indigenous people* is used for the descendants of pre-Columbian peoples, consistent with the definition adopted under International Labour Organization Convention No. 169.[1] Original or indigenous peoples make up one of the largest human groups in the world – 300 million people in all regions. Of these, 150 million are in Asia and an estimated 40 million in the Americas.

For historical reasons, different ethnic and racial communities have been excluded from the benefits of development in the Americas. The historical experience and its inheritance must be faced.

"[D]uring the social and political formation of the Region, groups of African descent, as well as other original peoples, went through stages of extreme deprivation in legal, economic and social terms, marked by political/military

> subjugation and slavery. This no doubt left an imprint over the centuries leading to the limited social and political participation by minorities and ethnic groups that is still part of the current landscape".[2]

This history is reflected today in imbalances in access to health and education services, as well as the disparities in opportunities for political, social and cultural participation. These groups have missed out on the benefits of past social policies and programmes leaving them at a disadvantage in the labour market and in access to credit, thus further limiting their opportunities for social advancement. Ethnic origin can therefore be seen as a factor in the structural exclusion of certain groups or peoples.

Ethnicity tended to be ignored in earlier development policies, including health policies. In the Latin American and Caribbean region in particular the study of inequities linked to ethnic origin is relatively novel, and is being encouraged through the work of regional and international organizations.[3]

The use of the 'ethnic group/race' variant to analyse disparities can help anti-poverty and other programmes to achieve better results. Such programmes could be more effective than previous strategies that did not take cultural origin into account in their definition of poverty and assumed that it was sufficient to advocate the alleviation of poverty through economic growth. The shortcomings of this strategy have been revealed. Even in periods of economic growth, Latin America and the Caribbean is the region that has displayed the greatest disparities in income and other quality-of-life factors such as health care and access to health services.[4]

1. Ethnic/racial minorities : the health gap

The Durban World Conference recognized and urged action over the evidence that in many countries there are severe health status disadvantages for ethnic and racial groups, including immigrants and refugees. The Programme of Action recalled that to enjoy the highest attainable standard of physical and mental health is a human right and it should be available to all without discrimination in law or in fact because of their ethnic or other status.[5]

A review of the literature shows that the effects of inequities due to ethnic origin in health conditions, access to services and the quality of health care have been studied in an increasing number of countries covering a broad spectrum of societies that differ in terms of location and development.[6]

The evidence available on health disparities – and it is not available in all countries – makes clear that social exclusion is generalized and reflects the inheritance of past racial discrimination and the experience of continuing discrimination. Whether in developed countries, such as the United States, Australia or Canada, or developing countries, such as Brazil, South Africa or Colombia, ethnic/racial minorities, immigrants and refugees suffer disadvantages in their living conditions and health status, independent of their level of education, income, age or gender.

Life expectancy

In Brazil, a United Nations Development Programme (UNDP) project in collaboration with the Applied Economic Research Institute of Brazil (IPEA) records that in the last half of the 20th century, the difference in life expectancy between whites and Afro-Brazilians was seven years. In 1950 the life expectancy at birth was 47 years for whites and 40 years for Afro-Brazilians.[7] The differential remained unchanged 50 years later. Brazilians experienced an important improvement in life expectancy rates in the late 90s but, when analysed by race, the seven-year gap persisted to the detriment of Afro-Brazilians (63.5 years as compared with 70 for their Caucasian counterparts).[8]

Official information from the Australian Aboriginal Health Service (1996 data) shows that the life expectancy of an Aboriginal person (1.7 per cent of the population) is 20 to 25 years less than that of a non-Aboriginal person.[9]

In Guatemala, there is a strong correlation between life expectancy at birth and population distribution by ethnic group. There is a differential of nearly ten years between people born in the capital and those born in Totonicapán, a Guatemalan department in which more than 96 per cent of the population is indigenous.

In Panama, Boca de Toro Province has a large indigenous population: mortality due to diarrhoea in recent years was 34.4 per 100,000 as compared with a national average of 6.4.[10]

In the United States, indigenous Americans and Alaskans have a life expectancy that is five years lower than that of the general population. The life expectancy of the overall population is 76.9 years – 71.8 years for African Americans, 71 years for indigenous people and 77.4 years for whites.[11]

Infant mortality

Infant mortality is another indicator used to measure health status differentials. It is analysed here by ethnic origin for selected countries for which information is available.

*Table 1:* *Infant mortality rates per 1,000 live births, South Africa, 1993*

Group	Infant mortality rate
Blacks	72
Coloured	22
Indian	32
White	13
Ratio: Whites/Blacks	5.5

Source: Gilson L. and Di McIntyre, "South Africa: addressing the legacy of apartheid" in Challenging Inequities in Health, Rockefeller Foundation/PAHO, 2002.

This table shows that the infant mortality rate was five times higher among blacks than among whites. The ratio is higher than in an analysis based on income levels only, where it is approximately three times higher in the poorest quintile than in the richest quintile.

It is very clear from this case study, based on data yielded by the 1993 South African Living Standards and Development Survey (LSDS), that it is important to isolate the racial/ethnic origin variable because it reveals continuing inequalities in areas other than income and education levels.

Figure 1: *Infant mortality rate of black and coloured people by income quintiles, South Africa, 1993*
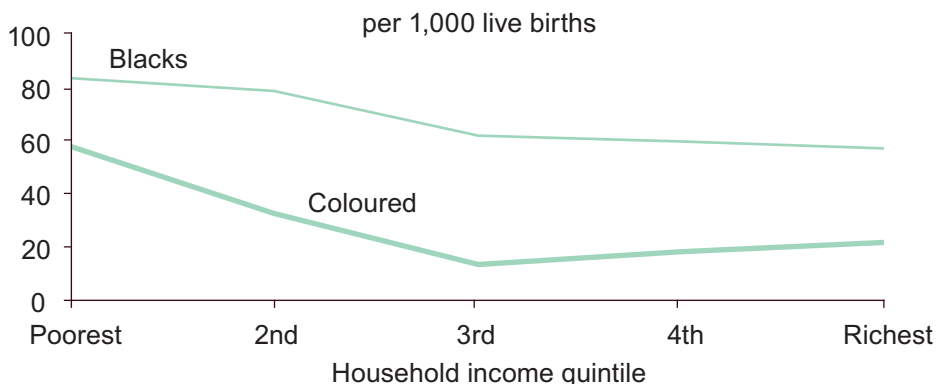
Source: Living Standards and Development Survey, South Africa, 1993.

The graph indicates that the difference in the infant mortality rates is higher than all income variations and notes that the ratio of the values of the rates for the poorest group (quintile 1) is very similar to that for the highest income group (quintile 5).

Table 2: *The relative risk of a child dying before the age of 5 (South Africa, 1995)*

Population group	Relative risk
African	2.0
Coloured	1.3
Indian	1.0
White	1.0

Source: South African Health Review, Chapter 4: Health Status and Determinants. South Africa, 2000.

In spite of the South African Government's systematic efforts to narrow infant mortality gaps since the early 1990s, the 1996 census shows that in 1995 the risk of African children dying before the age of five was still twice that of white children.

*Figure 2 :* Infant mortality in Colombia in selected departments by sex
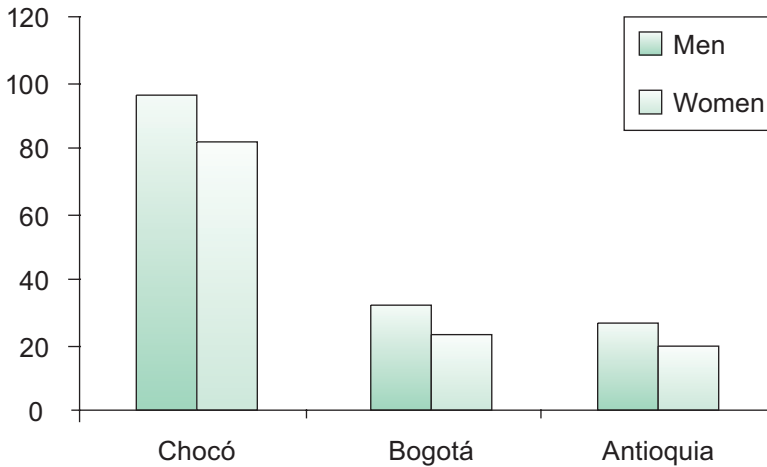
Source : PAHO, Equity and health from an ethnic perspective, Washington DC, 2001.

The gender-based data in figure 2 show that infant mortality is three (for males) to four (for females) times higher in Chocó, where the majority of the population is of African descent, than in other departments of Colombia such as Bogotá and Antioquia, in which Caucasians are in the majority. Male infant mortality is above 90 per 1,000 live births in Chocó, but it is below the national average in Antioquia, where it is less than 25.

Researchers have questioned whether ethnic origin is actually a macro-determinant of health or whether differences in infant mortality correlate rather with socio-economic status. Figure 3 relates to Brazil and correlates mothers' education levels disaggregated by their ethnic origins, as a proxy measure of living standards, with infant mortality.

Figure 3: *Infant mortality by race and the mother's years of schooling in Brazil*
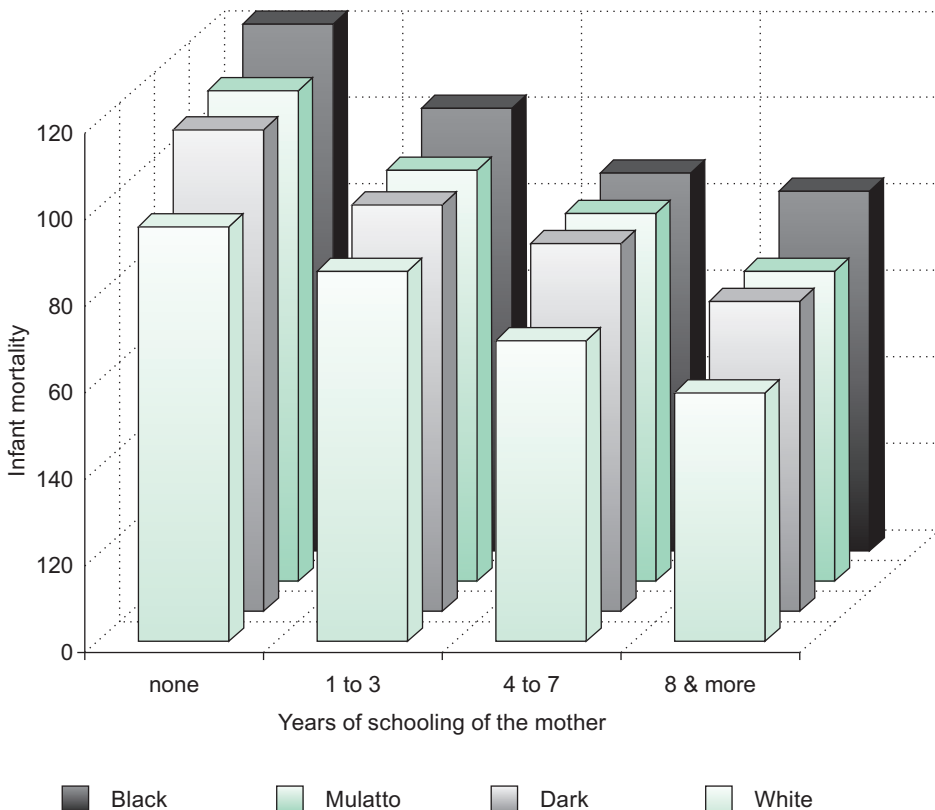
Source: Pinto da Cunha, E., 1997. In Barata et al., Equity and health: Papers in Epidemiology. (Abrasco/FioCruz, Rio de Janeiro).

The graph shows that, when infant mortality rates are set against the mother's years of schooling for each ethnic group, the infant mortality rate for black mothers with the highest number of years of schooling, i.e. eight years or more, is seen to be the same as for illiterate white women. This indicates that ethnic origin is an independent factor in social exclusion that can be stronger than the individual's socio-economic level as measured by level of education.

Homicide rates

Data on homicide rates from the United States provide another measure relating race to health and social conditions.

Table 3: *Homicide rates in the United States among adults aged 25 to 44, by race and by level of education (1994-1995)*

Education	Men		Women	
	African American	*White*	*African American*	*White*
< 12 years	163.3	25.0	38.2	10.2
12 years	110.7	10.6	22.0	4.7
> 13	32.4	2.9	9.4	1.6
Total (1995)	*77.9*	*11.0*	*17.4*	*3.3*

Source: LaVeist, Thomas, Race, Ethnicity, and Health, Jossey-Bass, Maryland, 2002.

Table 3 shows that there is a consistent difference between the chances of being a victim of homicide depending on race. Even in the male population with tertiary education, the homicide mortality ratio between African and white Americans is approximately 11.

Esmeralda, Ecuador, a province with a large population of African descent, has a homicide mortality rate four times higher than the national average – more than 40 per cent, compared with less than ten per cent. A substantial difference is also found in an analysis of the suicide rate (14 among people of African descent and 5 for the total population). Suicide rates are linked to individual emotional stability.[12]

Access to medical services

Access to services is another key indicator for measuring health inequities between ethnic groups. Many studies confirm that access is linked to economic position. A study on the United States gives the breakdown of those without medical insurance as: whites 0.2 per cent, African Americans 19.7 per cent, Mexican Americans 36.9 per cent, Puerto Ricans 15.5 per cent and Cuban Americans 20.3 per cent.[13] It can be seen that ethnic and racial minorities are in a much more vulnerable situation than white Americans in terms of access to health services.

But is the explanation of such differences, replicated elsewhere, more related to poverty than ethnic origin? Figure 4 is based on information derived from the household survey conducted by Brazil's National Household Research Service in 1998. It shows information on access to different medical services distinguishing whites and people of African descent, the latter broken down into mulattos and blacks. The ethnic groups' differential behaviour as regards services cannot here be explained by economic barriers since the analysis concerns the highest income quintile in the three categories (white, mulatto and black).

The behaviour of the highest quintile, composed of people with the greatest purchasing power, shows that recourse to private medical consultation is highest among whites

(highest column), lower among mulattos, and much lower among blacks. The opposite is true of emergency-room consultations, which are attended by a higher percentage of people of African descent than by white Brazilians.

These data indicate that whites above a certain income opt for better quality health services and expect less from the public services. Their visits to private physicians also imply a positive attitude to health promotion and disease prevention. These people probably receive better health protection through frequent medical check-ups and early prevention. Information available for the United States shows that the timing of medical visits is one of the major factors affecting the capacity to solve health problems at an early stage.[14] Early or very late detection radically affects the choice to be made regarding possible courses of treatment. Late detection rules out some courses of treatment because there is no longer any point in administering them.

People of African descent, therefore, undergo much more radical courses of treatment, extractions and amputations because they do not turn to the medical services in time. In comparison with white Americans, African Americans are more likely to have asthma treated by the emergency services and to be hospitalized, which implies little access to preventive and primary health-care services. People of African descent with diabetes are also more likely to have amputations than whites.[15]

Figure 4 : *Type of service normally used, by ethnic group, for the highest per capita income quintile, Brazil, 1998*
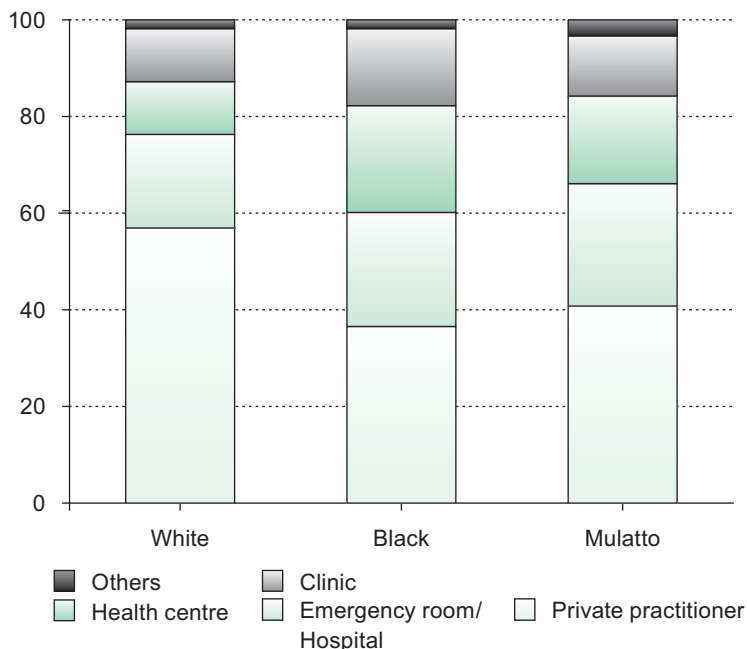
Source : Elaborated by PAHO using official statistical information from Household Survey, Brazil, PNAD, 1998.

Many factors connected with social origin can inhibit or foster access by different ethnic groups to health services. They include income, education, gender, age, language skills and self-perception of health. A study of the population of Chinese origin in England showed that this population group self-reported the same health status but few of them visited a general practitioner.[16] A survey conducted as part of the study revealed that only 19 per cent of the members of the Chinese community in England had visited a doctor in the month before the interview compared with 28 per cent of the general population. The percentage was also low over a longer period. In the 12 months preceding the interview, 64 per cent of the Chinese population had visited a general practitioner compared with 76 per cent of the overall population. The study concludes that language is a barrier for non-English-speaking members of the Chinese community, who prefer to consult traditional Chinese doctors.

Access to mental health treatment and care also reflects differences among groups. Studies reveal that barriers to access to mental health care may be associated with such factors as segmentation in the quality of services or cultural differences. Thus, there may be stigma associated with mental illness that inhibits individuals from seeking help.[17] A study of Mexican Americans experiencing mental health problems found that they were less likely to consult a mental health specialist than non-Hispanic whites.[18]

2. Equity, ethnicity and public policies

There is agreement on the values that underlie modern democratic societies if they are to achieve unrestricted citizenship, namely the application of human rights, tolerance, equity, pluralism and ethnic and racial equality.

In the 20th century, commitment to the value of equality of citizenship was expressed in many societies in the design and implementation of 'universal access' health programmes. In the past 50 years, the health sector in many countries has striven to reduce maternal and child mortality, to improve general health conditions and to extend coverage. The World Health Organization (WHO) 'Health for All' initiative in 2000 developed strategies on primary health care and disease prevention to target the most disadvantaged groups.[19]

In the last decades of the 20th century, debate began over whether such efforts at prevention were sufficient to secure equality of access to health care. Research confirmed that they have not always been successful. Efforts to improve opportunities for poor and disadvantaged citizens to exercise political rights through electoral processes as voters have been more effective, although less so in terms of their access to representative positions in society.

In other areas that reflect quality of life (health, education, housing, sanitation), wide gaps between social groups in the same society have persisted. One such group is immigrants. Immigrants – who arrive in a country in search of freedom, in some cases even to save their lives, or to enjoy better material living conditions – find that as well as

the social disadvantage they bring with them, they encounter additional barriers and rejection of a cultural character (language, clothing, religion). They also find themselves sharing the same – or lower – standards of health, education, housing and income with local ethnic minorities.

The particular difficulty that immigrants encounter in gaining access to health-care services is known to arise directly because of their migrant status and their frequent employment in the informal labour market (harvesting work, piecework, etc.), which does not entitle them to social benefits. Few countries, however, provide comparative statistics on immigrant groups and health.

In the past, social policies – as the major instrument for providing social security to the disadvantaged and the poor – have encountered difficulties in reaching particular sectors of the population, particularly ethnic minorities and migrant workers. The universal approach, when variables (such as gender, ethnic/racial origin and income levels) are taken into consideration, has produced wide gaps between the various segments of the population, whichever variable is selected.[20] Racial discrimination as a social factor contributes to these differences in health between individuals. Discrimination in the field of health takes many forms, including difficulties in access to services, the poor quality of services available, and inadequate information on which to base decisions.[21] Discrimination may result also from indirect factors such as lifestyle, place of residence, occupation, levels of income, and individual or family status.

Poverty and ethnicity are perversely and deeply linked, which makes it difficult to analyse the two processes separately. The evidence that ethnicity is a variable adding disadvantage that can operate independently of social class or socio-economic stratum has been considered briefly above. Yet would poverty reduction policies, aimed at the poor as a whole, reduce ethnic inequities as well? Why have policies, designed under the universal access model, been insufficient in the past to provide equality of opportunity to citizens of different ethnic origin? What can be done in the health sector to reverse the disparities?

The answers to these questions are not yet wholly clear, but policymakers in different countries have sought to address them and have implemented programmes and projects from which good practices and lessons can be taken.

Some countries have established specialized health programmes for ethnic minorities and indigenous peoples such as the Aboriginal Health Services of Australia and the Indian Health Services of the United States. Special programmes have been created also within ministries of health, as in Bolivia, Brazil, Colombia and Ecuador. Arising from this experience, some guidance and good practices to address the needs of minorities have been identified. These include:

• The need for statistical information to be disaggregated by race and ethnic group;

• The ethnic perspective should be included in the design of health programmes targeting the poor;

- Participation by ethnic minorities should be facilitated in formulating and evaluating health projects;
- Health services must surmount cultural barriers to make access friendlier to ethnic/racial groups;
- Traditional medicine should be promoted as part of health-care systems and programmes.

3. The importance of disaggregated data

A major problem facing efforts to formulate, monitor and evaluate health policies with ethnic/racial sensibility is that of the lack of information.[22] If discrimination and inequality are to be addressed, then the ethnic composition of the population must be more transparent. Without reliable data, systematically collected over time, that are broken down or disaggregated by ethnic origin, the problems and challenges of ethnic and racial discrimination, including in health, cannot be effectively addressed. The incorporation of a question on ethnic origin into the census, household surveys and other public data collections systems is necessary for evidence-based public policy formulation. The Durban Conference recognized that such disaggregated data were vital to overcome racism, racial discrimination and xenophobia and called on all countries to implement data collection in this way.[23] Such data are collected in a number of developed and developing countries. The United States and the United Kingdom are good examples where disaggregated data have been collected for decades. More recently, many Latin American and Caribbean countries (Argentina, Belize, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Paraguay and Venezuela) included a question on ethnic origins in their 2000 census.[24] The next step should be to include ethnic origin in the periodic household surveys that are widely used to gather socio-economic data. In the case of health, it would be desirable to add ethnic origin to the data collected by a country's health information system, for example birth and death certificates should be included in reports on communicable diseases. Many health sector authorities have not yet adopted this practice and lack of information is very common.

Collecting information by race and ethnic groups is not simple since ethnic origin does not a priori seem relevant in the health field – biologically, there is only one human race. From a medical practitioner's perspective, a sick patient from a racial or ethnic minority needs the same treatment as any other person presenting the same symptoms of similar age and sex; thus information on origin is, or should in principle be, irrelevant.

From a broader public health and equality standpoint, however, such information is not irrelevant. A number of indicators in which ethnic origin has a significant impact on health may be identified. These concern differentials in:

- Life expectancy at birth;
- Mortality rates, particularly infant and maternal mortality;

- Health status for specific pathologies, such as cardio-pathologies, diabetes, hypertension, sickle-cell anaemia;
- Access to health care, disease prevention and health promotion services;
- Timing of consultations for medical attention; and
- Quality of the services provided.

It is therefore impossible to ignore the fundamental importance of ethnic/racial data if any advance is to be made in ensuring that the enjoyment of health and health care is delivered as an equal good for all.

4. Conclusion

The brief account above has demonstrated that there are real disparities in the provision of and access to health services that affect people of different racial and ethnic origin, as well as other groups, such as immigrants. This can be explained by their lower level of political representation and restricted capacity to build up social capital, both of which are needed for a change in their social situation. The evidence suggests that citizenship restrictions and other barriers to the full exercise of their rights also play a role. Past and present racial prejudice and discrimination influence all such factors.

The social situation – shared by most minority ethnic groups – produces poverty. This translates on a daily basis into low income, residence in often remote and under-resourced areas, poor access to education and other services, lack of appropriate problem-solving tools, weak structures for consultation and coordination with government agencies, and lack of the information on health promotion and disease prevention that is required to change behaviour and adopt healthier lifestyles. Some indigenous and ethnic communities are reluctant to share information with health authorities due to fear of stigmatization, but this must be overcome as isolation helps to maintain and close the poverty circle.

At present, policymakers and technical cooperation programmes have to prioritize but the decision has to be taken at national and local level on how to better meet people's needs. Some guidelines can be given on addressing the elimination of disparities linking poverty to ethnicity. The first priority is to collaborate with national statistics institutions responsible for collecting statistical information and with ministries of health to disaggregate data by ethnic origins. Secondly, successful experience or good practices related to the organization of services targeting ethnic groups need to be identified and systematized. Finally, methodologies for appropriated targeting need to be developed. Targeted compensatory programmes of affirmative action can be a positive initiative to redress historical inequities at least for a transitional period. Such initiatives have been much debated and have aroused controversy. Nevertheless, there has also been growing support for new policies. Research on Brazil has concluded that, if no affirmative

action is taken to benefit ethnic groups, it will take more than the lifetime of this genera-tion to redress existing social inequities.[25] Robert Martins, Adviser to the United Nations High Commissioner for Human Rights, has written, "it is necessary to differentiate the population of African descent in public policies to pay off the historical debt".[26] The evi-dence is compelling that if the goals of health equity are to be achieved then special measures need to be implemented.

A seminar held in 2002 to follow up the Durban Conference summarized clearly the task ahead for the Latin American-Caribbean region. The Seminar noted that:

> "despite the inadequate information available, [it is known that] indigenous groups, migrant groups and people of African descent in Latin America and the Caribbean are considerably more prone to health inequalities than the general public in the region: inequalities both of health status and access to, use of and funding of health services. The reduction of these inequalities will require joint efforts by States, the concerned communities, civil society and external coopera-tion to carry out policies and programmes that discriminate in favour of the groups concerned."[27]

At regional level, responsibility now rests with Governments, financial institutions and technical cooperation agencies to formulate programmes, coordinate teams and pro-mote civil society participation, so that the goal of the highest attainable standard of health for all citizens can be delivered regardless of their ethnic origins.

Further reading

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Issues for discussion

What evidence is offered by the author that racial or ethnic discrimination can be distin-guished from poverty as a variable in explaining differences in health status? The Durban Programme of Action calls for data collection on ethnic origin to be done with the consent of the individuals based on their self-identification and respecting human rights, data protection regulations and privacy guarantees (paragraph 92). Can you foresee any problems with this approach?

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6. Racism and HIV/AIDS

Shalini Bharat

HIV/AIDS-related stigma comes from the powerful combination of shame and fear – shame because the sex or drug injecting that transmit HIV are surrounded by taboo and moral judgement, and fear because AIDS is relatively new and considered deadly. Responding to AIDS with blame or abuse towards people living with AIDS simply forces the epidemic underground, creating the ideal conditions for HIV to spread. The only way of making progress against the epidemic is to replace shame with solidarity, and fear with hope.

Peter Piot, Executive Director,
Joint United Nations Programme on HIV/AIDS (UNAIDS)

Introduction

It is increasingly acknowledged that those most deeply affected by the HIV epidemic are also among the most severely disadvantaged, whether as a result of race, economic status, age, sexual orientation or gender. As with other stigmatized health conditions such as tuberculosis, cholera and plague, fundamental structural inequalities, social prejudices and social exclusion explain why women, children, sexual minorities and people of colour are disproportionately impacted by AIDS and the accompanying stigma and discrimination. The two-decade-long global history of the HIV epidemic reinforces the well-documented interaction of disease, stigma and 'spoiled' social identities based on race or ethnicity and sexuality.

The strong linkages of HIV/AIDS with gay men and other so-called 'risk groups' established early on seem to have blinded social researchers and others to the factors of racial, class and gender relations that frame AIDS not as a medical problem alone but as a social one. Race, class and gender have been found to serve as important determinants of a person's health status and well-being affecting his/her perception of illness, health-seeking behaviour, accessibility to services and coping mechanisms. Because these factors usually operate in tandem, they severely compromise the person's overall health status and ability to respond to the problem. Although, there is some empirical evidence that links poverty and gender to HIV/AIDS, there is still insufficient research on the relationship between HIV/AIDS, ethnicity and race.[1]

This chapter explores what is known about the links between racism, racial discrimination and HIV/AIDS and identifies some avenues for further research, as well as action that should be taken to protect victims of this variant of racial discrimination.

1. The phenomena: racism, racial and AIDS-related discrimination

Race is a form of 'group identity' and arguably the basis of some of the most extreme and serious acts of discrimination and violations of human rights globally. In the domain of health, race is identified as "a central determinant of social identity and obligations [and] an empirically robust predictor of variations in morbidity and mortality."[2] To understand how race is relevant to questions of public health, care and treatment issues, it is important to first examine the phenomena of stigma and discrimination in general, and how it is related to illness and disease.

Stigma

The concept of 'stigma' was first elaborated in the classic work of the sociologist Erving Goffman.[3] He defined stigma as "an attribute that is significantly discrediting" and which serves to reduce the person who possesses it in the eyes of society. Relating the concept to conditions of mental illnesses, physical deformities and socially deviant behaviours such as homosexuality, Goffman argued that the stigmatized individual was seen to be a person with "an undesirable difference". In other words he maintained that stigma is constructed by society on the basis of perceived 'difference' or 'deviance' and applied through socially sanctioned roles and sanctions. The result is a kind of 'spoiled identity' for the person concerned. Goffman identifies three kinds of stigma. The first he called stigma derived from physical deformities; the second is associated with perceived 'blemishes of individual character' (e.g., due to mental disorder or homosexuality); and the third, 'the tribal stigma of race, nation and religion'. This third type of stigma, "transmitted through lineages" and possessed equally by all members of a family, implies that group membership and group identity could in themselves be sources of stigma.[4]

Race or ethnicity then is one such group identity that is a source of stigma, prejudice and discrimination for those possessing that identity. When the racial identity combines with a health condition such as HIV/AIDS, it contributes to "double stigma" (tribal stigma and stigma due to HIV/AIDS status). An early work of Postell, 'Health of Slaves on Southern Plantations', made pictorial representations of the popular public images of African American group identity in relation to diseases and health care.[5] The health-seeking behaviour of black Americans, for instance, is symbolized in one picture by a black woman on foot, with images of quackery-chicken's head, frog and snake parts – representing her health practices and beliefs – and dense vegetation and darkness framing her background. This picture is contrasted with that of a white American doctor on a buggy, with images of medicinal bottles – the tools of his trade – and a sunlit background with limited vegetation. The image so created is one of backwardness, ignorance and cultural inferiority of the black people. Wailoo provides other examples. Thus the hookworm was designated the 'germ of laziness' because of the lethargy it produced in its patients, a majority of whom were black. The fight against tuberculosis

among the black population was described as not just a fight against the disease, but "…against physical, mental and moral inferiority, against ignorance and superstitions, against poverty and filth."[6]

In these and other descriptions, notes Wailoo, one image that dominated was that of "the carriers – a portrait of a social menace whose collective superstitions, ignorance and carefree demeanour stood as a stubborn affront to modern notions of hygiene and advancing scientific understanding… [a people best understood as] …a disease vector…"[7] He goes on to show how the scientific advancements of that time in the field of bacteriology gave rise to the notion of 'human disease vectors' in the context of 'Typhoid Mary' or the 'asymptomatic carrier'. Coming from the pioneering scientists of that time, such images also bore the stamp of scientific authenticity. Wailoo cites the noted hookworm researcher Charles W. Stiles, who declared that the incidence of the disease, "possibly indicates that the Negro has brought [it] with him from Africa…and we must frankly face the fact that the Negro … because of his unsanitary habit of polluting the soil…is a menace to others".[8] Thus, observes Wailoo "one important feature of stigma in public health was associated with contemporary scientific and social ideas about 'the carrier' of disease."[9] It is clear from these examples that the notion of the 'disease vector' is quite old and that it was used to stigmatize the black character itself. When Goffman elaborated his concept of stigma in the early 1960s he referred to this negative characterization as the creation of 'spoiled identity'.

The stigmatization of African American identity in relation to diseases in the early 20th century shows a remarkable continuity today in the context of HIV/AIDS. An illustration is the stigmatization and harassment of Haitian people in the early 1980s, who were accused of having brought AIDS into the United States.[10]

The meaning of discrimination

The concept of stigma is integrally linked to that of 'discrimination'. According to the Oxford Dictionary of Sociology, the concept of discrimination simply means "treating unfairly" and is most commonly used in the context of sociological theories of ethnic and race relations. More recent sociological analyses of discrimination, however, "concentrate on patterns of dominance and oppression, viewed as expressions of a struggle for power and privilege."[11]

While this latter sociological definition emphasizes the structural dimensions of discrimination,[12] Herek's social psychological analysis defines discrimination in behavioural terms – "discrimination is behaviour".[13] In other words, discrimination is the differential treatment of individuals according to their membership of a particular group. Herek differentiates discrimination from 'stigma', which 'resides in the structure and relations of society', and 'prejudice', which 'resides in the minds of individuals'.[14]

In the context of race, *racism is the stigma and racial discrimination is the behaviour that gives expression to that stigma*. Racism is rooted in the ideology of cultural superiority and results in the generalized and definitive valorization of biological differences, whether real or imagined, favourable for the racist, devaluing the other, with the aim of justifying an aggression or privilege.[15] Racism is transmitted through generations and serves to rationalize the hierarchical patterning in society whereby one group dominates over other(s). Racism expresses itself through institutional norms, cultural values and individual and/or collective discriminatory behaviour patterns.

Finally, reference can be made to legal definition. Race-based discrimination or racial discrimination is defined in article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination as:

> "…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."

Aids-related stigma and discrimination

In recent years concern about AIDS-related stigma and discrimination has grown.[16] Parker and Aggleton seek to conceptualize stigma and discrimination not just as individual processes but as social and cultural phenomena linked to the actions of whole groups of people, not the consequences of individual behaviour.[17] They combine the works of Foucault[18] which emphasize the cultural production of difference in the service of power, and the work of Goffman that relates to stigma associated with deviance, to make the point that stigma and stigmatization function at the point of intersection between culture, power and difference. So conceptualized, stigma is not merely an expression of individual attitudes or of cultural values, but is central to the constitution and continuity of a given social order. Within such a conceptual framework, it is possible to understand and analyse racism and racial discrimination related to HIV status.

AIDS-related stigma and discrimination are complex social processes. They are neither unique nor randomly patterned.[19] They usually build upon and reinforce pre-existing fears, prejudices and social inequalities pertaining to poverty, gender, race, sex and sexuality, and so on. In this sense, racist attitudes and racial discrimination linked to HIV/AIDS status play into, and reinforce, already existing racial stereotypes and inequalities concerning people of colour in general. Like other forms of stigma, AIDS-related stigma also results in social exclusion, 'scapegoating', violence, blaming, labelling and denial of resources and services meant for all. Research shows that it is not necessary for people to experience stigma directly or personally (enacted stigma); stigma may be perceived or presumed to be there (felt stigma).[20] This latter type of stigma is psychologically more damaging and difficult to challenge in public.[21]

There are two other forms of stigma – courtesy stigma and self-stigma. Courtesy stigma is that shared by all those associated with the stigmatized person (for example health-care providers of HIV-infected individuals). Self-stigma is the stigma accepted and internalized by the person and used to legitimize others' negative actions, such that challenging these becomes difficult. Instead the person self-restricts behaviour out of a sense of vulnerability or indulges in self-blame.[22] Primarily the disliked sectors of society – gay and bisexual men, injecting drug users, and sex workers – have been most closely associated with the epidemic since its early onset. Hence, Herek has further differentiated between 'instrumental' and 'symbolic' stigmas.[23] The former derives from fear of AIDS as a communicable and lethal illness, while the latter refers to the use of AIDS as a vehicle for expressing hostility toward groups that are already stigmatized in society. Racism and racial discrimination linked to HIV status may be categorized as 'symbolic' stigma, as the already stigmatized and marginalized racial groups are stigmatized further on account of their association with HIV. Conversely, HIV is assumed to be high among certain racial/ethnic groups on the basis of their past association with diseases such as cholera, plague, hookworm etc.[24]

Herek has described a four-part process of stigmatization on the part of a society: first, by identifying and defining the disease; second by assigning responsibility for its appearance to some person, group or thing; third, by determining whether those affected by the disease are to be viewed as innocent or guilty; and fourth, by assigning responsibility for identifying a cure or solution to another segment of society.[25]

2. Race, gender, class and HIV/AIDS: the intersection

The linkage between race and HIV/AIDS cannot be seen in isolation from the dimensions of gender, class and sexual orientation.[26] As Aggleton notes, "intersectionality is central to an understanding of how gender, race, age, sexuality combine together to determine who is infected and once infected who is able to access medications and health care".[27] This intersectionality contributes to double and sometimes multiple stigmas and stigmatization of the infected. Gender differences in patterns of HIV infection vary widely around the world. In regions where HIV transmission is mainly heterosexual, more young women are infected than men. In most of Africa infection rates among young women are at least twice those among young men.[28] In some parts of Kenya and Zambia, teenage girls have rates of 25 per cent compared with 4 per cent among teenage boys.[29] The gender dimension of the HIV epidemic is closely related to patriarchal values and norms and to the fact that women bear the major consequences of the epidemic on account of loss of livelihood, economic pressures, care of sick family members and the stigma of AIDS.[30]

In many parts of Asia it is marriage that poses a greater risk of HIV infection to women who themselves report monogamous behaviour. The impact of this can only be imagined in countries where marriage is a cultural ideal and near universal, as in India. Gender

norms and values in these countries ordain that women accept their 'lot' in marriage and dare not question their husbands' demand for sex. Further, they prevent women from seeking knowledge about sex, sexuality and reproductive health matters. Women and young girls thus lack the necessary information resources and power to make choices, such as in matters of contraceptive use, by which they may reduce the risk of infection. Lack of adequate education and training for earning livelihood further marginalize women, particularly those from disadvantaged racial and ethnic backgrounds. In situations of armed conflict, migration and crisis displacement, again it is the women who bear the consequences of sexual assault and rape. Evidence gathered from Croatia, Bosnia and Herzegovina, and Rwanda suggest how rape and sexual abuse are used as weapons of war, so enhancing the risk of HIV and other sexually transmitted infections (STIs) for women.[31]

Poverty and HIV/AIDS

Poverty is yet another dimension that combines with race and gender to multiply HIV related risk. Worldwide, the AIDS epidemic is most severe in the poorest countries and among people of colour.[32] Conditions of poverty, hunger, powerlessness and ignorance provide fertile ground for the spread of HIV and most black people and other ethnic minorities live in these conditions. Poverty increases the probability that people will take personal risks. For example, in Nicaragua, economic hardship makes young women agree to have sex with older, married men, whose demand for younger, 'clean' women is increasing in the hope of warding off HIV infection.[33] While poverty increases the risk of HIV, HIV also accentuates poverty. In sub-Saharan Africa, for example, where labour shortage due to HIV-related morbidity and mortality has cut crop production by more than 40 per cent in affected households, the epidemic has caused a major developmental crisis.[34]

3. Geographical dimensions : problem and trends

AIDS was recognized as a global crisis by the mid-1980s. At the end of 2001, an estimated total of 40 million people were living with HIV/AIDS – of whom 18.5 million women and 3 million children.[35] Almost 22 million people have already died of AIDS, while nearly 3 million AIDS deaths were reported in 2003 alone.[36] HIV/AIDS is the fourth largest cause of death globally and the leading cause of death in Africa.[37] Overall sub-Saharan Africa continues to lead with 28.1 million HIV-infected people but new HIV infections as percentages of existing cases are the highest in Eastern Europe and Central Asia (43 per cent), followed by the rest of Asia and the Pacific (26 per cent), as against the global average of 11 per cent.[38]

HIV/AIDS epidemiological data are generally reported by country and by risk group and not by ethnicity/race due to the political sensitivity involved.[39] It is also argued that race/ethnicity-based data may serve to perpetuate stigma linked to those groups and

that, in part, the problem may also be a 'definitional' one with respect to racial categories.[40] Some country-specific data however provide racial/ethnic dimensions of the problem. These figures may not present the true racial profiling of HIV prevalence, but they are suggestive of levels of social inequalities related to race, gender and class.

Epidemiological data from the United States suggest that African American men and women account for an increasingly larger proportion of the HIV/AIDS cases. Although African Americans make up only 13 per cent of the population, they accounted for an estimated 54 per cent of all new infections in 2000. Nearly 82 per cent of all the women estimated to have acquired HIV in 2000 were African American and Hispanic.[41] Reports also suggest that AIDS has become the leading cause of death among African Americans aged 25 to 44.[42] In a survey of six United States cities, HIV prevalence rates of 30 per cent were found among African American gay men.[43]

In Canada, the proportion of reported AIDS cases has steadily increased among ethnic groups. Between 1991 and 1999, for example, the proportion of white AIDS cases declined from 88.6 per cent to 66.1 per cent, while a corresponding rise was registered among various ethnic groups. According to one report, 78.6 per cent of the cumulative AIDS diagnoses reported to December 1998 were reported by ethnicity.[44] This trend was found to be particularly significant after 1994 among aboriginal and black people. Statistics for 2000 reveal that whereas the Aboriginals and blacks comprise 2.8 per cent and 2.0 per cent of Canada's population, respectively, they accounted for nearly 9.2 per cent and 8.3 per cent of all reported cases of AIDS in that year.[45] In Honduras, HIV infection among the black Carob minority known as "Garifunas" is six times the Honduran national average, at 8.2 per cent in men and 8.5 per cent in women. Among men and women in their twenties, HIV infection was reported to be at 16 per cent.[46] In Australia, a significantly higher proportion of HIV infection is reported among indigenous women (26 per cent) than among the non-indigenous women (8 per cent).[47] In Europe, HIV infection rates among Africans in France, especially among the women, are reported to be increasing.[48] In the United Kingdom, Ugandan migrants form the second largest group affected by HIV-1, after gay men.[49] Recent statistics also reveal a narrowing gender gap in HIV infection rates. Globally women accounted for 40 per cent of all new infections in 2001 and for 37 per cent of the total AIDS deaths in 2001.[50] Within minority racial and ethnic groups too, women are found to be increasingly at greater risk of infection and targets of greater levels of stigma and discrimination. The UNAIDS report for 2002 notes that "…young, disadvantaged women (especially African American and Hispanic) are increasingly vulnerable to infection".[51]

In most parts of Africa HIV prevalence among women is climbing faster than among men. In Botswana, for example, median HIV prevalence among pregnant women increased from 38.5 per cent in 1997 to 44.9 per cent in 2001, while in Zimbabwe the prevalence rate increased from 29 per cent in 1997 to 35 per cent in 2000.[52]

4. Empirical data on racism and racial discrimination related to HIV/AIDS status

As stated before, the relationship between racism, racial discrimination and HIV/AIDS has not been explored sufficiently well. Besides anecdotal evidence and a few small-scale research studies, there is no comprehensive documentation of racial discrimination linked to HIV/AIDS. The earliest racist pronouncements were in relation to 'African sexuality' and the blaming of 'Haitians' in the United States for being the 'vectors' of the disease.[53] Although the fear seems real that documentation of ethnic data might further polarize communities, the significance of reliable racially disaggregated data on HIV/AIDS for developing policies and programmes sensitive to race-based discrimination cannot be underestimated.[54] Such data can serve as an advocacy tool for promoting and protecting rights of ethnic or racial groups.[55]

Throughout the world, HIV/AIDS-related stigma is known to have triggered a range of negative and unsupportive reactions. Various contexts – family, community, work place, health-care setting – where stigma and discrimination are known to occur have been identified.[56]

Early on in the epidemic, travel restrictions were placed on 'foreigners', most of whom belonged to racial/ethnic minorities. For example, African students travelling to USSR and parts of Western Europe were detained, isolated or even expelled from their university programmes for reasons that included their HIV status.[57] In the Gulf countries mandatory testing is imposed on all foreign nationals[58] and HIV-infected foreigners continue to be denied permission to enter the United States. African Americans, in general, have reported greater levels of stigma and discrimination in the health-care sector due to their HIV status compared to whites. Some of the most common reactions reported are those of scapegoating and blaming. As already noted, many Haitians were harassed and stigmatized in the early period of the disease due to the belief that they were the carriers of the infection to the United States.[59] In countries that are particularly hard hit, instances of violence and assault against HIV-infected persons have been recorded. This often follows the public disclosure of one's HIV status, as happened in the case of a young community volunteer in South Africa, Gugu Dlamini, who was stoned and beaten to death. It is not surprising therefore that HIV-positive people fear disclosing their 'serostatus'. In an evaluation by the AIDS Support Organization (TASO) in Uganda, 58 per cent of the clients reported fear of stigma as the main reason for non-disclosure of their serostatus to others.[60] Families and individuals are known to have gone to great lengths to hide the presence of HIV infection from others in the community.[61] Such secrecy serves to keep the epidemic socially invisible and greatly increases the potential of its silent spread in the community, as those infected fail to seek services to learn constructive ways of living with HIV.[62]

Although direct evidence of racial discrimination due to HIV/AIDS is not so readily available, a plethora of research findings report wide health disparities among racial minorities that are inextricably related to racism and other forms of discrimination in society.[63] Studies in the United States, for instance, indicate higher infant and adult mortality due to diabetes, homicide and HIV/AIDS among Afro-Americans than among the white population.[64] A study of 107 United States cities confirmed higher disease-specific mortality among African Americans than among other groups.[65] In Peru, provinces with a higher concentration of Afro-Peruvians, such as Piura, report higher infant mortality (93/1000 live births) compared with Lima (45/1000 live births), which has a low population of African descent.[66] Similar sharp disparities are reported in Brazil, where infant mortality among Afro-Americans is 62/1000 compared with 37/1000 among whites.[67] Access to health insurance, too, is generally poorer for certain racial groups. By 1986, 39 per cent of Hispanics in the United States had no coverage, a figure three times higher than that of whites and double that of African Americans.[68] In Latin America and the Caribbean, the Afro-Venezuelan population lacks health services and health workers refuse to visit due to violence.[69] Access to modern medical technologies is generally poorer, so that fewer elderly Afro-Americans in the United States consult health specialists as compared to elderly white people. They receive less preventive care and poorer-quality hospital services, and lack access to sophisticated medical technologies for heart problems etc.[70]

There is some evidence that might explain why racial minorities may be particularly vulnerable to the risk of HIV/STIs. In most countries, men and women from indigenous groups and racial minorities generally have fewer opportunities for schooling and employment than the majority population. Consequently, there is greater gravitation towards drug abuse and paid sex work. In Baltimore, United States, for instance, over half of drug injectors never graduated from secondary school and 97 per cent of these were African Americans.[71] Because of the lack of racially disaggregated HIV/AIDS data and because prevention services first started among white gay men, there are fewer culturally appropriate preventive services for racial minorities. This may partly explain why unsafe sex fell by a smaller margin among black teenagers (15 per cent) compared with white teenagers (35 per cent), between 1988 and 1995, and why risk exposure among the Hispanics actually increased over the same period.[72] Ignorance may not be a sufficient reason for disparities in safe sex practices. For example, while over 95 per cent of Garifuna men and women knew about HIV transmission, almost 40 per cent of Garifuna men and 13 per cent of women reported unsafe sex behaviour in the previous 6 months.

Despite insufficient direct evidence linking racial discrimination to HIV/AIDS, it is easy to see how racism, class and gender intensify existing inequalities, given the wide health disparities between white majority populations and people of colour.

5. International responses

Legal responses

As early as 1983, 12 countries had adopted legal instruments on AIDS. By 1995 this number had increased to 120.[73] Legal responses have included:

- Compulsory screening and testing of groups and individuals;
- Prohibition of people with HIV from certain occupations;
- Medical examination, isolation, detention and compulsory treatment of infected people;
- Limitations on international travel and migration;
- The restriction of certain behaviours such as injecting drug use and prostitution.[74]

Legislation largely reflects the conflict between protection of public health and protection of individual health. In India, for example, a Supreme Court ruling suspended the rights of HIV-positive people to marry, ostensibly to protect the marital partner. In South Africa, however, the Constitutional Court held that the dismissal of a cabin attendant by South African Airways because he was HIV-positive was unfair discrimination. Nevertheless, even where supportive legislation and courts exist, fear of social exclusion and blame often prevents HIV-positive people from seeking legal protection.

The resolution adopted by the 99th Inter-Parliamentary Union Conference urged parliamentarians around the globe to implement the International Guidelines on HIV/AIDS and Human Rights. Particular focus was given to those dealing with public health legislation; criminal law and prison systems; anti-discrimination legislation; privacy, confidentiality and ethics (including in conducting research); as well as public and private sector standards and mechanisms for implementing the Guidelines.[75]

Strategies

Today HIV/AIDS is largely recognized as a human rights issue.[76] At the international level, the strategy has been to integrate human rights principles such as non-discrimination, confidentiality, participation and equality into HIV/AIDS programmes and policies as well as AIDS-related research.

The London Declaration on AIDS Prevention (1988) was the first international statement to call for de-stigmatizing HIV/AIDS. Resolution WHA 41.24 of the 41st World Health Assembly (1988) recommended that Member States protect the human rights of affected individuals. In 1989 the United Nations Centre for Human Rights organized the first international consultation on HIV/AIDS and Human Rights. This was followed by a second consultation, in 1996, at which the 12 International Guidelines on HIV/AIDS and Human Rights were drafted.[77] Significantly many human rights bodies now include reference to 'HIV/AIDS status' under the more general

phrase 'health status'. For example, a general comment adopted by the Committee monitoring the International Covenant on Economic, Social and Cultural Rights enumerates the grounds for non-discrimination in health as including:

> "any discrimination in access to health care and the underlying determinants of health as well as to means and entitlements for their procurement on the grounds of race, colour, sex, language, …birth, …health status (including HIV/AIDS)…or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health".[78]

Resolution 49/1999 of the United Nations Commission on Human Rights reaffirms that "…the term 'or other status' in non-discrimination provisions in international human rights texts should be interpreted to cover health status including HIV/AIDS". The Commission's resolution 2001/33, *Access to medication in the context of pandemics such as HIV/AIDS*, recognizes such victims' right to the highest standards of health care.

The United Nations General Assembly convened a special session to consider HIV/AIDS in June 2001. One outcome was the establishment of the Global AIDS Fund to strengthen AIDS work in developing countries and with disadvantaged populations. The General Assembly also called upon States to enact, strengthen and enforce legislation to eliminate all forms of AIDS-related discrimination and confront stigma, silence and denial by 2003.

The Durban Conference marked the strong resolve of the international community to take action on the racial linkages of the AIDS epidemic.

At the regional level, the South African Development Community's Code on HIV/AIDS and Employment seeks to protect the rights of HIV-positive workers.[79]

The 2004 World Aids Campaign that culminated on World Aids Day, 1 December, had as its strategic focus women, girls and HIV/Aids. A new initiative was launched in 2004 (see box).

Global Coalition on Women and AIDS

Launched in 2004 campaigners, government representatives, community workers and celebrities are working to stimulate concrete change on the ground to improve the daily lives of women and girls worldwide. The Coalition will focus on preventing new HIV infections among women and girls, promoting equal access to HIV care and treatment, accelerating microbicides research, protecting women's property and inheritance rights and reducing violence against women.

Internet: www.unaids.org

Examples of legal activism at national level

Examples of good legislative and other national action on human rights and HIV/AIDS that can serve as models elsewhere are beginning to emerge. Examples here are drawn from UNAIDS reports. In Costa Rica, a local NGO successfully helped an HIV-positive college student seek combination therapy through intervention of the Supreme Court. In Venezuela, local NGOs, and lawyers and health activists were able to secure the right to free treatment for HIV-positive people under the social security system. In India, the Lawyer's Collective has successfully defended workers who lost their jobs due to HIV status and the Population Council's Horizons programme is helping to set up HIV-patient friendly hospitals in the capital. The centre for the study of AIDS at the University of Pretoria, South Africa, is working to create an environment where it would be possible to challenge stigma, racism and discrimination related to AIDS. The AIDS Law Project at the University of Witwatersrand represents yet another success story of winning a precedent – setting judgement on unfair dismissal of HIV-positive persons and on discrimination against HIV-positive prisoners. National human rights institutions in Ghana, India and South Africa have launched activities to promote and protect HIV-related human rights in their respective countries.[80]

6. Conclusion

Some understanding of the development and maintenance of AIDS-related stigma and discrimination exists, but there is still a need to develop a much deeper understanding of the links between racism, racial discrimination and HIV/AIDS, the dynamics and the impact of race-based stigma on HIV-positive people. Equally, evidence-based strategies to challenge the linkage must be developed. The following lines of action are suggested:

- Promoting race-disaggregated data to ensure that racial or ethnic dimensions are recognized in all work related to AIDS research, prevention and care;

- Developing a research programme to document the evidence, nature and forms of race-based AIDS-related stigma;

- Developing suitable research frameworks and race-sensitive data collection instruments to examine the interplay of race, class, gender and sexuality in the production of AIDS stigma and its impact on the quality of life of affected people and on AIDS prevention and care programmes and policies;

- Supporting government and NGO efforts to challenge racial discrimination related to HIV/AIDS by promoting the understanding and use of human rights instruments;

- Documenting evidence of good legislative practice and other national responses countering racist attitudes and stigma related to AIDS;

- Creating awareness about anti-racist and supportive laws and human rights instruments among all sections of society, and especially among young people using the formal educational curricula for school students and non-formal education methods

for out-of-school youth. UNAIDS and UNESCO have produced an excellent educational resource, "a kit of ideas for youth organizations", on HIV/AIDS and human rights that can be used in and out of school.[81]

Further reading

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Issues for discussion

What is stigma? What factors fuel HIV/AIDS-related stigma and discrimination? How can a human rights approach contribute to ending prejudice and discrimination towards people living with HIV/AIDS? Read the International Guidelines on HIV/AIDS and Human Rights in discussing this question.

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7. Racism and contemporary slavery

Kevin Bales and Jessica Reitz

We acknowledge that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude, organized nature and especially their negation of the essence of the victims, and further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so…

We strongly condemn the fact that slavery and slavery-like practices still exist today in parts of the world and urge States to take immediate measures as a matter of priority to end such practices, which constitute flagrant violations of human rights.

(Durban Declaration, paras. 13 and 29)

Introduction

Since the abolition of legal slavery in the 19th century, the word 'slavery' has been used for many different things: prostitution, prison labour, even the sale of human organs. More than 300 international slavery treaties have been signed since 1815, but none has defined slavery in exactly the same way. Many definitions of slavery focus on the legal ownership of one person by another, since most slavery in the 19th century took that form. It is important to remember, however, that slavery has been part of human history for thousands of years; it actually pre-dates the advent of both money and written law.

The key characteristics of modern slavery are not about ownership, but about how people are *controlled*. The slaveholder controls a slave, usually through mental or physical abuse or threatened abuse. Many people who become slaves are tricked into it; others following a trail of lies walk into enslavement. What keeps them enslaved is violence or its threat.

The second key characteristic of slavery is that slaves are physically constrained or have restrictions placed on their freedom of movement. The third characteristic is that slaves are forced to work. Slavery is normally used to exploit someone in some kind of economic activity. No one enslaves another just to be cruel; people are enslaved for profit.

Definitions of slavery have caused controversy because opinions differ about which practices should be categorized as slavery and thus designed for elimination. A definition that works for many different types of slavery is essential, however, because slavery, like all human relationships, changes over time. The main characteristic of slavery is control through threat of violence, but that can take many forms. In those few places where old styles of slavery are still practised, like Mauritania, there are long-term, often lifelong relationships between slave and master. In most countries the state of slaves is more short-term and dangerous.

1. Geographical dimensions of slavery

No one knows exactly how many slaves there are in the world. Slavery is illegal in virtually every country and that means it is usually hidden from view. Examining carefully all the information available, however, leads to an estimate of perhaps *27 million slaves* alive today. Where are all these slaves? Most of those 27 million, perhaps 15 to 20 million, are in India, Pakistan and Nepal. Otherwise slavery tends to be concentrated in South-East Asia, Northern and Western Africa, and parts of South America, but there are some slaves in almost every country in the world, including the United States, Japan and many European countries.

Slaves tend to be used in simple, non-technological and traditional work with the largest proportion in agriculture. They are used in many kinds of work aimed at local sale and consumption, but slave-made goods filter throughout the global economy. Carpets, jewellery, steel and foods like cocoa and sugar are imported directly to North America and Europe after being produced using slave labour.

2. The forms of contemporary slavery

Slavery has never existed in a single form. In some ways, every relationship of slavery that links two people may be unique, but there are patterns in these relationships. There are several forms of slavery common enough to have their own names. The three main types listed below are not an exhaustive list, but they do represent the prevalent forms of slavery today, under which most modern slaves are held:

1. *Chattel slavery* – is the form closest to old slavery, whereby a person is captured, born or sold into permanent servitude, and ownership is often asserted. This form is found most often in Northern and Western Africa and some Arab countries, but represents a small proportion of slaves in the modern world.

2. *Bonded labour or debt bondage* – the most common form of slavery in the world, whereby people pledge themselves against a loan of money, but the length and nature of the service is not defined, nor does their labour diminish the original debt. In many cases of debt bondage the slave's work (and indeed their very life) becomes *collateral* for the debt. This means that all of their work belongs to the moneylender until the debt is repaid. Debt bondage is most common in South Asia.

3. *Contract slavery* – this form of slavery shows how modern labour relations are used to hide new forms of slavery. Contracts are offered which guarantee employment, perhaps in a workshop or factory, but when workers are taken to their place of work they find they are enslaved. This is the most rapidly growing form of slavery, and probably the second largest form today. Contract slavery is most often found in South-East Asia, Brazil, some Arab States and some parts of the Indian subcontinent.

In addition, several other kinds of slavery account for a small part of the total number of slaves. Most of these tend to be restricted to specific geographical regions or political

situations. An instance where slavery is linked to politics is what is often called *war slavery* and includes government-sponsored slavery. In Myanmar today, there is widespread capture and enslavement of civilians by the Government and the army. War slavery is also a feature of the ongoing civil war in the Sudan.

In some parts of the Caribbean and in West Africa, children are given or sold into domestic service. They are sometimes called *restavecs*. Ownership is not asserted, but strict control, enforced by violence, is maintained over the child. The return on the enslaved child is not in terms of profits generated, but in the domestic services provided. It is a culturally approved way of handling 'extra' children and, though some children are treated well, it is a type of slavery that lasts until adulthood.

Slavery today is different from that in the past in three important ways. Firstly, slaves today are cheaper than they have ever been. The cost of slaves has fallen to an historical low, and they can be acquired in some parts of the world for as little as US$ 10. Secondly, the length of time that slaves are held has also decreased. In the past slavery was usually a lifelong condition; today it is often temporary, lasting just a few years or even months. Thirdly, slavery is globalizing, which means that slavery practices in different parts of the world are becoming more alike. The way slaves are used and the role they play in the world economy is increasingly similar wherever they are. These changes have come about very quickly, occurring, for the most part, in the past 50 years. Three things in particular pushed slavery through rapid change:

1. The population explosion has tripled the number of people in the world since 1945 (from two to six billion); the bulk of this growth has been in the developing world.

2. The economic transformations of first modernization and then globalization have driven many people in the developing world both into the shanty towns surrounding the major urban centres and into serious social and economic vulnerability. While, however, population growth combined with economic transformation has created a glut of the economically desperate and socially vulnerable, they alone do not cause slavery.

3. Government corruption, especially by the police, is one further ingredient necessary for turning the desperate and vulnerable into slaves. In many countries police sell their violence to control slaves acting as slave catchers, pursuing and punishing escaped slaves. For the slave-user, payments to the police are just a normal part of business. When laws against kidnapping are not enforced, those with access to the means of violence, namely the police, can harvest slaves.

Old and new slavery compared

The population boom, the increasing vulnerability of the poor in developing countries, added to government corruption, have led to new forms of slavery. For the first time in human history there is an absolute glut of potential slaves. It is a dramatic example of

supply and demand. Slaves are now so cheap that they have become cost-effective in many new kinds of work. They are so cheap that it is not worth securing permanent ownership. Disposability means that the new forms of slavery are less permanent. Across the world the length of time a slave spends in bondage varies enormously. It is simply not profitable to keep slaves when they are not immediately useful. Although most are enslaved for periods of years, some are held for only a few months. The key differences between old and new forms of slavery are:

Differences between old and new forms of slavery	
Old forms of slavery	New forms of slavery
Legal ownership asserted	Legal ownership avoided
High purchase cost	Very low purchase cost
Low profits	Very high profits
Shortage of potential slaves	Surplus of potential slaves
Long-term relationship	Short-term relationship
Slaves maintained	Slaves disposable
Ethnic differences important	Ethnic differences less important

These differences can be further clarified from a specific example. Perhaps the best-studied and understood form of old slavery was that in the American South before 1860.[1] The demand for slaves was reflected in their price. By 1850, an average field labourer was selling for $1,000 to $1,800. Today the equivalent would be $20,000 to $40,000. On average, slaves generated profits of only about 5 per cent per year. Ownership was clearly demonstrated by bills of sale and titles. And there was, of course, extreme racial differentiation between slaveholder and slave. The racist element was so strong that a very small genetic difference, being one-eighth black and seven-eighths white, meant lifelong enslavement.[2]

3. The question of race

In the new forms of slavery, race means much less than it did in the past. Ethnic and racial differences were used in the past to explain and excuse slavery. The *otherness* of the slaves made it easier to use violence and cruelty to maintain total control. This otherness could be defined in almost any way – a different religion, tribe, skin colour, language, customs or economic class. Any of these could be, and were, used to separate slaves from slaveholders. Maintaining these differences required tremendous investment in some very irrational ideas. The American 'Founding Fathers' had to go through moral, linguistic and political contortions to explain why the 'land of the free' only applied to white people. They were driven to it because slavery was worth a lot of money to a lot of people in early North America and they felt they had to make moral excuses for their economic decisions.

Today most slaveholders feel no need to explain or defend their use of slavery. Freed of ideas that restrict the status of slave to *others*, modern slaveholders use other criteria to choose slaves. Enslaving people from your own country decreases costs. The question is not "are they the right colour to be slaves?", but "are they vulnerable enough to be enslaved?" The criteria for enslavement are no longer colour, tribe or religion; they are about weakness, gullibility and vulnerability.

It is true that in some countries there are ethnic or religious differences between slaves and slaveholders. In Pakistan, for example, many enslaved brick makers are Christians and the slaveholders are Muslim. In India, slave and slaveholder may be of different castes. In Thailand they might come from different regions of the country. But in Pakistan there are Christians who are not slaves, and in India members of those same castes are free. Caste or religion simply reflects vulnerability to enslavement; it does not cause slavery. Only in one country, Mauritania, does the racism of old slavery persist, but this is one of the last and fading survivals of old slavery. In Mauritania, Arab slaveholders have black slaves and race is a key division. Of course, some cultures are more divisive than others. Enslaved prostitutes in Japan are more likely to be Thai or Philippine women, but they may also be Japanese. The key difference is that Japanese women are not nearly so vulnerable and desperate as Thais or Filipinas. Thai women are available for shipment to Japan because Thais enslave Thais. The same pattern occurs in the oil-rich States of Saudi Arabia and Kuwait, where Muslim Arabs might enslave Sri Lankan Hindus, Filipino Christians or Nigerian Muslims. The common denominator is economic and social vulnerability, not colour. Behind every assertion of ethnic difference is the reality of economic disparity. While modern slaveholders are colour-blind, they are predators acutely perceptive to weakness.

4. International response: the role of the State and the United Nations

The table below lists and summarizes definitions of slavery and slavery-like practices as they appear in international instruments since 1926.

Table: *Evolution of slavery conventions*

Slavery Convention	Definition/declaration regarding slavery
Slavery Convention (1926)	Slavery defined (art. 1(1)): Is the "status or condition of a person over whom all of the powers attaching to the right of ownership are exercised" Forced Labour added (art. 5): States should "prevent compulsory or forced labour from developing into conditions analogous to slavery."
Universal Declaration of Human Rights (1948)	Servitude added (art. 4): "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms"
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Servile Status added (art. 1): Practices referred to as servile status should be abolished: (a) debt bondage (b) serfdom (c) unfree marriages (d) the exploitation of young people for their labour
International Covenant on Economic, Social and Cultural Rights (1966)	Freedom to choose work added (art. 6(1)): Recognizes "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"
Rome Statute of the International Criminal Court (1998)	Trafficking added (art. 7(2)(c)): Enslavement defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

This review of the main slavery conventions illustrates the progression of views of slavery in international conventions over time. While in 1926 the notion was that a person exercised rights of ownership over another, the example of forced labour from colonial settings was added as something that could develop into a practice analogous to

slavery. In 1948 and 1956 the ideas and practices related to 'servitude' and 'servile status' were added. Both terms are defined in *The Oxford English Dictionary* (1991) using the words 'slave' or 'slavery'. International legislators, however, consciously avoided defining them as slavery. In 1966, the issue of unfree labour was addressed. By 1998, the definition of slavery had returned to its original 1926 version with the addition of the practice of trafficking in persons. The most recent reference to slavery in an international instrument is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime (2000), which criminalizes trafficking of persons "for the purpose of exploitation" including, "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".[3]

5. The practice of trafficking in persons

Since the end of the cold war there has been a dramatic increase in human trafficking around the world.[4] It affects every continent and most countries. It involves the transport and/or trade of humans, usually women or children, for economic gain using physical coercion or deception. Often migrant women are tricked and forced into domestic work or prostitution.

Trafficking is a global problem affecting every continent and most countries. It occurs within and across national borders and ranks as one of the most lucrative forms of international crime. It is impossible to know how many people are trafficked and statistics are difficult to obtain because trafficking is an underground activity. A United States Government report published in 2003 estimates that at least 800,000-900,000 people worldwide are trafficked each year.

Men, women and children are all victims of trafficking, although the majority are women and children. People are trafficked into a variety of situations. For example, West African children are recruited into a range of exploitative work and transported illegally throughout the region; Chinese and Vietnamese women are trafficked to some Pacific islands as sweatshop labour making goods for the United States market; men are trafficked from Mexico and forced to work on farms in the United States.

The trafficking in human beings is not new. But it is a rapidly growing problem. A number of factors have led to its expansion, such as the easy profits made from exploitation; growing deprivation and marginalization of the poor; discrimination against women; restrictive migration laws; a lack of information about the realities and dangers of trafficking and insufficient penalties against traffickers.

Contemporary slavery : bonded labour

In the southern Indian State of Tamil Nadu, outside the big city of Madras, there are small towns where millions of *beedis*, small, flavoured cigarettes, are made. On the outskirts of one of these towns lives an 11-year-old boy named Vikram. Vikram, like many of the other children in his town, is a slave. When he was nine years old, his younger brother became very ill. The only way Vikram's poor parents could buy medicine for their ailing son was to borrow money from the local man who controlled the production of *beedis* in their village. The opportunistic moneylender used the loan as a means for taking Vikram into debt bondage. Since Vikram's parents had nothing else to offer as collateral, the moneylender said they must pledge Vikram against the debt. His parent's choice was a terrible one: to save the life of their youngest son, they had to put their oldest son into bondage. For the moneylender it was business as usual, and he received another child slave for just a few dollars. Today none of the work that Vikram does will pay off the debt, and he is basically the property of the moneylender until his parents find the money for repayment. Two years after the initial debt was made, it has grown with extra charges to about $65.

Vikram works from six in the morning until nine at night, with breaks for breakfast and lunch. Each day he rolls about 1,500 *beedi* cigarettes by hand. Each *beedi* is smaller than a normal cigarette. Since there is no glue used, each *beedi* must be tied shut with a thread and a tiny knot. Sitting cross-legged on the floor with a tray of tobacco and kendu leaves on his lap, Vikram's hands fly through the motions of wrapping, rolling and tying the *beedis*. He must work quickly, like a machine, if he is to make the number required from him everyday. If he is sick, he still has to work, and if he fails to deliver his quota, his debt is increased. Vikram does not go to school and he can never play with the other children in his community. His childhood was stolen by the moneylender to provide virtually free labour and high profits.

Source : Free the Slaves.

Contemporary slavery: trafficking

Daniela was trafficked from Albania to Italy. Her story is not unusual. She went because she wanted to be able to earn some money for her family, and in Albania there were no jobs for a young woman with little education. A friend from her village helped her emigrate. Once in Italy, the friend sold her to someone else and she was forced into street prostitution. The traffickers forced her to work in prostitution every day and took all her money. She was passed from one trafficker to the next, and finally to one who purported to be her 'boyfriend', and promised to take her away to a better life. He also turned out to be a trafficker and took her to England, putting Daniela to work as prostitute in a flat. They lived with several other Albanian men and women. Daniela tells how she was beaten by her trafficker and the other men, often with wet telephone wires. One time a client walked out on her when he saw how badly her body had been beaten. She tried to escape once whilst in England, but the traffickers caught her, and as punishment cut one of her fingers to the bone, slowly.

In Italy and in England, Daniela never even thought about going to the police for help. She had no faith in the police in Albania, whom she knew were corrupt and complicit in the trafficking of women; why, she thought, would the police be different anywhere else? She was also scared of what would happen to her family. Eventually, the traffickers took her back to northern Italy. Italian police stopped her while she was working on the streets and asked to see her papers. She did not have any. They served her with a deportation notice and gave her 15 days to leave the country. They made no inquiry into her circumstances or offer of help. If they had asked her simple questions they might have ascertained she had been trafficked. They did not inform her about a specific law in Italy that gives trafficked persons who provide information to the police about being trafficked the right to stay in that country and participate in a social integration programme. So, after her encounter with the police, she went back to the traffickers, showed them the deportation order and they moved her to another city.

Source: Pearson, E., *Human Traffic Human Rights: Redefining Victims of Protection*, Anti-Slavery International, 2002, p. 1.

6. Conclusion

The human and economic relationships of modern slavery are complex. It would be much easier to understand and combat slavery if there were very clear good guys and bad guys; if all slaveholders were cruel and all slaves yearned for freedom; if the solution to all slavery were simply to set slaves free. Being free means more than just walking away from bondage. Freedom is both a mental realization and a physical condition.

Ultimately, slaves have to find their own way into true freedom. The physical and psychological dependence they often feel toward their masters can make this a long process. If an abused child needs years of therapy and guidance to overcome trauma, equally abused slaves can hardly be expected to enter society immediately as full citizens. Many ex-slaves are phenomenally resilient, but the worst abused may need a lifetime of care. In the struggle to survive, not just slavery but also liberation, there is one striking parallel between the old slavery of the United States and the new slavery of today. When slavery came to an end in 1865, slaves were just dumped on the labour market, while today slaves who gain their liberty also face an uncertain future without resources or help. If slavery is to end, attention must be paid to learning how ex-slaves can best secure their own freedom and become citizens in their own right.

Liberation brings new problems. A lifetime of dependence cannot be swept away in an instant. A person denied autonomy, who has never had to make choices, can be paralysed when confronting decisions. If anything can be learned from the lives of freed slaves, it is that liberation is a *process*, not an event. If we are serious about stopping slavery, we have to commit to supporting the rehabilitation process of freed slaves, which may take years. This means thinking very carefully about what slaves need to achieve true freedom. What kind of care do slaves and ex-slaves need to attain a sense of freedom and personhood? Unfortunately, we know very little about the psychology of slavery or how to help its victims. To end slavery we will have to become experts in repairing the damage slavery brings to both mind and body.

It will also be necessary to understand slaves as economic beings. Slaves have few skills. The jobs they do as slaves are not usually worth much on the free market. But if they are freed and cannot support themselves, how will they avoid being enslaved again? Small children are dependent on their parents, who often expect them to do simple tasks around the house. Slaves are kept in a state of permanent dependence and are prevented from learning all but the most simple of tasks. No one would dream of dropping an eight-year-old into the job market to compete for a livelihood, but this has happened to thousands of freed slaves. Around the world, only a tiny handful of people work to understand and build new economic routes from slavery to self-sufficiency. The economic process of becoming self-supporting parallels the growth to psychological and social independence.

From psychology to small-scale economics to large-scale law enforcement, much more research and development is needed. From the little work that has been done, it seems that there are several ways to help people to stay free: helping them to make the psychological adjustment to freedom, giving them access to credit, letting ex-slaves make their own decisions about what work they will do, the presence and oversight of powerful people on the side of ex-slaves, and that greatest of liberators – education.

What can we do?

One of the things we know about slavery today is that it spans the globe and reaches into our lives. Whether we like it or not, we are now global people. We have to ask ourselves: Are we willing to live in a world with slaves? If not, we have to educate others and ourselves about the links that tie us to slavery and then take action to break those links. Of course, there are many kinds of exploitation in the world, many kinds of injustice and violence to be concerned about. But slavery is important because it is exploitation, violence and injustice combined. There is no more potent combination of these three crimes. If there is one fundamental violation of our humanity we cannot allow, it is slavery. If there is one basic truth that virtually every human being can agree on, it is that slavery must end.

Further reading

Bales, K., *Disposable People: New Slavery in the Global Economy*, Berkeley: University of California Press, 1999.

Pearson, E., *Human Traffic Human Rights: Redefining Victims of Protection*, Anti-Slavery International, 2002.

Weissbrodt, D. and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, Office of the United Nations High Commissioner for Human Rights, HR/PUB/02/4, 2002.

Issues for discussion

Given the key characteristics of slavery as described in the chapter, what definition of slavery would best encompass the different forms it takes today? What measures and strategies would better protect the victims of trafficking? (Chapter 8 has some proposals.) What measures might Governments adopt and implement to eradicate bonded labour? Discuss and agree upon recommendations to submit to the United Nations.

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[2] Genovese, E., *Roll, Jordan, Roll: The World the Slaves Made*, New York: Vintage, 1976.

[3] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), article 3(a).

[4] See also chapter 8.

8. Racism and migration*

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We note with concern and strongly condemn the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them; reaffirm the responsibility of States to protect the human rights of migrants under their jurisdiction and reaffirm the responsibility of States to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups; and stress the need for their fair, just and equitable treatment in society and in the workplace.

(Durban Declaration, para. 48)

Introduction

Today, one in every 50 human beings is a migrant worker, a refugee or asylum-seeker, or an immigrant living in a 'foreign' country. Current estimates by the United Nations and the International Organization for Migration (IOM) are that some 175 million people live temporarily or permanently outside their countries of origin (2.5 per cent of the world's population).[1] Many of these, 80-97 million, are estimated to be migrant workers and members of their families.[2] Another 12 million are refugees outside their country of origin. These figures do not include the estimated 20 million internally displaced persons (IDPs) forcibly displaced within their own country, nor tens of millions more of internal migrants, mainly rural to urban, in countries around the world. Given this picture of the scale of migration, it is not surprising that the Durban Conference gave extensive attention to migrants as a major category among the contemporary victims of racism, racial discrimination and xenophobia.

Increasing ethnic and racial diversity of societies is the inevitable consequence of migration. Migration means that a growing number of States have become or are becoming more multi-ethnic, and are confronted with the challenge of accommodating peoples of different cultures, races, religions and language. Addressing the reality of increased diversity means finding political, legal, social and economic mechanisms to ensure mutual respect and mediate relations across differences. Xenophobia and racism have, however, become manifest in some societies which have received substantial numbers of immigrants, as workers or as asylum-seekers. In those countries

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* This chapter is an edited form of a publication titled "International Migration, Racism, Discrimination and Xenophobia", prepared for the 2001 Durban World Conference on Racism by the following United Nations bodies: International Labour Office (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR).

the migrants have become the targets in internal disputes about national identity. In the past decade, the emergence of new nation States has often been accompanied by ethnic exclusion.

As Governments grapple with the new realities of their multi-ethnic societies, there has been a marked increase in discrimination and violence directed against migrants, refugees and other non-nationals by extremist groups in many parts of the world. The lack of systematic documentation or research over time leaves it unclear whether there is a real increase in the level of abuse or in the level of exposure and reporting. Unfortunately, there is more than enough anecdotal evidence to show that violations of human rights of migrants, refugees and other non-nationals are so generalized, widespread and commonplace that they are a defining feature of international migration today.

1. Definitions of racial discrimination, racism and xenophobia

The extent of racial discrimination and xenophobia is often played down and sometimes denied by authorities. Racial discrimination is defined in international law as being:

> "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 a equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[3]

Racism and xenophobia are distinct phenomena, although they often overlap. While racism generally implies distinction based on difference in physical characteristics, such as skin colour, hair type, facial features etc., xenophobia denotes behaviour specifically based on the perception that the other is foreign to or originates from outside the community or nation. By dictionary definition, xenophobia is "the intense dislike or fear of strangers or people from other countries." As a sociologist puts it, xenophobia is "an attitudinal orientation of hostility against non-natives in a given population."[4]

The definition of xenophobia, and its differentiation from racism and racial discrimination, is still evolving.

- *Racism* is an ideological construct that assigns a certain race and/or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the 'superior' race exercises domination and control over others;

- *Xenophobia* describes attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.[5]

In many cases, it is difficult to distinguish between *racism* and *xenophobia* as motivations for behaviour, since differences in physical characteristics are often assumed to

distinguish the 'other' from the common identity. However, manifestations of xenophobia occur against people of identical physical characteristics, even of shared ancestry, when such people arrive, return or migrate to States or areas where occupants consider them outsiders.

2. Globalization and migration

Globalization has accentuated the unevenness of development between countries and thereby generated significant pressure for the movement of labour across borders. Some of this movement takes the form of the classic 'brain drain' with relatively skilled workers migrating to developed economies. But a significant proportion takes the form of low-skilled or even unskilled workers moving, sometimes illegally, to neighbouring countries with rapidly growing economies that thus offer higher wages for relatively low skills.

In principle, the flow of labour between countries should be economically beneficial for all countries. However, while the unrestricted movement of goods and capital is accepted almost without qualification, the movement of labour tends to raise sensitive political and sociological issues. Still, it is necessary to recognize that migration can never be eliminated or even fully controlled. In fact, with rising globalization, migratory pressures will most likely increase. The challenge for the international community will be to manage this issue in the broader context of a coherent, human-centred and human-rights-based response to globalization.

3. Future trends

IOM predicts that the total number of international migrants will approach 250 million by the year 2050. Such a prediction has to reflect many probable factors. These include the effects of war, famine, drought and epidemics, the increasing economic gap between rich and poor countries, and the differential between countries in which the population is growing and those where it is decreasing. On the basis of data on fertility rates, United Nations projections show significant decreases in the populations of many countries in Europe and some in other regions, contrasting with large projected increases in parts of Asia, Africa and the Americas. The threat of rising sea levels and extreme weather conditions, associated with global climate change, may also emerge as major factors behind forced migration. Already international aid agencies, including the International Federation of Red Cross and Red Crescent Societies, are warning of the humanitarian impact of the unfettered growth of carbon dioxide levels in the atmosphere, caused mainly by the burning of fossil fuels in industrialized nations.

4. A human rights approach to international migration

Human rights should be at the centre of any analysis of migration and xenophobia. Fortunately, more consideration is now being given to the protection of migrant and

refugee rights by NGOs and human rights organizations. Migrants' rights have emerged as a formal topic on the agenda of many migration-related conferences and forums, and news and communications media attention has increased substantially. The challenge is to turn this concern into concrete action. A long and slow trend of extension to migrants of basic human rights principles culminated in 1990 with the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. That Convention built on the ILO Conventions of 1949 and 1975 on the subject. NGO and United Nations initiatives have revived attention to these norms, notably by initiating a successful global campaign for ratification of the Convention. It came into force in July 2003 and to date some 27 States have ratified it. The appointment of a United Nations Special Rapporteur on the human rights of migrants has further focused attention on the application of human rights to migrants. The Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, has emphasized the importance of a human rights approach not least because it allows all parties to look at the experience of migration from the perspective of the migrants.[6]

Human rights recognize that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life. Human rights are *universal* – they apply everywhere; they are *indivisible* – in the sense that political and civil rights cannot be separated from social and cultural rights; and they are *inalienable* – they cannot be denied to any human being. A human rights framework can help to identify where racism, xenophobia and discrimination contribute to motivating or compelling migration. This framework also provides criteria to identify and measure where racism, discrimination and xenophobia affect the treatment of migrants and refugees.

5. The migration process

The ease of travel today, the widespread awareness of conditions in other lands, family and ethnic ties, opportunities – even requirements for international experience to advance in business, professions and careers – all facilitate migration. In a globalizing world, this should be encouraged and supported. Yet for many migrants, the migration process exposes them to racism and xenophobia, when leaving their own country, transiting another or entering their country of destination.

For some migrants, the choice to leave a country of origin is a full and well-informed one, based on the offer of employment or a social connection, such as marriage. For many others, there is little or no choice, due to political, social, economic or environmental pressure and necessity. It is clear that most people prefer to stay in their home countries when they can do so in safety, dignity and well-being. Perceptions of tolerable political, social and economic levels and conditions vary widely across different countries and communities, but the most basic consideration is the ability to survive above a local minimum standard of decent living. In essence, forced displacement today is largely the direct consequence of the breakdown or absence of sustainable community.

Although the right to leave one's own country is enshrined in article 13(2) of the Universal Declaration of Human Rights, it is often thwarted in practice by difficulties of obtaining travel documents and visas to enter any other country. The past two decades have seen a dramatic realignment of international visa and direct airside transit visa regimes. In many parts of the world, such restrictions have cut across traditional bilateral and subregional routes limiting the movement of migrant labour and merchant traders where relatively free movement had existed before, sometimes for centuries.

Increasingly strict border control measures of many States and the absence of adequate provision for regular migration are linked by many observers to increased irregular migration.[7] For many reasons, including the lack of a legal alternative, an increasing number of migrants leave their country of origin and enter another country in an irregular fashion. With the narrowing of opportunities for economic, social and humanitarian migration, irregular migration has given rise to pressures for greater migration control measures and provided anti-immigration political organizations with an issue to rally around.

Irregular or unauthorized migrants are vulnerable to racist and xenophobic hostility, whether in countries of transit or destination. Irregular migrants are easy and often tempting targets for such hostility. Lack of legal status leaves them reluctant to seek or be provided with police protection, the means of redress or access to justice. Irregular status impedes possibilities for community self-organization, unionization or other forms of association to respond collectively to racism and xenophobia and to call on government and civil society support. Irregular status may place migrants at considerable risk of abuse when dealing with or apprehended by government authorities, particularly where these are inadequately trained and supervised.

National campaign against xenophobia

The **Roll Back Xenophobia** campaign established in South Africa in 1998 is a widely visible national effort to confront rising incidences of xenophobic hostility and violence in that country. It began as a joint initiative between national and international institutions: the South African Human Rights Commission, the National Consortium on Refugee Affairs and the Office of the United Nations High Commissioner for Refugees. It emphasizes broad, multifaceted activity by government, civil society and communications media. These include information campaigns by national and local government, training of police, strengthening of labour rights protections for migrant workers, sensitization of trade union officials, awareness-raising by religious organizations, factual reporting by news media, codes of conduct for civil servants and police, inclusion of migration and refugee concerns in primary, secondary and tertiary education, and a number of other measures. A broad range of civil society organizations now participate in the campaign.

Internet: www.sahrc.org.za/roll_back_xenophobia_campaign.htm

Trafficking and migrant smuggling

Trafficking and migrant smuggling have increased in parallel with increasing obstacles to legal migration. This growth of trafficking and smuggling of persons by organized criminal groups presents compelling challenges for human rights advocates and humanitarian organizations, as well as for law enforcement agencies. Racism and discrimination are factors putting migrants at risk of trafficking, and racism and xenophobia influence treatment of victims of trafficking and smuggling in transit and destination countries.

International law has recently recognized a distinction between the concepts of trafficking and migrant smuggling. Until a few years ago, most agencies referred to organized irregular migration as 'trafficking' – using this term in a generic sense to distinguish harmful migratory processes from those that could be characterized as more humanitarian. The term 'trafficking' now refers principally to a migratory process which involves some form of coercion or deception and which is for an exploitative purpose.[8] The term 'migrant smuggling', on the other hand, is now used to refer to the facilitated, illegal movement of persons across borders for profit.[9]

The international community has recognized that both trafficked persons and smuggled migrants are entitled to basic human rights protections. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Smuggling Protocol) were both adopted by the United Nations General Assembly in November 2000 and have been widely signed. These two instruments are discussed further below.

Sometimes, racially incited violence is directly related to the trafficking process itself. It is not always possible to infer xenophobia or racist motivation in the neglect or murder of migrants, but two legal cases involving stowaways probably represent only the tip of the iceberg. The most infamous case is arguably that of the 'MC Ruby', in which seven Ghanaian stowaways were brutally murdered and thrown overboard by the ship's Ukrainian crew before arriving at Le Havre, France, in October 1992. The case reached court because one stowaway, Kingsley Ofusu, survived to tell the tale:

> "The Ukrainian sailors say they were afraid of getting into trouble if they arrived in Europe with the stowaway aboard. They say that they, too, are poor and that some of them handed over stowaways in Rotterdam last year and that the owner of the boat was so angry at being fined under the new laws that he docked the money out of their pay to teach them a lesson. They seem to think there was nothing unusual in what they did to the black men."[10]

Because migrants in an irregular situation are largely invisible to authorities during their migration, quantifying the number of racially motivated acts by carriers or border authorities is impossible. It can only be flagged as an area of great concern requiring large-scale monitoring and research.

Arriving in destination countries

Entry into destination countries is subject to the immigration rules of that country. Whilst immigration controls may discriminate between nationalities, they need not result in racism or xenophobia. They do so, when procedures target particular ethnic groups, become arbitrary or lack transparency, or when the immigration process itself is made as gruelling as possible so as to act as a deterrent. The systematic use of detention will often tend to single out specific nationalities or ethnicities more than others. Deterrence measures certainly raise the costs and risks of entry into destination countries. Nevertheless, many people are so motivated or desperate that they will try to avoid border controls by hiding in the back of a lorry or the hold of a ship. Many refugees have no choice other than to use irregular entry, increasingly at the hands of smugglers, but they risk the fact of their irregular migration being held against them in any asylum claim. Migrants who enter a country 'illegally' are perceived as 'illegal' immigrants and therefore as 'criminals'.

Immigration policy discussions are rarely separable from more general debates on race relations within host communities. Strong border control is often advocated as necessary for the acceptance of racial, cultural or ethnic minorities by the dominant culture.[11] Differences in admission based on ethnic or racial factors, however, can set categories of migrants and refugees apart from other minorities and mainstream society. Temporary status for refugees or guest workers, for example, militates against integration.

Without a legal status, the migrant or refugee can be 'invisible' to the welfare, police, judicial, health-care and other agencies of the State, heightening their risks of exploitation and discrimination. Prolonged periods of detention for asylum-seekers and unauthorized migrants can also serve to isolate and stigmatize migrant communities.

Facilitating integration and intercultural understanding

ISOP 'human rights and integration' in Austria is a publicly and privately funded organization implementing a holistic programme to facilitate the integration of migrants and refugees into Austrian society. It offers training courses which combine social, educational, legal and political elements with vocational training and advice on labour market opportunities. ISOP also works to develop intercultural understanding by raising public awareness on anti-discrimination and anti-racism issues.

ISOP uses individual advisers to give appropriate ongoing support and advice to migrants and refugees on a one-to-one basis, both before and after employment. It assists both legal immigrants and new arrivals to secure necessary legal documentation, vocational training and the possibility of acquiring qualifications. It also arranges transitional one-year jobs for migrants in long-term unemployment. Its figures indicate that 70 per cent of the unemployed participants are successful in finding a job.

6. Treatment of migrants

The Durban Conference brought into focus the worrying dimensions of racism, discrimination and xenophobia in the treatment of migrants and refugees. The preparatory events for the Conference in Europe, the Americas, Africa and Asia all highlighted that growing racist and xenophobic hostility directed at non-nationals, including migrants, refugees, asylum-seekers, displaced persons and other foreigners, is a serious denial of human rights, human dignity and security.

Manifestations of anti-foreigner hostility include incitement to and actions of overt exclusion, hostility and violence against persons, explicitly based on their perceived status as foreigners or non-nationals, as well as discrimination against foreigners in employment, housing or health care. Anti-foreigner hostility can also be symptomatic of a denial of deeper racist tendencies within the host society:

> "The ethnic or racial inequalities implied by discrimination or racism would be inconsistent with official ideologies of liberal democracies, and thus instead [of] recognizing such 'imperfections', it is more expedient to deny them or explain them away as characteristic of the victims, or as [a] temporary phenomenon of transition for new immigrants. Furthermore … as long as the existence of racism is denied, [so is] the need for anti-racist and anti-discrimination legislation."[12]

Research on xenophobia and discrimination against migrants, refugees and other non-nationals is still very limited, especially outside Europe and North America (see chapter 9). There are few data that allow for effective comparisons among countries, let alone across different regional contexts. Nonetheless, the research that has been done provides very clear indications of the breadth and depth of these phenomena. A very few examples are included below, with the caveat that the data presented are not intended to imply any conclusions regarding practices in a country cited, nor any comparative evaluation in relation to other countries. The absence of any data at all from most countries may be an indication that many serious problems remain unknown and unacknowledged.

Xenophobia versus diversity

Severe economic inequalities and the marginalization of people from access to basic economic and social conditions of life reflect racism and xenophobia. Prime targets are those perceived to be outsiders or foreigners: migrants, refugees, asylum-seekers, displaced persons and other non-nationals.

The influx of migrants themselves is also sometimes cited as a cause of xenophobia amongst the host community. For example, some European studies conclude that a link exists between racism or xenophobia and immigration or the presence of minorities:

> "It would be a serious error to say that immigrants or minority members 'generate' racism. In actual fact, they are the main victims of it, though not the only ones. Nor can it be said that the number of immigrants is proportional to the number of racist acts. The fact remains that, by definition, xenophobia is an attitude of rejection and stigmatism of foreigners, and that it can very quickly and very easily cross the line that divides it from racism."[13]

Conversely, though, the presence of a large number of immigrants does not necessarily provoke xenophobic or racist reactions. For example, in France, the National Advisory Committee on Human Rights, which surveys French public opinion, shows that the fear of foreigners is strongest in areas where the number of immigrants is smallest. Similarly, there is little xenophobia in districts where large numbers of foreigners are mixed with French nationals.[14] This observation is repeated across several other European countries and must surely hold for most metropolitan centres across the world.

The NGO Working Group on Migration and Xenophobia concluded that the growth of often-violent racism and xenophobia against migrants and refugees is often fed by restrictive immigration policies; increasingly narrow interpretations of government obligations to protect refugees; the resulting reliance by all categories of migrants on often clandestine means of entry; the resultant criminalization of so-called illegal migrants; the stigmatization of refugees as "bogus asylum-seekers"; and the scapegoating of migrants and refugees as criminals and the cause of unemployment.[15]

The deliberate association of migration and migrants with criminality is an especially dangerous trend, one which tacitly encourages and condones xenophobic hostility and violence. Migrants are commonly associated by politicians, in news media coverage, and in popular discourse with crime, trafficking, drugs, disease, AIDS and other social ills.[16] Migrants themselves are criminalized, most dramatically through widespread characterization of irregular migrants as 'illegal' implicitly placing them outside the scope and protection of the rule of law (see chapter 10). More generally, migration is commonly characterized as problematic and threatening, particularly to national identity and security.

The official and popular self-understandings of many societies and States remain anchored in particular historical and often monocultural, monoethnic and monolinguistic identities. Such concepts of national identity stand in contradiction to the consequences of increased migration, in which the populations of many, if not most, countries worldwide are becoming more diverse. Monocultural and monoethnic understandings by definition exclude or subordinate different racial and ethnic identities, cultures, languages, traditions, religious faiths and national origins. The promotion or retention of such concepts not only ignores changing national realities, but also risks fanning the flames of exclusionary and xenophobic responses to immigration and diversity.

Municipal action for diversity

"Rotterdam Multicoloured City" is one of the key priorities of the Rotterdam (Netherlands) Municipality, endorsed by the city council in 1998. Diversity is set to become the normative basis for all municipal policies. Forty-two per cent of the Rotterdam population is of immigrant origin, of whom 27 per cent are ethnic minorities. The percentage of ethnic minorities employed by the Municipal Authority is targeted to rise from 16.1 per cent in 1998 to 22 per cent in 2002.

Policy objectives include:

- Proportional participation by immigrants in Rotterdam society, in particular, proportional representation of immigrants in executive committees and personnel.
- Strengthening immigrant entrepreneurship and encouraging initiatives by immigrants.
- Making cultural diversity apparent in Rotterdam.

Implementation includes: reinforcing participation of ethnic minorities in subsidized institutions, including reporting on the number of migrants/ethnic minorities on institution's board, in the establishment and in product consumption; making cultural diversity palpable, visible and accessible, including in tourism; history and architecture; and strengthening immigrants' entrepreneurship.

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A promotion of 'multiculturalism' and/or respect for diversity – respect for the values and identities of others – is increasingly seen as one of the most effective approaches to changing attitudes and reducing the expression of racist and xenophobic hostility against migrants, refugees and other non-nationals.

Exploitation

At the heart of the problem of protecting the rights and dignity of migrants, particularly migrant workers, is their usual position in the labour market. Many are unskilled foreign workers relegated to marginal, low status, inadequately regulated or informal sectors of economic activity. As observers in Asia have often put it, migrant labour fills the 'three-D' jobs – dirty, dangerous and difficult. Migrant labour has long been utilized in both developed and developing economies to sustain economic enterprises and, sometimes, entire sectors that are only marginally viable or competitive. For example, foreign workers are commonly employed in small-scale manufacturing, in agricultural plantations, in households for domestic service, and in the 'sex industry'.

Wage differentials between national and foreign workers

A survey of manufacturing firms in the Republic of Korea undertaken by ILO and the Korea Labour Institute found that foreign workers received less than half the wages earned by nationals. The following table indicates the extent of wage differentials between national and foreign workers by size of enterprise. There are many indications that the same situation exists to varying degrees in many countries.

Table: *Foreign workers in total workforce (in per cent) and wage differentials between foreign and national workers, by size of firm and industry in 1993 in the Republic of Korea (wages in won)*

Size of firm	Per cent	Wage of foreign workers	Wage of nationals	Ratio of foreign/national wages
less than 30	22.6	327 800	686 170	0.48
30 to 99	9.0	373 000	635 100	0.59
100 to 199	7.2	390 430	606 740	0.64
200 and over	4.3	368 000	584 790	0.63

Source: Abella, M.I.; Park, Y.B; Böhning, W.R.; *Adjustments to Labour Shortages and Foreign Workers in the Republic of Korea*; ILO International Migration Papers, No. 1, Geneva, 1995, p. 13.

Migrants work for long hours at low pay and do not enjoy access to benefits or other protection. Studies undertaken by ILO and the International Confederation of Free Trade Unions (ICFTU) indicate that organizing migrants into unions or organizations to defend their interests and rights is often extremely difficult, if not impossible. Those without proper authorization to work are easily intimidated against joining or organizing unions, by the threat or actual practice of deportation.[17]

They are usually at the margin of protection by labour workplace safety, health, minimum wage and other standards. They are often employed in sectors where such standards are non-existent, non-applicable or not respected or enforced. Vulnerability to exploitation and abuse is often exacerbated by problems with languages, unfamiliarity with local custom and culture, and lack of networks for social support.

Given their lack of legal recognition and precarious status in host countries, hiring migrants can often be done without payment of benefits, payroll taxes and other mandatory contributions, thus representing further savings to employers. An especially important aspect of the vulnerability of irregular migrants to both exploitation and xenophobic

abuse is that they are perceived as being removable from the territory of the country, for example when domestic unemployment rises and/or when rising political tensions prompt the targeting of scapegoats.

The weak position of migrants in the labour market is largely a consequence of their immigration status, or lack of it, in countries of employment. Many countries needing foreign labour are only willing to admit migrant workers for temporary periods, often to meet cyclical upturns in the demand for labour, but with the possibility of repatriating them as soon as demand weakens. Temporary status, however, generally means explicit lack of entitlements to mobility in the labour market or to gaining entitlement to benefits such as social security. All too often, rights to family reunion and/or union membership are explicitly proscribed.

Discrimination

As noted above, the International Convention on the Elimination of All Forms of Racial Discrimination (1965) identifies racial discrimination as:

> "…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."[18]

Whilst this is an important international convention for the general issue of racial discrimination, State parties are not prohibited from applying distinctions, exclusions, restrictions or preferences between citizens and non-citizens.[19] There are no specific provisions in the Convention that tackle issues of discrimination faced by migrants on the basis of nationality. The evidence of such discrimination is increasingly apparent through research conducted around the world:

> "Serious studies have identified that in certain developed countries executives are allegedly more racist when recruiting staff than their counterparts in some other countries. For example, in one European study, 28 per cent of (non-European Union) foreigners between the ages of 25 and 49 are unable to find work, the rates being as high as 35 per cent for Turks and Pakistanis and 60 per cent for recent immigrant groups such as the Somalis."[20]

Comparative data on unemployment figures measuring different rates between national and employment-authorized non-national members of the workforce may provide telling evidence of discrimination in employment. The following example gives an indication for a European country – a situation replicated widely elsewhere according to other studies and anecdotal evidence.[21]

Promoting integration

'Integration of immigrants on the labour market', a project run at the *Kofoeds Skole* centre in Copenhagen, Denmark, is a targeted effort to overcome discrimination in employment by a combined approach of improving language competence, organizing active job-seeking activities and practical training programmes for unemployed refugees and immigrants. (A recent study (2000) carried out for the Ministry of Labour indicated rates of unemployment of 16.5 per cent for immigrants and their descendants compared with 5.5 per cent for the rest of the population.)

The project has involved a broad range of different actors in promoting recruitment of immigrants, including: the public employment service, municipal authorities, and unemployment insurance funds, ministries, the Confederation of Danish Trade Unions, the National Association of Local Authorities, the Association of Engineers and various organizations representing immigrants. As one result, the integration of immigrants and refugees was mentioned for the first time in collective labour agreements in 2000, and formed part of the settlement drawn up by the Public Conciliator. On completion of project training, 70 per cent of the participants obtained employment or went on to further education.

High rates of unemployment have long been registered among ethnic minority and immigrant workers in many West European countries – and elsewhere. In 1991, ILO initiated a research project to examine the dimensions and causes of disparities between national and migrant workers in access to employment, with a view to helping States find solutions to this problem.[22] The research methodology isolated the effects of discrimination from other variables, such as differences in age, experience, education, language, skills, marital status and gender, that could affect access to employment.

The initial project focused on a number of countries in Western Europe and North America. Its findings[23] showed discrimination in access to employment to be a phenomenon of considerable and significant importance in the countries covered by the research. Overall net-discrimination rates of up to 35 per cent were not uncommon, meaning that migrants/minorities were discriminated against in at least one out of three application procedures. As a consequence of the rigorous research methodology, the discrimination rates uncovered by the project were assumed to be conservative estimates.

Combating discrimination through training

Anti-discrimination training in Louvriers, France, an initiative of the Local Programme for Professional Integration (PLIE) responds to perceived systematic discrimination by local employers – a view borne out by surveys of employers. Social partners requested that emphasis be placed on:

– Identification of discriminatory practices and efforts to combat occurrences;

– Understanding of immigrants, their social behaviour and cultural perceptions;

– Develop appropriate methodologies to raise concerns with target groups and strategies to advance future careers;

– Increase employers' awareness of ethnic cultures and practices.

Training centred on three main themes: (1) cultural diversity and perceptions; (2) analysis of racial discrimination; and (3) compilation of tools to identify and fight against discrimination. Working groups developed collective responses towards these issues; the programme took into account France's immigration history, the impact of colonialism and particulars of the Maghreb and Black Africa regions. National and international good practice models were drawn on, and legislation and regulations reinforced in case studies.

Participants assessed that the training permitted the identification of both cultural and non-cultural behaviour that prejudices access to employment, allowing these issues to be further addressed with employers.

Victimization and persecution

The global nature and specific characteristics of violence and discrimination against migrants, refugees and other non-nationals are now widely acknowledged. They are facilitated by the restricted application or non-application of basic human and legal rights to non-nationals in the laws and procedures of States. There is not yet wide acceptance, especially by destination States, of the basic rights and entitlements for unauthorized migrants recognized in the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Indeed no State receiving migrants has yet ratified the Convention.[24] Under the ILO conventions relating to migrant workers, undocumented migrants are entitled to equal treatment in respect of rights arising from present or past employment in terms of remuneration, social security, and other benefits, as well as regards trade union membership and exercise of trade union rights. Nonetheless, restrictions or exclusions from protection of their rights are usually more severe for foreign nationals without authorization to enter, remain or be employed in the territory of a State. The undocumented are especially vulnerable to abuse, particularly because they are generally unwilling or unable to seek protection

from the authorities when confronted with xenophobic violence. Governments, too, may not always be as concerned about controlling irregular migration as they might suggest, with irregular entry sometimes being "tacitly permitted or even encouraged, just because irregular migrants lack rights and are easy to exploit."[25]

Women and children migrants and refugees are particularly at risk of exploitation and abuse, including xenophobic hostility. The 'double jeopardy' of being both foreign and female often makes it especially difficult to access public officials and legal processes that in theory should protect their rights. The United Nations Special Rapporteur on violence against women has emphasized the role of official anti-immigration policies in casting trafficked women migrants as culprits deserving sanction rather than victims needing protection and assistance.[26]

'The right to a nationality', outlined in article 15 of the Universal Declaration of Human Rights, has been called the 'right to have rights'. It is both a right in itself and a key to other fundamental rights in the civil, political, social, economic and cultural realms. The 1954 and 1961 Statelessness Conventions provide a legal framework through which States can avoid and reduce cases of statelessness while ensuring that stateless persons have, at a minimum, the protection of legal status in a given country. The Office of the United Nations High Commissioner for Refugees (UNHCR) is the agency responsible for following up on statelessness issues within the United Nations.

National anti-discrimination monitoring body

In the United Kingdom, the Race Relations Act (1976) established the **Commission for Racial Equality.** The Commission's aim is to work towards abolishing discrimination, the promotion of equal opportunity and proper relations between minority groups, to ensure the updating of the Race Relations Act and recommend any necessary legislative changes. This Commission helps those wishing to initiate proceedings in the event of discrimination and to carry out official investigations. It also conducts research, publishes guides on good practices, provides information and advice, and supports non-governmental organizations that work to improve inter-ethnic relations. All of these services are available to migrants and refugees. Recent legislative changes mean that government functions themselves, including the Immigration Service and Police, will come under increased scrutiny by the Commission.

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7. The response required: entrenching a rights-based approach

Core rights

Underpinning any response to the racism and xenophobia faced by migrants and refugees must be an understanding that, regardless of their legal status, refugees and migrants can never be denied their fundamental human rights. These are contained in the Universal Declaration of Human Rights and the two major human rights treaties: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Most Member States of the United Nations have ratified these instruments and are, therefore, under a legal obligation to ensure their effective implementation. Most of the 'core rights' in these instruments are applicable to non-citizens.[27] In addition, many have been recognized as forming part of customary law, binding all States irrespective of whether or not they are parties to the relevant treaties. The human rights standards contained in the Universal Declaration and the two Covenants form the bedrock of any right-based solutions to racism and xenophobia.

A number of specialized human rights instruments provide further standards for the treatment of refugees and migrants. The Convention on the Elimination of all Forms of Racial Discrimination is fundamental, as is the ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111). The Convention on the Rights of the Child (1989), the ILO Convention on the Worst Forms of Child Labour and the Convention on the Elimination of All Forms of Discrimination against Women (1979) are of particular importance given the vulnerability of women and children during the migration process. Some countries have yet to ratify these instruments. Others have registered reservations to exclude migrants from the protection of certain articles and clauses. Given the particular inability of stateless people to enjoy these rights, all States must be encouraged to accede to the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). All the proposals above should be given comprehensive endorsement as the platform for any international effort to protect migrants and refugees from racism and xenophobia.

The principle of equal treatment of migrants in matters of employment has been enshrined in several ILO conventions and recommendations. Convention No. 97 concerning Migration for Employment (1949) proscribed discrimination against immigrants in respect of nationality, race, sex or religion in matters of remuneration, allowances, hours of work, overtime, holidays with pay, minimum age, restrictions on homework, apprenticeship and training, membership in trade unions and benefits of collective bargaining, accommodation, social security (subject to some limitations), employment taxes, dues or contributions, and legal proceedings. The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), developed further the rights of migrant workers to family reunification, to preserving national and ethnic identity and cultural ties with their countries of origin, and to free choice of employment after two

years of lawful residence for the purpose of employment. The ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111), proscribed "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equal opportunity or treatment in employment or occupation". All these international instruments intended to advance protection have been ratified by a significant number of States, though the Migrant Workers Convention should be more widely ratified by receiving countries in particular.

United Nations Convention on Rights of Migrant Workers and Their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) provides a comprehensive legal framework to protect migrants against all forms of racist and xenophobic hostility. The Convention applies both to documented (legal) and undocumented (unauthorized or irregular) migrant workers. It stipulates that migrant workers must not be held in slavery or servitude and that forced labour must not be demanded of them. States Parties must establish sanctions against persons or groups who use violence against migrant workers, employ them in irregular circumstances, or threaten and intimidate them.

The importance and relevance of the provisions in this Convention can be summarized in the following seven points. (1) Migrant workers are recognized as more than labourers or economic entities. They are human beings with families, possessing rights, including that of family reunification. (2) Migrant workers and members of their families, being non-nationals residing in States of employment or in transit, are recognized as being unprotected. Their rights are often not addressed by the national legislation of receiving States or by their own States of origin. (3) For the first time, an international definition of migrant worker, categories of migrant workers, and members of their families, is provided and international standards of treatment are established through the setting-out of the particular human rights of migrant workers and members of their families. (4) Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognized for documented migrant workers and their families, notably equality of treatment with nationals of States of employment in a number of legal, political, economic, social and cultural areas. (5) The Convention seeks to play a role in preventing and eliminating the exploitation of all migrants, including in putting an end to their illegal or clandestine movements and to irregular or undocumented situations. (6) It attempts to establish universally acknowledged minimum standards of protection for migrant workers and members of their families. It serves as a tool to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards. (7) Although specifically focused on migrant workers and members of their families, implementation of the Convention would provide a significant measure of protection for the basic rights of all other migrants in vulnerable situations, notably those in irregular situations.

The Convention came into force on 1 July 2003; in other words, it became operative and part of international law. It may now be used as an authoritative standard of good practice, and thus may exercise strong persuasive power over non-party States as well, even though they have not agreed to be bound by its standards. Some of its provisions have already been used as a guide in drafting national migration laws. A notable example is Italy, where much of the comprehensive national migration law adopted in March 1998 is based on norms set out in the 1990 Convention.[28] Nevertheless a key goal for the immediate future must be to persuade destination States to accede to the Convention.

New protections for trafficked persons and smuggled migrants

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Smuggling Protocol), adopted by the United Nations General Assembly in November 2000, contain important provisions aimed at protecting the rights of these particularly vulnerable groups of migrants.[29] (The distinction between the two groups was explained in the section on trafficking and migrant smuggling above.)

In appropriate cases, and to the extent possible under domestic law, States parties to the Trafficking Protocol are required to protect the privacy of trafficking victims. They should ensure that they are given information on legal proceedings and facilities and be supported in participating in criminal proceedings against suspected offenders. States should consider measures to provide for the physical and psychological recovery of victims of trafficking; endeavour to provide for the physical safety of trafficking victims within their territory; and ensure that domestic law provides victims with the possibility of obtaining compensation. The special requirements of children, including appropriate housing, education and care, are to be taken into account in the application of these protection provisions. State parties are also to consider adopting legislative or other measures permitting victims of trafficking to remain in their territories temporarily or permanently in appropriate cases with consideration being given to humanitarian and compassionate factors. The Protocol also addresses the issue of prevention. States parties should establish policies, programmes and other measures aimed at preventing trafficking and protecting trafficked persons from re-victimization. States parties should undertake information campaigns and social and economic initiatives to prevent trafficking. The cooperation of civil society should be enlisted in such preventive initiatives. Finally the application and interpretation of measures to implement the Protocol (including those related to border control and law enforcement) "must be consistent with internationally recognized principles of non-discrimination".

Whilst the protection provisions of the Migrant Smuggling Protocol are not as extensive as those of the Trafficking Protocol, the former instrument does include a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the

worst forms of exploitation which often accompany the smuggling process. When criminalizing smuggling and related offences, States parties are required to establish, as aggravating circumstances, situations which endanger the lives or safety of migrants or entail inhuman or degrading treatment, including for exploitation. Migrants themselves are not to become liable to criminal prosecution under the Protocol for the fact of having been smuggled. States parties are required to take all appropriate measures to preserve the internationally recognized rights of smuggled migrants, in particular, the right to life and the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment. They are also required to protect migrants from violence and afford due assistance, as far as possible, to migrants whose life or safety has been endangered by reason of having been smuggled. The special needs of women and children are to be taken into account in the application of the Protocol's protection and assistance measures.

Both Protocols contain important savings clauses to the effect that nothing in them is to affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law, human rights law and refugee law.

The special character of the refugee protection regime

Giving better recognition to the human rights of all migrants should not dilute the particular protection needs of refugees, who are fleeing persecution. The principles enshrined in the Convention Relating to the Status of Refugees (1951) and its 1967 Protocol may be undermined by policies aimed at combating irregular migration. For example, the application by Governments of the major destination countries of blanket border enforcement measures, such as readmission treaties, carrier sanctions, or the posting of airline liaison officers around the world, means that bona fide refugees may be denied the chance of escaping persecution, or may be returned to the country of persecution by a neighbouring State. Such practices must be reviewed in accordance with international obligations to uphold the right to asylum and combat racism and xenophobia.

The Convention and its Protocol are landmarks in the setting of standards for the treatment of refugees. They incorporate the foundation concepts of the refugee protection regime that are as relevant in the contemporary context as they were in 1951. Refugee law is not static but has a dynamic and action-oriented function. It has, and must retain, an inherent capacity for adjustment. The Convention and Protocol need to be upheld in their entirety and fortified by other treaties that prohibit refoulement to inhuman or degrading treatment, such as in article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) or under regional arrangements such as the European Convention on Human Rights. The Office of the United Nations High Commissioner for Refugees (UNHCR) is the international agency which has the mandate to provide international protection to refugees and other persons of concern, and to supervise the application of conventions for the protection of refugees.

8. Conclusion

Advancing the protection of migrants and refugees in the face of xenophobic hostility, discrimination and violations of human rights requires common approaches, strategies, coordination, and the ability to mobilize human and material resources. Government officials and institutions, international organizations, civil society organizations and migrant support groups, all have roles to play and contributions to make. Various initiatives described above demonstrate that dialogue and cooperation is possible among government, corporate and international and civil society actors. All this and more will be required to generate the alternative solutions set out in the Durban Programme of Action.

A rights-based approach to migration needs to be more adequately incorporated in the policies and activities of all concerned with migration. Political will or the lack of it is the fundamental variable that can make the difference between effective interventions to tackle racism and xenophobia, or the continued exposure of migrants and refugees to its effects. If the 21st century is to avoid repeating some of the mistakes of the last, then the rights and dignity of all migrants and refugees must be respected.

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Issues for discussion

Is it possible to propose immigration policies that do not involve racial discrimination? What rights ought non-citizens be entitled to once they lawfully enter a country? What difference should it make to their rights if non-citizens have entered a country unlawfully?

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[26] E/CN.4/2000/68. See also chapter 12.

[27] Weissbrodt, D., 'The Rights of Non-Citizens', Report submitted to the 53rd session of the Sub-Commission on Promotion and Protection of Human Rights, July, 2001, *Discrimination against Non-Citizens and Ideas on Future Action*, Regional Seminar of experts for Western States, Brussels, 10-12 December 2003.

[28] For further discussion of the 1990 Convention and its entry into force, see *International Migration*, Quarterly Review, Vol. 38, No. 6 Special Issue, 3/2000, IOM; or its offprint titled *The Human Rights of Migrants*, co-published in 2001 by IOM and the United Nations.

[29] Supra notes 8 and 9.

9. Researching discrimination against immigrants

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Introduction

This chapter aims to interest students in discrimination research, both theoretical and empirical. It provides an introduction to current techniques of research using the example of migration. Immigrants have been the target of lethal violence, violent assaults, threats and verbal abuse and publicly expressed hatred. They have seen their property damaged, destroyed or desecrated.[1] Much attention has been paid to these shameful experiences in the European Union. One response has been the establishment of the European Monitoring Centre on Racism and Xenophobia (EUMC), which has conducted and commissioned vital research.[2] Although this chapter will have a European focus, the phenomena discussed are, and always have been, global.

1. International migration

In studying international migration it is essential to distinguish between *flows* and stocks. Flows are made up of the people who moved abroad during a given period of time, usually one year. Stocks, under the United Nations definition, are made up of the people currently residing in a country other than the one where they were born. Some recent estimates on the size of the migrant population in the world may be cited. According to a report by the United Nations Population Division:

> "Around 175 million persons currently reside in a country other than where they were born – about 3 per cent of the world's population. The number of migrants has more than doubled since 1975, and 60 per cent of the world's migrants currently reside in the more developed regions, with 40 per cent living in the less developed regions. Most of the world's migrants live in Europe (56 million), Asia (50 million) and Northern America (41 million). Almost one of every ten persons living in the more developed regions, but only one of every 70 persons in developing countries, is a migrant. In the ten years from 1990 to 2000, the number of migrants in the more developed regions increased by 23 million persons, or 28 per cent".[3]

These numbers refer to current *stocks* of international migrants. They include refugees, but migrants in an irregular status are probably only partially covered. They include citizens born abroad who later moved to the country of their citizenship, but they do not include non-citizens born in the country. In Europe, where there are many small countries, there will clearly be more international migration than in North America or Asia.

The numbers would be substantially larger, if people who lived abroad at some time during their life but do not currently do so were included. In other words, the number of people with migration experience far exceeds the number of current migrants.

The same report also provides recent numbers on migration flows:

> "In the five years from 1996-2000, the more developed regions of the world received nearly 12 million migrants from the less developed regions, about 2.3 million migrants per year. The number of net migrants amounted to 18 per cent of the number of births, and the net migration accounted for two thirds of the population growth in the more developed regions. The largest gains per year were made by Northern America, which absorbed 1.4 million migrants annually, followed by Europe with an annual net gain of 0.8 million".[4]

All these numbers, of course, beg the question: how can we know all this? The methods of assembling migration statistics is, however, beyond the scope of this chapter.[5]

Most migration is not international. This has partly to do with distance. The large majority of moves are over distances of less than 100 kilometres. This fact has also to do with borders, with language differences, with the very limited transferability of skills, with the particular costliness of having to live in an unfamiliar place or in a place without relatives and friends to fall back on.

2. Migrants and discrimination

In undertaking research into racial discrimination and the experience of migrants there are a few important points to be kept in mind:

- There are many different categories of migration from both a legal and a behavioural point of view. Not all offer the same opportunity for discrimination, and not all of them offer the same opportunity for action against discrimination or for redress.

- Migrants in an irregular situation are not easily separated from migrants with a regular status. For one thing there are many shadings of irregularity, and secondly those in an irregular situation are frequently close relatives or friends of migrants in a regular status. (For instance, in Europe, article 8 of the European Convention on Human Rights protecting the right to family unity binds them together legally. In France, since 1998, this has been sufficient grounds for a regularization of status.)

- Stocks matter not flows, since it is the current migrants who experience discrimination, although it is newcomers in particular who are prone to suffering discrimination. This is not to say that they are aware of discrimination or that, if they are aware, they are willing to admit to it. Similarly, earlier migrants not currently residing abroad may have experienced discrimination but may not choose to remember.

- Discrimination is not unique to international migration. It is an important feature also of internal migration.

- Humanity cannot be divided into a share that is being discriminated against and a share that discriminates. To be discriminated against is no protection from discriminating oneself.

- Discrimination against migrants can be individual or institutional. Discrimination is institutional when there are rules, obligations or customs depriving the individual of the choice not to discriminate.

- This differs from what is sometimes also called 'institutional' racism but would better be named 'organizational' racism: "the collective failure of an organization to provide an appropriate professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour that amount to discrimination through the unwitting prejudice, ignorance, thoughtlessness and racist stereotyping that disadvantage minority ethnic people".[6]

- When individuals discriminate, whether by choice or institutionally, they do so as members of a community. Since the boundaries of communities are often ill defined, discrimination tends to be situational – depending on context it may or may not occur. Individuals may discriminate when they feel a need to reaffirm the boundary around them, i.e. the boundary uniting them, but there may be other situations when this need does not arise. Behaviour in one situation, therefore, is a poor guide to the same person's behaviour in another situation. The criteria determining the choice to discriminate are only poorly understood at present.

Discrimination by law

Non-citizens suffer racial discrimination, which is formally proscribed by the law, and informal discrimination, which may often be prohibited by the law (and should be where it is not). The discriminatory scope and power of national(ist) legislation should not be underestimated but remains under-researched in both causes and effects, and even in extent.

Waldrauch, in a sophisticated analysis, showed how much law discriminated in Europe in 2000.[7] For seven States and six areas of law, an index was constructed running from zero (perfect legal equality with nationals of the country) to one (perfect inequality). In addition, an overall index for each State was constructed. The results vary from a favourably low overall index of 0.22 in the Netherlands, to a value of more than double that, i.e. 0.46, in Switzerland. Austria also has a high index of 0.44, while Belgium (0.26) and France (0.29) have fairly low values. Germany and the United Kingdom are in the middle with 0.36 each. The differences between countries are not the main point. The main point is the extent of discrimination endorsed in laws of each country as such.

The index of discrimination by the law in 2000						
	Resi-dence	Family reunion	Employ-ment	Social rights	Civil and political rights	Natural-ization	Total
Austria	.35	.51	.49	.27	.54	.55	.44
Belgium	.25	.23	.20	.23	.52	.20	.26
Switzerland	.58	.42	.41	.27	.42	.57	.46
Germany	.45	.43	.29	.24	.45	.35	.36
France	.28	.28	.15	.21	.48	.40	.29
Netherlands	.31	.21	.17	.14	.21	.24	.22
United Kingdom	.42	.42	.28	.44	.22	.45	.36
Spread	.33	.30	.32	.30	.33	.37	.24

Source: Waldrauch 2001 : 522, 531, 536, 550, 553, 559.

The overall index is a weighted average of the six indices for each country. The first field covers residence rights, the second the right to family reunion, and the third the law on access to employment. The fourth subject is that of social rights, comprising social insurance (unemployment, health, pension, work accidents) and non-insurance public welfare. The fifth context relates to civil rights defined as including eight basic freedoms, i.e. freedom of the person (habeas corpus), of undisturbed possession of premises, of property, of assembly, of association, of opinion and of speech, of religion, and equality before the law. The last indicator concerns political rights comprise voting, labour representation and access to public service employment. As might be expected, inter-State variation is much larger in each of the subject indices than in the overall index. This indicates that the legal systems of the different countries tend to include differing trade-offs between rights in some areas and denial of rights in others.

Discrimination through the law may start well before migration, and may in many instances be the cause of migration rather than its consequence. Minorities tend to be over-represented not only among asylum applicants – where this would be expected – but among labour migrants as well. This may be due in part because national development efforts are focused on the majority population or on the geographical areas where that population is found. Partly it may be due to discrimination by majority employers – not least in the various levels of government.

Not all citizens in all countries have equal access to the chance of obtaining a visa for the destination country of their choice. In a world of nation States severely limiting the individual's right to change residence and to look for work in a world labour market, migration is becoming partially dependent on a variety of transgressions of the law. There is no space here to go into the multifarious and nefarious consequences of this state of affairs except to note the deaths and the effective enslavements that occur as a consequence.[8]

An overall conclusion must be that in the case of the non-citizen the scale of the effects of intentional, formal discrimination underpinned by the law is not known well if at all, since research is lacking.

3. Applied research on informal discrimination

Discrimination between private agents, often termed informal discrimination, is not easy to detect, much less to prove. Lawmakers have been struggling over the question of where to place the burden of proof, on the accused or the accuser. Similarly, researchers have either been inferring discrimination from unequal outcomes or have sought to prove it directly. Making inferences cuts both ways. Discrimination may appear to exist only because other causes of differential outcomes have not been taken into account. On the other hand, racism may be discovered in the absence of complaints about it. As John Wrench put it:

> "Sometimes there are open acts of discrimination which are recognized by those who experience it; more commonly, they operate quietly, unrecognized by the victims, and are only discovered through specific investigations. The concealed nature of many of these processes leads to the danger of underestimating the extent of labour market discrimination at any one time".[9]

The necessity of having reliable and comparable statistics and data sets has been underlined many times. The truth today is that despite United Nations and regional efforts to guide and train national statistical offices, the diversity of legal regulations, popular apprehensions and State traditions provide for an almost complete incomparability of data.[10]

Statistical data are often thought to be able to show conclusively in themselves that discrimination exists. This is, unfortunately, not so. Instead they are merely the material for research attempting to discover discrimination and the extent to which it occurs.

Research approaches can be categorized as follows:

1. Collection of testimony or evidence from migrants and minority members, from watchdogs or police reports;

2. Research into agent behaviour, for instance through the method of discrimination testing;

3. Inter-group comparisons, mostly of a statistical nature, relating outcomes to inputs;

4. Research into attitudes, usually either employing text analysis or survey techniques.

All four are examined in turn, albeit briefly. Most attention has been focusing on access to employment, working conditions and the degree to which immigrants are being permitted to participate in the upward mobility of employees within enterprises. The discriminatory techniques used in these areas do not differ, though, from those used in other areas. The law as a determinant of attitudes and behaviour or practice has been surprisingly absent from research.

An important caveat must be added at this point. None of the four approaches represents research into the *causes* of discrimination. Julio Faundez, in chapter 4 of this volume, refers to some of the salient hypotheses about causes but it would be a vast exaggeration to claim that the causes, origins or triggers of discrimination are known. A clear idea of what precisely appears to be causing differential outcomes is a matter of the greatest importance for policy purposes, if interventions are to be efficient and to the point, avoiding unintended and counterproductive side effects. Such knowledge, however, is not currently available. The four approaches outlined in this chapter are merely about finding out how much discrimination there is, or how much propensity to discriminate. Even so, to make statements about the existence of discrimination is touchy and often contentious. As a minimum, therefore, a highly conscientious use of figures and a careful, probing and circumspect approach to interpretation are required.

Collecting information on incidents

Good information on incidents can be found in Virtanen's European Statistical Atlas on Racial Violence,[11] which presents information for each of the 15 EU member countries for the years from 1995 to 2000, on five categories of crime committed specifically against migrants and minority members:

i. Lethal violence;

ii. Violent assaults against a person;

iii. Threats against a person;

iv. Incitement to racial hatred and violence;

v. Damage to property.

The information is based partly on police statistics and partly on NGO reports, and at times they are placed side by side. There are large difficulties and uncertainties associated with such an exercise. As noted by Virtanen:[12]

- It is difficult to delimit precisely which crimes should be included – if the perpetrator's motivation is the defining criterion, for example, there will be inevitable uncertainty in the statistics.

- Should inclusion in the count be based on formal complaints to the police or other relevant authorities, on court charges, or on convictions?

- Is it certain that all incidents or offences were discovered and recorded?

- Nations differ widely in the way they organize their police and court systems, the way they define their legal concepts, and the way they collect and present their statistics.

- To ensure comparability when making distribution and level comparisons, the legal and statistical circumstances must be carefully controlled for, before concluding that similarities or dissimilarities may be taken as real.

- If it were possible, the number of incidents should be set in relation to the size and composition of the minority population.

The conclusion is that, given existing data, it is extremely difficult to make any comparisons either across countries or over time in terms of racial or xenophobic incidents. By the same token, of course, it is not possible to aggregate the data that Virtanen collected across countries or even across the five categories of incidents in any one country. Once again comparability proves to be beyond reach. At the very best comparisons and aggregations can be made merely across years within one category and one country, and even this is often questionable.

Finally, it should also be noted that it is not uncommon for people experiencing discrimination not to admit to it in surveys. Trying to collect the information in survey form, rather than from the statistics Virtanen used, may therefore be no improvement.

Research on behaviour and practice

A prominent method in research on actual behaviour is discrimination testing.[13] Here, two or more testers, one seemingly belonging to the majority group, the other to a minority group, apply for the same job, or the same apartment, or the same training opportunity etc. They are matched as closely as possible for all the criteria that would usually be regarded as relevant, including height and weight and communication skills.[14]

> "If over a period of repeated testing the applicant from the majority background is systematically preferred to the others, then this points to the operation of discrimination according to…background."[15]

In recent research conducted in Europe the method was applied in Belgium,[16] Germany,[17] the Netherlands[18] and Spain[19] by ILO.[20] The testers were men between 20 and 25 years and the minority affiliation was Moroccan in Belgium, the Netherlands and Spain, and Turkish in Germany. In 2003, the same research was undertaken by ILO in Italy, again with young Moroccan men posing as immigrants.[21] Other countries will follow in this research.

Independent researchers applied the same methodology in Denmark with young Pakistani and Turkish men and women[22] and in Switzerland (only the first two stages, see below) with young Turkish, Portuguese, and Albanian-speaking Yugoslav men.[23] In Belgium, Italy and Spain, the tests were carried out in cities in three different parts of the respective countries, in Germany in one industrial region, in the Netherlands in the central conurbation, and in Switzerland in two labour markets. In one Belgian city, Brussels, and in Denmark the tests used both men and women testers.

The 'net discrimination rate' is perhaps best explained by an example. If the majority tester alone had been offered the job in 25 per cent of the cases and the minority tester alone in 10 per cent of the cases, then the net discrimination rate would be 15 percentage points (25 – 10 = 15). For statistical reasons, a net discrimination rate of less than 15 percentage points was regarded as no evidence of discrimination.

In five of the seven countries the job applications went through three stages:

1. Job seekers apply for a vacancy by showing up in person or by telephoning (Is this job still available?). Their application may be taken into consideration or they may be denied a chance to apply ('we are sorry, the job has just been taken');

2. Applicants may be given the possibility to present their credentials, following which they may or may not be invited for a selection interview ('Sorry, we are looking for somebody with qualifications other than you have');

3. The interview may result in an actual job offer or a rejection.

In Germany, because of the formal requirements of the third stage, the tests only proceeded to stage two. In Switzerland only stage two, i.e. the written job application, was carried out. In Germany, as also partly in Denmark and to a lesser degree in Belgium, Italy and Spain, testers directly enquired from companies about job openings without reacting to a public job offer.

The results show that a person perceived to be a non-immigrant is given a chance of a job much more frequently than a person perceived to belong to an immigrant minority. The table below shows that, in the five countries where all three stages were carried out, the net discrimination rates ranged between 17 percentage points in Denmark and 35 percentage points in Italy – an average of 30.5 percentage points. Male non-immigrant testers had to contact between 1.9 (Germany) and 4.0 (Denmark) employers – average 2.3 – to receive one job offer, while immigrants had to contact between 2.3 (Germany) and 5.8 (Netherlands) employers – average 4.8.

In Germany and Switzerland both testers were offered a job but, as in the other countries, the immigrant was often offered an inferior job, or the same kind of job at inferior conditions.

The distribution of job chances in discrimination testing in seven countries (males only)							
	Completed cases		*A chance for a job was given to (per cent)*				*Net discrimination*
	Number	*Per cent*	*Both*	*National*	*Migrant*	*Neither*	
Belgium	637	100.0	5.8	41.8	8.5	44.0	33
Denmark	231	100.0	0.4	24.7	7.8	67.1	17
Germany	333	100.0	42.6	9.9	0.0	47.4	10
Italy	621	100.0	7.4	39.0	3.9	49.8	35
Netherlands	235	100.0	0.0	28.9	1.7	69.4	27
Spain	468	100.0	1.9	33.1	3.8	61.1	29
Switzerland	1,369	100.0	33.2	14.0	0.4	52.4	14
All Seven	3,894	100.0	17.7	26.0	3.2	53.1	23

Data source: Zegers de Beijl (ed.) 1999: 45, 58, 71, 81; Arrijn et al. 1998; Fibbi et al. 2003; Allasino et al. 2004. Calculations by the author.

Net discrimination rates in seven countries, completed valid cases, males
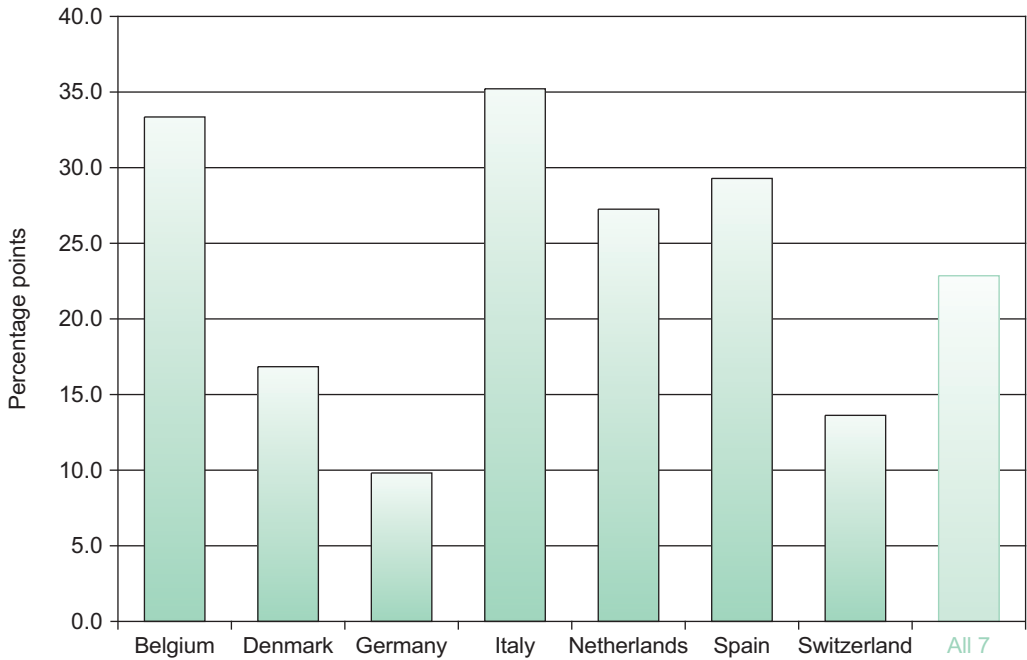
Inferring (unobserved) discrimination from the relation of outcomes to inputs

Wrench cites evidence from various European countries that holding education, sex, age, occupational level, and region constant, the unemployment rates of minority populations were higher than those of the native whites.[24] Here, discrimination may be inferred from different groups achieving differential results in the market in spite of having the same endowments. The discrimination may originate from structures or from agents or both.

Most of this sort of research is based on regression techniques. Important new developments in regression-based research on discrimination have occurred over the past 20 years, first through the introduction of Blinder-Oaxaca decomposition,[25] then by distinguishing between education, training and experience received before migration and after migration.[26] This has consistently shown that schooling *received outside* the destination country is not rewarded in the labour market, while any education or training *received in* the destination country will tend to be rewarded. Consequently, the first generation born in the destination country receives better wages and enjoys better working conditions than their parents did, due to in-country education. With the second generation born in the destination country, the differences become imperceptible, although exceptions persist. This is borne out by related research employing other regression strategies[27] or non-regression analysis.[28]

There are two important findings from this research:

- Income differences – including having no income – between minorities and the majority tend largely to be due to differential educational attainment when all have received their education in the country and the grossest rights deprivations have been abolished;[29]

- The finding that pre-migration education and training are not rewarded may indicate that discrimination is, at least partly, against the unknown. States and employers do not trust the education and training institutions in other countries, and make little or no effort to learn more about them. Economists have been terming this situation 'information asymmetry'. While the migrants know what they are capable of, the employers do not and can only find out over time, through experience. Given uncertainty about the outcomes, they may make assumptions unfavourable to the migrants, especially to the better-qualified ones, that will only be reversed in the long run.[30]

Nonetheless, uncertainty shrouds these results. Studies relating outcomes to inputs can never really prove (or disprove) the existence of discrimination, since discrimination (or its absence), in these studies, is an unobserved variable and can only be inferred from outcomes being related to inputs in a different (or the same) manner in all groups. The evidence, therefore, is always only indirect. Further, to show that outcomes differ is one thing, but to be certain that only the unobserved and residual discrimination can explain any remaining differences after taking into account a number of other hypothetically determining variables is quite another matter. It requires a large leap of faith.

Research on attitudes

Research on discriminatory attitudes has taken two major directions. One is text analysis,[31] which will not be dealt with here, and the other is survey research.

In the European Union and the countries applying for membership of the Union, the Eurobarometer (the European Commission's regular survey) has served as an effective tool to reveal a wide range of attitudes. Questions on attitudes to migrants and minorities have been consistently included in these surveys. Some important points should be kept in mind when citing comparative surveys such as, for instance, Eurobarometer 47 or 53, as in section 5 on trends below. All points are taken from a careful analysis undertaken by Social Research and Analysis (SORA). A first and very important caveat concerns the comparability of questions across languages and historical contexts. This matters especially when a survey investigates not the attitudes to recent migrants in particular or exclusively, but attitudes to minorities in general.

> "In some EU countries, no distinction is made in terms of language use between minorities and immigrants. In other countries, public opinion towards immigrants and refugees from non-European communities may not be the same as that

towards national minority groups. Minority groups may include very different social groups, such as refugees and working immigrants as well as groups with a long [local] history. ”[32]

Further problems resulting in bias include:

• The diverse political debates in different countries at the time of the survey;

• A vastly different interpretation of identically worded questions in different languages or countries (or even between people of different educational or social backgrounds using the same language);

• Refusal proved a major problem in five of the fifteen countries; people who refuse to answer individual questions, or refuse to answer an interview at all, do not necessarily have the same attitudes as the ones who provide answers.

4. Geographic dimensions of the problem

Before 1990, research into discrimination against migrants and their descendants was undertaken in a few countries only – Australia, South Africa, the United Kingdom and the United States. To these Canada and the Netherlands can now be added, and in a number of other European countries first initiatives have been taken. The EUMC RAXEN[33] network is now established in all EU member countries and will be expanded to the ten new members which have joined since May 2004. Outside of these few countries there is very little formal research on discrimination against migrants, although NGOs and sometimes trade unions may keep track of abuse and occasionally of other forms of discrimination. As international migration appears to be increasing, universities and other research institutions will have to make more of an effort to include the topic in their curricula and with funding agencies. There is no reason to assume that the experience of discrimination or the prevalence of racist attitudes is less common among populations that have not yet been researched. While EU data show large differences in attitudes between countries, discrimination testing has shown only small differences in actual behaviour.

5. Trends

Whether any form of discrimination or the inclination to discriminate is increasing or decreasing in extent or severity over the longer term is completely unknown. Short-term fluctuations, as indicated in the data presented in the next section, should not be over-interpreted. The trend in research volume has been to grow gradually.

Empirical data on the extent of the phenomenon: European data

In 1997, people in the European Union were surveyed for their self-professed racism. There were approximately 1,000 interviews per member country. Respondents were asked to rate themselves on a scale from one to ten from “not at all racist” to “very racist”.

Two thirds of the respondents rated themselves three points or less, nearly one quarter rated themselves in the middle of the scale (four to six points), and only one in 11 declared themselves to be racist to a degree of seven points or more. There were sizable differences between countries but there is no way of telling whether this is due to differences in racism, in honesty or in sensitivity. Nor is there a clear indication of the extent to which differences might be due to differences in meaning or connotation of the word 'racist'.

In Belgium, 22 per cent gave themselves at least seven points, in France 16 per cent, in Austria 14 per cent and in Denmark 12 per cent. This amounts, roughly, to one in five, one in six, one in seven and one in eight, respectively, giving themselves at least seven points. All four countries are long-standing countries of labour immigration, but so are others, such as Luxembourg, Sweden, the Netherlands, Germany and the United Kingdom, where respondents were much less likely to rate themselves as racist than respondents in the other four countries. In more recent countries of immigration the highest score was 10 per cent of respondents giving themselves at least seven points. This was the case in Finland. In Italy the share was 9 per cent and in Greece, Spain, Ireland and Portugal the share was between 3 per cent and 6 per cent. Given Eurobarometer sample sizes, and assuming best practice, any differences of more than 1 percentage point mark a difference between populations.

Self-ratings on a scale of 1 to 10 ('not at all racist' to 'very racist')
in the European Union, Spring 1997, per cent

	1 point	*2 and 3 points*	*4 to 6 points*	*7 to 10 points*
Belgium	19	27	33	22
Denmark	17	40	31	12
Germany	32	34	26	8
Greece	43	31	21	6
Spain	49	31	16	4
France	25	27	32	16
Ireland	45	32	20	4
Italy	35	35	21	9
Luxembourg	54	33	12	2
Netherlands	24	46	26	5
Austria	26	32	28	14
Portugal	58	25	14	3
Finland	22	43	25	10
Sweden	42	40	16	2
United Kingdom	35	34	24	8
EU-15	34	33	24	9

Data source: Eurobarometer 47.1, 1997
http://europa.eu.int/comm/public_opinion/archives/special.htm.

In 2000, Eurobarometer 53 included some identical questions to those asked in Eurobarometer 47.1 in 1997 thus giving an indication of attitude changes in the European Union during the period:

- Support for policies designed to improve the coexistence of majorities and minorities has increased;

- A majority of Europeans have voiced concern over minorities because they fear minorities are threatening social peace and welfare;

- People are worried about unemployment, a loss of social welfare and a drop in educational standards;

- A small, but significant minority of Europeans feels personally disturbed by the existence of minorities.[34]

SORA analysis of the data suggests that attitudes are tending to become more sceptical towards immigrants in seven or eight countries, to be unchanged in one, to differ on different items in two, and to be positive in three or four. SORA assessed growing support for policies designed to improve social coexistence between majority and minority groups as a positive trend, and declining support as a negative trend. While one hesitates to challenge this assessment, the data could be interpreted differently. Quite conceivably it reflects support for the cultural assimilation of immigrants or minority groups rather than for making the majority more willing to coexist with them. Alternatively, it could also be support for greater control of the attitudes of other majority members rather than the respondent. In either of these cases, the 'contradiction' the authors see in the overall trend would in fact makes sense. The respondent is more worried and therefore the wish has grown for others to be made more cooperative.

SORA identified attitudes towards minorities as being related to voting behaviour, education, and family relations, to persons of different race or ethnicity, religion, nationality or culture, as well as experience of unemployment. Higher education and personal relations or contact were associated with more positive attitudes towards minority groups, unemployment often with more negative attitudes. But these factors while they worked well in the Northern part of the EU, failed to provide a sound explanation for the attitudes shown towards minorities in the countries of Southern Europe. Attitudes there seem to be influenced by other factors.[35]

The education finding has been replicated many times. In the United States, for instance, it was found that the less-skilled are more opposed to immigration regardless of whether they live in places with greater or lesser concentrations of immigrants.[36]

As noted earlier, though, attitudes are next to no guide to behaviour.

6. Anti-discrimination training

Some scepticism has been expressed, not of the necessity to have legal instruments against discrimination, but of their efficiency by themselves:

> "Although national measures, such as anti-discrimination legislation, are necessary, they are not seen to be a sufficient means of combating 'racial' or ethnic discrimination in employment. The effect of such legislation is often that racism becomes more subtle, and that indirect, institutional or unintentional discrimination becomes important. Therefore, as well as laws against discrimination, there also exists a range of social policy initiatives against racism and discrimination at an organizational level, including equal opportunities programmes."[37]

Since xenophobia, racism, nationalism and the propensity to discriminate appear to vary partly by degree of education, training may be a feasible way forward. The awareness of discrimination is not as great as it might be. This goes for both ends of the interaction, the discriminating person and the discriminated one.

Wrench identified eight distinct training approaches:

1. Information training (information provision with a multicultural or anti-discrimination emphasis);

2. Cultural awareness training (a multicultural emphasis with a strategy of information provision or of attitude change);

3. Intercultural practice training (a multicultural content intends behaviour change with reference to information provision and attitude change);

4. Racism awareness training (at core anti-discrimination training intending attitude change, often linked with some information provision and some multiculturalism);

5. Equalities training (behaviour change intended through emphases on anti-discrimination contents and/or contextualizing);

6. Anti-racism training (an anti-discrimination emphasis in content intending organizational change connected with all the other strategies, i.e. information provision, attitude change and behaviour change);

7. Anti-discrimination training for 'black' managers, when a degree of equality has already been achieved (to strengthen the group's own ability to remove barriers to advancement);

8. Diversity training (emphasizes context, intending organizational change but includes elements from all the above). Diversity training also presupposes a degree of equality rather than seeking to produce it. This has become the preferred approach especially among British trade unions.[38]

As a final point, it would be useful to assemble easily accessible up-to-date collections of non-discriminatory or anti-discrimination practice, especially for training and education purposes. One obstacle, however, and an important one, is the lack of a widely agreed definition of 'good practice'.[39]

7. Conclusion

This chapter has laid particular emphasis on the methods of investigating the existence of discriminatory attitudes and practices. It has highlighted, in particular, the opportunities and pitfalls of diverse methodologies, and has illustrated them with examples mostly, though not exclusively, from Europe. Finally, a sketch of tried and tested training approaches designed to influence attitudes and practices was given, and some suggestions were made about other ways forward. Not all societies and Governments are equally alert to the challenge. In fact, countries are at very different stages of facing the fact of discrimination. This is true even in Europe, the continent with the most immigrants.

A major conclusion clearly is that some hard thinking about research methods is required in order to make the results more useful and more convincing. Two further conclusions would be that many research questions have remained unexplored and that much more research should be done. The latter should include the evaluation of training activities.

Further reading

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Issues for discussion

What is the difference between stocks and flows of migrants, and which of the two matters for discrimination? What is the difference between inferring discrimination from unequal outcomes and trying to prove it directly? The author calls for further research. What further questions does he have in mind that need answering?

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10. Racism and the administration of justice

Leila Zerrougui

We express our profound repudiation of the racism, racial discrimination, xenophobia and related intolerance that persist in some States in the functioning of the penal systems and in the application of the law, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement, especially where this has contributed to certain groups being over-represented among persons under detention or imprisoned.

(Durban Declaration, para. 25)

Introduction

Speaking to the United Nations Commission on Human Rights in 2001, Mary Robinson, the then High Commissioner for Human Rights, noted that she received regular information from all parts of the world regarding serious violations of the right to be free from racial discrimination. "Violence against certain groups and segregation and discrimination in housing, education and employment continue to be the norm in many societies", she said.[1]

Discrimination is complex and multidimensional, with every region developing one or more forms of discrimination for historical, sociological, ideological, economic or cultural reasons. Discrimination is intrinsically linked to structural situations of injustice and/or low status for certain social categories and is often based on considerations of race, colour, birth, national or ethnic origin or other related grounds. Some victims suffer discrimination on two and sometimes three separate grounds. This is true, for example, of women and children belonging to marginalized or stigmatized social categories.[2]

If racism, racial discrimination, xenophobia and all related forms of intolerance still persist in daily life, it follows that they will inevitably be reproduced in a country's legal and judicial systems. It is a shocking fact that discrimination – the manifestation of racism, xenophobia and intolerance – exists and persists in the administration of justice and, unfortunately, spans the entire planet. While this chapter focuses on criminal justice, discrimination and disadvantage based on ethnic or immigrant status is also experienced in other legal processes unconnected with the penal law, including the civil courts. Much more research is needed in order to understand how ethnic and racial difference exercises a daily influence on the quality of justice. An array of reports by experts, including by NGOs, however, has established that racial and ethnic discrimination is a common phenomenon in national systems of criminal justice, whatever the type of legal system. That research establishes that racism is pervasive in police stations, courtrooms, prisons and places of detention for ethnic minorities, indigenous peoples, asylum-seekers and irregular migrants worldwide.[3]

The events of 11 September 2001 and the scale of the tragedy that these events has produced have revived tensions between communities, increased fears and led, in several regions of the world, to racist and xenophobic attitudes and acts of violence towards members of certain religious or ethnic communities.[4] The legal provisions adopted by many countries, including anti-terrorist measures, have sometimes targeted people belonging to ethnic or religious minorities and/or have drawn distinctions that human rights advocates have termed discriminatory.[5]

In order to fight transnational organized crime, countries with substantial migration flows have strengthened their legal provisions for combating illegal entry and have imposed restrictions on the right of asylum that call into question rights that have been established by international humanitarian law for these vulnerable people. In this respect, some countries systematically detain anybody entering their territory illegally, while others just as systematically stigmatize or lock up migrant victims of trafficking. These situations exacerbate racism and discrimination, increase the insecurity of vulnerable people and make it even more difficult for the judicial system to cope.

Unfortunately, unequal treatment and discriminatory practices in the administration of justice are not exclusively exogenous or ascribable to exceptional circumstances. An analysis of discriminatory mechanisms in the operation of the judicial system shows that in the administration of justice, discrimination is also endogenous and structurally integrated in the organization and operation of the law.

1. Racism and justice

When discrimination occurs in society, the judicial system is immediately implicated because it is so often unable to protect victims effectively and to secure them against repeated violation of their rights. Shortcomings and inadequacies are multiple: they include the failure to criminalize discriminatory acts in some countries, the absence of remedies or their ineffectiveness in others, the victims' precarious status, their ignorance of their rights and their distrust of the courts – all of which discourage them from bringing actions against those guilty of discrimination. Furthermore, threats of reprisal, social pressures and, in the case of illegal immigrants, the risks of detention and deportation, are added concerns. It is also true that marginalized groups are underrepresented among those who operate the justice system for both civil and criminal justice in all countries, and are the least able to influence judicial policy and its reform.

The evidence is that even if victims of racial discrimination invoke the law, they have limited chance of success, either because the courts, reproducing society's racist and sexist stereotypes and prejudices, are lax towards the perpetrators, or because vulnerable and impoverished victims, who often may not speak the language, are unable to substantiate their allegations. Research has shown how poorly equipped the judicial system in many countries is to protect victims of discrimination.[6] In some cases, the victims are penalized and those responsible for human rights violations escape punishment. Such patterns strengthen the impression of impunity and encourage further violation.

The enforcement of criminal law by police is likewise marred by racism. A practice mentioned in the Durban World Conference is that of 'racial profiling', that is the identification of suspects from minorities – such as Roma in Europe or Hispanics or African Americans in the United States – solely on the basis of their ethnic origin or colour. On the assumption that such groups commit more offences, police justify targeting these groups, engendering deeper hostility and alienation between communities and the police. Such groups are more frequently the target of police violence and the victims' complaints are rarely taken seriously because of their ethnic or immigrant status.

Racial profiling

"…States [should] design, implement and enforce effective measures to eliminate the phenomenon popularly known as 'racial profiling' and comprising the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity."

Source: Durban Programme of Action, para. 72.

The absence of legal aid to secure a lawyer to defend such persons on a criminal charge, or the low quality of legal service provided, can result in unfair trials and unjust sentences. A particularly well-documented trend in the United States has been the discriminatory use of the death sentence against African Americans. In the United States, blacks and whites are victims of murder in almost equal numbers. However, more than 80 per cent of those executed between 1997 and 2001 were convicted of the murder of a white person. A recent report by Amnesty International confirms that African Americans are disproportionately represented among people condemned to death in the United States. While they make up 12 per cent of the national population, they account for over 40 per cent of the country's current death row inmates. Over 20 per cent of black defendants who have been executed were convicted by all-white juries.[7] Recent research has examined whether racial attitudes play a role in white support for the death penalty in the United States. The researchers found that white support for the death penalty has strong ties to anti-black prejudice. In some parts of the country, racial prejudice emerges as the strongest predictor of white death penalty support.[8]

Ethnic and racial minorities are also more likely to be imprisoned than other ethnic groups. Class and poverty are also implicated in sentencing decisions, but racial discrimination is predominant. In the United States, black men are imprisoned at a rate more than eight times that of white men. In the case of women the ratio is more than eight times for black women and four for Hispanics. Children of minority background make up 15 per cent of the 10- to 17-year-old population but account for some 31 per cent of the youth arrested and 44 per cent of youths held in youth custody centres.[9]

Crisis situations or emergencies exacerbate the stigmatization of excluded populations. It is an established fact that when a country is facing exceptional circumstances, the number of human rights violations rises significantly and that discriminatory practices in everyday life and the administration of justice (which is disrupted and/or exploited) multiply, especially for vulnerable groups and individuals. The tragic events of 11 September 2001 and the subsequent response have unfortunately confirmed that this tendency can occur even in countries where the rule of law and the independence of the judiciary are already established.[10]

The reports of various United Nations human rights mechanisms confirm that, in the administration of justice, discrimination is indeed structural and institutional. That discrimination is to be found in the provisions of the criminal law. Discriminatory provisions relating to women, children, indigenous peoples, minorities and foreigners appear in the criminal legislation of a number of countries.[11] They are found also in procedural rules, judicial policy, the organization and operation of the police, the judicial system, sentencing and in the prison service.[12] Discrimination is usually suffered by people belonging to disadvantaged or historically stigmatized social categories. In police stations, prisons and other places of detention these people are the most at risk of torture and inhuman or degrading treatment.[13]

It must, however, be emphasized that the judicial system is implicated above all because discrimination is an integral part of its daily operation, and its potential victims are the same people who suffer from discrimination in their everyday lives. Yet although manifestations of racism and discrimination are, generally speaking, recognized and their victims identified, we do not yet understand what the mechanisms responsible for the persistence of discrimination in the administration of justice are.[14]

2. The international response

The Durban Conference

The existence of discrimination in the administration of justice has been long recognised. Various experts have reported it before the United Nations. But it was unquestionably the Durban Conference that focused world attention on the persistence and scale of this distressing phenomenon.[15] A considerable body of research was presented, along with recommendations from specialists on the subject, and Governments committed themselves to taking action.[16]

Concerns expressed in the Conference documents relate both to the presence of racism in the criminal justice system and the absence, or ineffectiveness, of legal remedies against acts of racial discrimination where victims seek protection. States are urged to undertake research into criminal prosecutions, police violence and penal sanctions in order to identify and eradicate racially discriminatory practices. States should

equally act to investigate effectively and prosecute all unlawful acts of racism and racial discrimination and should foster awareness and provide anti-racism training for personnel involved in the criminal justice system.

Above all States were reminded of the extensive provisions in international law that outlaw all forms of racism and racial discrimination, provisions they are obliged to apply including in their criminal justice systems.

Non-discrimination principles and criminal justice

Respect for the principle of non-discrimination is extremely important in the functioning of both civil and criminal justice. There needs to be awareness that victims of racism are often likely to be unfamiliar with the complexity of legal proceedings and are often made vulnerable by measures of constraint that restrict their freedom and rights. To guarantee effective protection to people, whether they are offenders, victims or merely witnesses, international law prohibits discrimination, and requires that equality before the courts, including equal access to the criminal justice system, equality before the law and equal protection of the law, must be respected by all States. All of these rules are recalled and reinforced in the Durban Conference documents.

These protections are accorded to all persons, including non-nationals,[17] during every stage of criminal proceedings including after conviction, regardless of the gravity of the charges.[18] For those made vulnerable by centuries of discrimination and marginalization, equal treatment necessitates affirmative action, which is essential in order to progressively eliminate structural discrimination.[19]

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international and regional instruments devote a number of their provisions to judicial guarantees. These include (among the various guarantees that international law recognizes for everyone without distinction of any kind) the presumption of innocence, minimum guarantees of due process, compliance with the rule requiring that offences and penalties shall be strictly defined by law, individuality of sentencing, the right of appeal to a higher court, the right to compensation, reversion of rights and rehabilitation for victims of human rights violations, and the ban on inhuman, cruel or degrading treatment or punishments.

The implementation of judicial guarantees, the restrictions to which they may be subject, rights that may not be waived, the treatment of offenders and the rights of victims of human rights violations,[20] all have formed the subject of detailed commentaries and interpretations by treaty bodies most especially the Human Rights Committee.[21] Other bodies have also contributed towards protection including the United Nations Commission on Crime Prevention and Criminal Justice, which has played an important part in codifying what are today the recognized rights of defendants and victims.[22]

Most States have ratified the main international agreements on how justice should be delivered, how the judicial system must act towards victims and how it must treat offenders. A series of minimum rules adopted by the United Nations periodic congresses now supplement international agreements, providing a minimum standard and legal frame of reference for protecting human rights. Specific declarations, principles and agreements have also been adopted to improve the protection of vulnerable and disadvantaged individuals and groups. Even if some norms are not yet mandatory, they are nevertheless generally accepted by the international community as constituting the minimum rules that apply whatever the domestic legal or judicial system.

The more general international legal framework for combating racism and racial discrimination, in particular the International Convention on the Elimination of Racial Discrimination was considered in chapter 2. The Committee on the Elimination of Racial Discrimination, which oversees the implementation of the Convention, has been vigilant in its dialogue with States over racial discrimination and the law, and the need for effective remedies for the victims of racial discrimination.[23]

Technical assistance and training

As part of its strategy to combat racism and discrimination in the administration of justice, the Office of the High Commissioner for Human Rights offers any country, upon request, a comprehensive cooperation programme of technical assistance, awareness-raising, education and training intended for law enforcement personnel, including judiciary, police and prison officers. The Anti-Discrimination Unit in the High Commissioner's Office provides expertise and advice on all aspects of anti-racism training. The Unit's primary focus is on the implementation of the Durban Declaration and Programme of Action.[24]

In the work of the periodic United Nations Congress on the Prevention of Crime and the Treatment of Offenders and in that of the Commission on Crime Prevention and Criminal Justice, the dimension of racism and discrimination are now more frequently incorporated into advice on crime prevention and control strategy.[25] The current approach is to try to ensure fairness for the victims of crime in general, including through harnessing the current interest in protecting the rights of vulnerable victims of transnational organized crime.

3. Examples of national good practice

As already emphasized, discrimination in the administration of justice is a common phenomenon in virtually all countries, and therefore the choice of certain countries to discuss manifestations of racism and discrimination in the administration of justice is intended above all to highlight examples of national good practice. Three examples of discrimination attributable directly or indirectly to racism, xenophobia and related intolerance are considered: discrimination that targets certain minorities, foreigners and non-citizens, and women.

Minorities

The best example is that of the United States, a country where equal treatment is established in the Constitution and the Bill of Rights and where the right to justice is deeply understood. Yet, as already noted, American justice, and more specifically criminal justice, has been implicated in the persistence of discriminatory practices towards the black minority and, to a lesser extent, towards Hispanics. Official and many other studies have documented the highly disproportionate incarceration rate for minorities, police brutality and questioning methods which seem, always disproportionately, to affect these minorities, violations of the standards for fair trials and the discriminatory use of the death penalty.[26]

Discrimination against minorities is not, of course, the prerogative of the United States. All the human rights protection mechanisms denounce, in various regions of the world, the abnormally high victimization and detention rates for African Americans, Aborigines, Dalits, Roma, children of indigenous peoples and migrant workers and other communities stigmatized by age-old structural injustice.[27]

The American example serves to demonstrate how formal equality and apparently neutral laws can in practice produce blatant discrimination. The United States has the merit of acknowledging the problem and its seriousness.[28] In other countries the problem is not acknowledged and no data are collected. The transparency practiced in the United States makes it possible to measure the scale of the phenomenon and to understand how it operates. Transparency is, in itself, a good practice because it draws the attention of national and international public opinion to witness failures and unequal treatment and it generates pressure on public authorities to act.

Foreigners

An example of good practice is that of the European Union. The protection of human rights and fundamental freedoms is a core value for the EU. The European system of human rights protection is effective. It is based on mechanisms in which decisions are binding, and it possesses a very sophisticated and efficient legal arsenal. Yet racism, xenophobia, exclusion, racist attacks and police brutality, especially towards foreigners, are frequent in Europe and have even increased drastically in recent years.[29]

In the administration of justice, behavioural and de facto discrimination specifically targets non-European foreigners, immigrants and minority groups that have traditionally suffered stigmatization. Further institutionalized exclusion also exists in the laws of some member States of the European Union[30] and even in the European legal order.[31]

Nevertheless, in terms of regional good practice, the European system is by far the most effective. The European Union has required strong national measures against racial discrimination.[32] National remedies have been improved and the mechanisms of the European system, including the Council of Europe's European Convention and

Court of Human Rights, the European Committee for the Prevention of Torture and the European Commission on Racism and Intolerance, allow effective supervision and offer effective recourse.[33]

Women

Discrimination against women is generally linked to the weakness of women's societal position. It results from the precariousness of their social status, the age-old low esteem in which they have been held and the structural discrimination that they suffer in the family and in society and which is reproduced in the administration and operation of justice in virtually all countries.[34] But it is in societies where patriarchal customs, religion and values continue to be very influential that women suffer most discrimination. It is especially the case in Africa, Asia and Arab-Islamic countries that discrimination against women is most blatant and often institutionalized in personal status, criminal law, rules of procedure and nationality codes.[35]

Compounding such institutional discrimination, there are specific crimes that target women and young girls and which criminal justice systems ignore or do not adequately consider (domestic violence, crimes of honour, genital mutilation, marital rape and sexual harassment).[36] Worse still, some countries have recourse to practices prejudicial to victims' rights in order to compensate for the judicial system's inability to deal with such crime.[37] The judicial system is equally discriminatory in the way it treats female delinquency.[38]

In this gender-specific discrimination, the racial dimension is always present, and usually women from the poorest sections of the population, foreign women and women from minorities with low status in society are its potential targets.[39] In patriarchal societies, a wall of silence and social resistance that prevents reforms from materializing surrounds discrimination towards women.

However, some countries are trying to adopt measures to which it is worth drawing attention. Thus, as part of the reforms currently under way in Bahrain, the new Criminal Code makes any form of violence committed against a woman by a member of her family an aggravating circumstance.

In Bangladesh, it was customary for courts to place women and children who had been the victims of violence in custody. On a complaint by the Bangladesh National Women's Lawyers Association, the Supreme Court ruled against placing women victims in prisons, not separated from other detainees. The Government later forbade the detention of women and children in the cells of police stations and in prisons for the purpose of protecting them from their persecutors. It adopted a directive to ensure that safe custody should mean shelter homes and not prison cells.[40]

In Malaysia also, criminal law has been amended and reforms of rules of procedure and evidence have been introduced to provide better protection for abused women.[41]

4. Conclusion

This chapter has offered a general survey of the manifestations of racism, xenophobia and related intolerance in the administration of justice, in particular criminal justice. In this sphere, violations of the right to non-discrimination are particularly serious and often lead to bodily harm, infringement of freedom and invasion of privacy. In the civil and administrative courts the precariousness of vulnerable people's rights is made worse by the complexity and technical nature of the proceedings.

International legal standards prohibiting inequality and discrimination are clear and specific in respect of the administration of justice, but making national practice comply with them is not an easy task. The elimination of manifestations of racism, xenophobia and related intolerance in the administration of justice is a long and costly process that requires political will, the mobilization of resources, education, research and advocacy. Above all, in order to carry conviction we need research that fathoms the workings of those mechanisms that perpetuate discrimination.

The complexity and diversity of de jure and de facto discriminatory mechanisms in the administration of justice in a large number of countries, the wide range of discriminatory practices and grounds for discrimination, the differences between legal and judicial systems, and the heterogeneity of institutional solutions adopted nationally are all fields in urgent need of further study and research.

Further reading

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Bowling B. and Phillips C., *Racism, Crime and Justice*, Harlow, Pearson Ltd, 2002.

Issues for discussion

What does the author mean by de facto and de jure discrimination in the criminal justice system? What examples does she give? Can you think of other examples? What measures could be introduced to end 'racial profiling' by the police?

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[2] See chapter 12.

[3] See, in particular, the Amnesty International report, *Racism and the Administration of Justice* (AI Index: ACT 40/020/2001), which gives examples drawn from Australia, Saudi Arabia, Burundi, the Czech Republic, the United States, the United Kingdom, South Africa, India, Guatemala, Indonesia, Iraq, the Sudan, Myanmar, Israel and the Occupied Territories, Japan and the European Union. The Special

Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, Mr. John Dugard, in his report to the 58th session of the Commission, gives an outline of discriminatory practices of the Israeli judicial system in the occupied territories (E/CN.4/2002/32, paras. 48-53).

[4] See the report by the then Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glèlè-Ahanhanzo (E/CN.4/2002/24); see also *Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001*, Report by Mr. Doudou Diène, current Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2003/23).

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[11] See, in particular, the report of the United Nations High Commissioner for Human Rights, supra note 1, and the paper of the tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders entitled *Women in the criminal justice system* (A/CONF.187/12).

[12] On discriminatory attitudes and practices, see reports of the Committee on the Elimination of Racial Discrimination, especially A/55/18.

[13] When considering the reports submitted by States parties, the Committee against Torture found that ill-treatment by police officers and prison guards in some countries seemed to be based largely on discrimination. See the report of the Committee against Torture (A/55/44) and the report of the Special Rapporteur on torture, Sir Nigel Rodley (E/CN.4/2001/66, paras. 4-11).

[14] It was to analyse this institutional discrimination and dismantle discriminatory mechanisms that the Sub-Commission on the Promotion and Protection of Human Rights decided to appoint the author as a special rapporteur to undertake a detailed study of discrimination in criminal justice systems. See resolution E/CN.4/Sub.2/RES/2002/3, adopted by the Sub-Commission at its 54th session on 11 August 2002. See on this subject the two working papers by Leila Zerrougui on discrimination in the criminal justice system: E/CN.4/Sub.2/2001/WG.1/CRP.1 and E/CN.4/Sub.2/2002/5.

[15] A/CONF.189/12.

[16] In preparation for the Durban Conference, Amnesty International, Human Rights Watch, the World Organization Against Torture, Penal Reform International and the International Criminal Justice Caucus published documents containing a wealth of information and statistics on manifestations of racism and discrimination in the administration of justice across the globe. These NGOs have been active in follow-up to the Durban Conference. See International Criminal Justice Strategy Meeting Report, April 2003, available at www.hrlawgroup.org.

[17] See general comments by the Human Rights Committee: No. 18 relating to article 26 of the Covenant, No. 29 relating to states of emergency, and No. 15 relating to the position of aliens under the Covenant.

[18] On differences in treatment of the perpetrators of the most serious crimes, see deliberation No. 6 of the Working Group on Arbitrary Detention (E/CN.4/2001/14, paras. 12 to 33).

[19] See the preliminary report of the Sub-Commission's Special Rapporteur, Marc Bossuyt, on the concept and practice of affirmative action (E/CN.4/Sub.2/2000/11).

[20] The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in resolution 40/34 of 29 November 1985, guarantees victims the right to be present at the trial, to receive assistance in defending themselves, to be informed of the progress of the proceedings and to take part in the decision-making process.

[21] The Human Rights Committee is the body that supervises the implementation of the International Covenant on Civil and Political Rights by the States that have ratified that treaty.

[22] See the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations publication, Sales No. F.92.IV.1).

[23] See in particular, CERD general recommendation No. 28 on follow-up to the Durban Conference, HRI/GEN/1/Rev.6.

[24] See also chapter 2.

[25] Vienna Declaration on Crime and Justice, *Meeting the Challenge for the Twenty-First Century*, A/CONF.187/4/Rev.3, 2000, para. 20.

[26] See in this respect Deysine, A., *La justice aux Etats-Unis*, Que sais-je, France 1998, pp. 92-120, and Leadership Conference on Civil Rights, *Justice on Trial: Racial Disparities in the American Criminal Justice System*. See also the reports and publications of the United States Commission on Civil Rights, Human Rights Watch (November 2002) and Amnesty International (July 2001), as well as the comments of the treaty bodies upon the periodic reports submitted by the United States.

[27] See Human Rights Watch, *Racist Impact: Criminal Justice and Public Administration*, 2001.

[28] For example, the United States in its report to the Committee on the Elimination on Racial Discrimination, considered in August 2000, acknowledged that "Various studies indicate that members of minorities (especially Blacks and Hispanics) may be disproportionately subject to adverse treatment throughout the criminal justice process." CERD/C/351/Add.1, para. 7(1).

[29] See chapters 9 and 10, and Gearty, A.C., 'The Internal and External "Other" in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe' in P. Alston (ed.), *The EU and Human Rights*, Oxford University Press, 1999. See also International Commission of Jurists, *The Non-Citizen and the Administration of Criminal Justice: Submission to the Committee on the Elimination of Racial Discrimination*, 2004.

[30] See on this subject the annual reports of the European Commission against Racism and Intolerance (ECRI).

[31] See Brion, F., 'Les menaces d'une forteresse – Citoyenneté, crime et discrimination dans la construction de l'Union européenne', p. 253, and Busch, N., 'Les fichiers automatisés', p. 135 in F. Tulkens and H.D. Bosley (eds.), *La justice pénale et l'Europe*, Brussels, Bruylant, 1996. See also L. Zerrougui, *Discrimination in the criminal justice system*, E/CN.4/Sub.2/2002/5, para. 27 et seq.

[32] See Race Directive 2000/43/EC of 29 June 2000.

[33] On safeguards and protections, especially in criminal law, see Pradel, J. and Corstens, G., *Droit pénal européen*, Paris, Dalloz, 1999.

[34] In its 1998-1999 report, the NGO 'Equality Now' provides examples of laws that explicitly discriminate against women in 45 countries. See also, *Women in the criminal justice system* (A/CONF.187/12).

[35] See, for instance, the report on the situation of women in Yemen published in 2002 by the World Organization against Torture.

[36] See the various reports of the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, and especially the report on cultural practices in the family that are violent towards women (E/CN.4/2002/83).

[37] See the reports of Ms. Radhika Coomaraswamy on her mission to Bangladesh, Nepal and India (E/CN.4/2001/73 and Add. 2) and the report of Ms. Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants (E/CN.4/2000/82).

[38] Women's involvement in lawbreaking is numerically relatively small to date, and the female prison population in most countries represents only some 4 to 5 per cent of the total prison population. See the annual reports of Penal Reform International and the Observatoire International des Prisons on prisoners' conditions of detention.

[39] In a document published in 2001 by the Office of the High Commissioner for Human Rights entitled *Gender Dimension of Racial Discrimination* this fact is emphasized at page 17: "Foreign domestic workers and women who enter a country illegally may be at great risk of detention and sexual and physical abuse. Moreover, foreign domestic workers who have been subjected to sexual violence or rape in the course of their work may find themselves incarcerated when seeking redress for such abuses, since some societies perceived them as offenders rather than victims." See also chapter 12.

[40] Report of the Working Group on Arbitrary Detention: E/CN.4/2003/8, para. 65.

[41] See, Asian Women's Fund, *Women and Legal Justice*, No. 00-6 March 2001, pp. 92-105.

11. Racism, the media and the Internet

Bent Sørensen

We note with regret that certain media, by promoting false images and negative stereotypes of vulnerable individuals or groups of individuals, particularly of migrants and refugees, have contributed to the spread of xenophobic and racist sentiments among the public and in some cases have encouraged violence by racist individuals and groups.

We recognize the positive contribution that the exercise of the right to freedom of expression, particularly by the media and new technologies, including the Internet, and full respect for the freedom to seek, receive and impart information, can make to the fight against racism, racial discrimination, xenophobia and related intolerance; we reiterate the need to respect the editorial independence and autonomy of the media in this regard.

We express deep concern about the use of new information technologies, such as the Internet, for purposes contrary to respect for human values, equality, non-discrimination, respect for others and tolerance, including to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, and that, in particular, children and youth having access to this material could be negatively influenced by it.

(Durban Declaration, paras. 89, 90 and 91)

Introduction

We live in societies dominated by the media. They influence attitudes, prejudices and people's capacity to act. The information and images brought into our homes each and every day go a long way towards shaping our understanding of the world in all its cultural, ethnic and religious diversity.

As listeners, viewers or readers we are all affected by the media. And the media's ability to influence us is growing all the time as the speed of communication increases, the range of virtual media worlds extends and the power of the Internet takes hold. Our societies are called upon more and more to examine the influence of the media and to shape its effects in a positive and constructive way, especially in terms of how we deal with cultural, ethnic and religious diversity, particularly when confronting racism, xenophobia and political extremism.

From the onset of the information age, the media have defined attitudes towards ethnic, national, religious or social groups other than those identified as the particular medium's target groups. Indeed, the media have often sought to become the spokespersons of a particular group, and to define its attitude toward others. This use of the media helped spread nationalism, anti-Semitism, racism and xenophobia as was seen during the Nazi regime. This type of media activity is by no means a thing of the past, as the recent history of the Balkans proves all too well.

Today's media have become more consolidated and reach out to a larger audience. Many people hitherto reviled or simply distrusted have become valued customers, readers, listeners and viewers. In this sense, the market has proved to be an effective instrument in eliminating some forms of racism. Some groups, however, seem to remain more vulnerable than others to hostility including that expressed in the media. These groups have been marginalized within society and therefore cannot expect either much media attention as customers or civic solidarity as citizens. They include minorities, new immigrants and non-nationals, especially where they are uneducated and poor. In contemporary Europe, a list of such groups would include Muslims, the Roma, and, in many European Union countries, immigrants and asylum-seekers from outside the EU. Though anti-Semitism has been delegitimized since the Second World War in public discourse in democratic European States, and though Jews are, as a rule, no more a politically or socially marginalized or threatened group, they remain vulnerable to anti-Semitism, mainly in anti-democratic rhetoric published in extremist publications. A coded language of anti-Semitism can also be found in some mainstream media. The European Monitoring Centre on Racism and Xenophobia (EUMC) in a report published in 2004 found an increase in anti-Semitic attacks in five European countries (France, Belgium, the Netherlands, the United Kingdom and Germany). The main perpetrators were "young disaffected white males" and "young Muslims of North African or Asian extraction".[1]

In the aftermath of the Second World War and the Holocaust, the post-war European generation has been educated in tolerance. Society has denied legitimacy to anti-Semitic and racist positions, and the post-war generation has in general seemed genuinely anti-racist. But with the growth of immigration and an increase in the number of asylum-seekers following the Balkan war, wars in Africa and the conflicts in the Middle East, racism and xenophobia have returned.

1. Media and intolerance

The media are both friend and foe in the task of promoting racial and social equality and combating racism and xenophobia.

One the one hand, as the Durban Declaration acknowledges, the media give readers, viewers and listeners an insight into and an understanding of the backgrounds, cultures and religions of people from ethnic minorities. If the problems and successes experienced by immigrants and ethnic minorities are described in a balanced way such information helps greatly to ensure nuanced views on immigrants and to build bridges between minorities and the majority.

On the other hand, the media can also help to create fear and prejudice – and thus consciously or unconsciously create fertile ground for strongly negative views or even stir up racism and xenophobia. In many countries the media portray the picture of their own country as being a soft touch encouraging 'thousands' or 'floods' of refugees and

asylum-seekers who consume many resources and taxpayers' money. Although journalists and programme makers generally have an anti-racist attitude, prejudices are reproduced in the media via a static conception of culture, the content of reporting, the roles distributed to ethnic minority spokespeople, and in the treatment of minority issues. In such cases an already weak section of the population can end up finding it even more difficult to become established in society. This is particularly a risk if the debate on foreigners is highly politicized and based on attitudes and feelings rather than facts and verifiable data. A comprehensive research report, published in 2002 by EUMC, shows the extent of the problem in Europe, and its findings are drawn upon below.[2]

Media policy and coverage often contribute to a racist vision of social reality by suppressing positive information about groups targeted by racists. Generally, the media in the news about ethnic, cultural, religious minorities and migrants in Europe focus on negativity, problems and crime. Very often there is an overemphasis on ethnic and immigrant crime. Headlines especially link the ethnicity, national origin or skin colour of groups, with their deviant or criminal behaviour (and even character). Such reporting is the basis for generalizations that associate minority groups with crime. Crime reports related to migrants and asylum-seekers also tend to be more dramatic or sensational and are described in a more brutal and violent way than general reports about domestic crime.

Crime is also represented as being associated with particular minority groups, which naturally vary from region to region. For example, the 2002 study of EUMC found that in the Finnish media, hardly anything else was covered about Russians and Estonians other than crime. "Crime is more often related to *visiting* Russians and Estonians than to the family living next door".[3] In Italy and Greece, Albanian immigrants have been most frequently associated with crime in the media. They are presented as an ungrateful, unreliable, disloyal, violent, criminal and lazy people. In documentaries and magazine articles, Albanians were associated with assaults, mafia practices and prostitution. Asylum-seekers are also negatively represented as trying to defraud the social security systems. In all European countries no other group is as negatively portrayed with the stereotype of crime as the Roma, Sinti and Travellers.

In coverage on other issues related to ethnic, cultural and religious minorities the media often portray a model of 'we' the victims and 'they' the problem. It appears especially in coverage of multicultural neighbourhoods and produces images of communities polarized between minority and majority. The approach in various articles and TV programmes dedicated to minority issues is often to break taboos on negative reporting, which means that ethnic and cultural difference (or socio-economic position) is mentioned as the cause of problems with migrant integration and life in multicultural neighbourhoods.

The labelling of minorities is another frequent method that conveys negative generalization. In the Italian media, for example, the most commonly used labels referred to illegality ('clandestini') or to other apparently neutral descriptions which, however, convey implicit negative connotations.

In the Finnish media, the use of discriminatory labelling has resulted in certain migrants and minorities coming to be associated with one theme. The word 'Somali' in the Finnish media represents much more than nationality; it is used as a symbol for undesirable refugees. It is a reasonable conclusion that the use of this label in a headline about criminal activity can give rise to racial hostility. In the Spanish media, offensive terms such as 'moros' are no longer used, but the terms that have replaced this are also generalizing (e.g. 'coloured people', 'Africans'). Such change in language nevertheless reflects a modest positive development, which seems to be mirrored in other countries that have experienced immigration more recently such as Italy.

The EUMC Report of 2002 found that, in the Danish media, minority and migrant actors are often lumped together in homogeneous categories of 'foreigners' and 'immigrants'.

In the British media, minorities are most often referred to by racial references ('black' and 'white'). 'Asian' is usually of more common usage than religious references, and there is very little use of national homeland identities.

In France, labelling of migrants has shown a gradual improvement in the sense that labels have become somewhat more positive over time. Previously, media discourse focused only on the 'banlieues' (a byword for social disadvantage, lawlessness and ethnic criminality). Another label or category – that of 'immigration' – has been used in the French media and official discourse since the 1980s. This referred in reality to second- and third-generation members of minorities, who hold French citizenship, and in particular to post-colonial minorities. Recently, alongside such negative labels more positive ones are to be found: that of 'sans papiers', which in many contexts has replaced the formerly used 'clandestins', indicating a partial softening of public opinion towards illegal immigration.

2. Media reporting post-September 11

Following the terrorist attacks in the United States on 11 September 2001, EUMC implemented a reporting system on potential anti-Islamic reactions in the then 15 EU member States. The *Summary Report on Islamophobia* analysed the consequential impact in society that media images and representations can have on perceptions of Muslims.[4]

The report's findings show that, in the period after September 11, a latent Islamophobia emerged in European countries. Certain media were identified as representing Muslims and Islam both negatively and stereotypically, sometimes as an almost necessary part of the reporting process. Many individuals who changed their attitudes or indeed participated in acts of aggression or violence towards Muslims acted in the light of visual identifiers that were essentially media-derived from post-September 11 coverage. It appears that behind the vast majority of attacks and infringements upon specific communities and individuals was the fact that victims were identified as Muslims by visible identifiers such as a headscarf, turban or a beard.

The headscarf seems to have become the primary target for hatred, with Muslim women being routinely abused and attacked across those countries in Europe where Muslim women could be identified in this way. Media coverage was found to have some relevance to the targeting of Muslim women, who were repeatedly highlighted in the media as being particularly oppressed in Afghanistan under Taliban rule. There may be some correlation, therefore, between the visual identifiers of Afghan women wearing the burka with Muslim women in Europe wearing the headscarf.

Another significant category of victim in the rise of aggression was men wearing turbans. Whilst the turban would not necessarily be immediately identifiable as Islamic attire, in the media coverage of both September 11 and the war in Afghanistan, and through the images of Osama bin Laden, the Taliban and everyday Afghans, the turban became an integral part of the semiotics of that period.

During the post-September 11 period, however, some media sectors were responsible and accountable, while others sought to remain balanced and objective. Where positive and balanced attitudes were identified in the various media, the reporting was built on dialogue with the Muslim community and a critical engagement not only with Islam, but also with topics relating more directly to September 11. In those media, Muslim voices were given a platform to be heard and a cross section of opinion was discussed.

In Finland for example, national newspapers sought to provide a fair and informative debate. It included discussion by readers, both Muslim and non-Muslim, and included responses from other countries as well. In Austria, different television broadcasts dealt intensively with the issues, but at the same time sought balance in the reporting. Programmes such as "Constructing Islam as an enemy?" included Islamic experts, whilst "Between fear and hope" included voices from the Austrian Islamic community. In these and many other examples, there were neither trends of sensationalism nor stereotyping.

Such trends were, however, a feature elsewhere. Sensationalism became a cornerstone of some reporting, whilst an inappropriate and disproportionate focus on extremist elements in Muslim communities became common.

3. The Internet

By 2002, the Internet had become a forum for an estimated 605 million users around the world.[5] Among these, racist, violent and extremist groups have been quick to learn how to take advantage of this medium through systematic and rational use. They use and exploit the Internet relatively effectively. According to the Simon Wiesenthal Center, in 1995 there was only one website inciting racial hatred; in November 1997, the Center counted 600; in 1999, 2,100; and by 2002 the figure had risen to over 3,300.[6]

United States service providers make some 90 per cent of such sites accessible. European web publishers use American providers to host their sites confident that they will not be identified, since the authorities in their own country cannot compel American

providers to reveal the identity of the person responsible for publishing a racist site. "In this sense the United States is playing a role similar to that traditionally played by certain States as regards income tax (tax havens) or gambling", concludes Professor David Rosenthal.[7] Wolfgang Neugebauer, Director of the Austrian Resistance Documentation Centre, suggests that, because the United States has not experienced the horrors of Nazism and genocide on its territory, Americans will tolerate this form of expression, whereas countries such as Germany or Austria will not. The American Mark Potok – an expert at the Southern Poverty Law Center – adds that the Internet plays a "terribly important" role in bringing together European and American extremist groups, the latter having previously been somewhat isolated.[8]

Some would argue that, since there are so many sites (probably several million), the numbers quoted for hate sites are insignificant; therefore, they add, one should not pay too much attention to, or be too concerned by, the existence of these extremist and racist sites. Others consider the Internet to be an attractive tool for racist propaganda: first of all, because it guarantees a large audience for a modest outlay; secondly, because it is difficult to track down all sites; and, thirdly, because extremists can operate with impunity in certain countries.

It is probably for these three reasons that movements or individuals spreading hatred have turned to the Net in recent years; this has, moreover, given them easy access to young people and other potential recruits. The Internet also provides the link to enable mobilization of extreme groups across borders, e.g. for demonstrations or football matches.

What was proscribed, carried out in secret, viewed as shameful and liable to prosecution in the past is nowadays perfectly readable and viewable on the Net. It could even be said that activists in movements that had been declining in both Europe and the United States have received a new lease of life thanks to the sites they have created. In some cases, one could even speak of a renaissance, so surprisingly large is the number of those logging on (the 'white supremacist' Stormfront website for example receives between 20,000 and 30,000 visits per day, and that of David Duke, from 5,000 to 10,000). The Net did not of course invent propaganda, nor can it be blamed for the formation and growth of these movements. The Internet is simply there, for you, for me. And the extremists know how to use it to disseminate their propaganda. Obviously, one does not automatically come across the pages of Stormfront or the Ku Klux Klan. One must want to find them, unless one happens upon sites that are too frequently and readily registered with search engines or searches by curiosity.

Some maintain that the matter should not be overplayed, that a mere read-through may prove instructive and that, in any event, what already exists cannot be hidden. They recall that teachers and parents must play their part by telling youngsters how perverse and dangerous such texts are. Others feel a real sense of disquiet. They are worried by this ease of access, which might contaminate weak minds or potential recruits, without teachers and parents being able or knowing how to intervene.

4. Legal controls on racist propaganda

Whereas European legal traditions follow the approach that racist propaganda may be prohibited by law as a permissible exception to the freedom of expression guaranteed in article 10 of the European Convention of Human Rights, legal traditions in the United States consider racist propaganda as political views, however abhorrent, and therefore in principle covered by the freedom of expression guaranteed by the First Amendment of the United States Constitution.[9]

On an international level, the fight against racist propaganda began with the United Nations International Convention on the Elimination of Racial Discrimination (ICERD).[10] Article 4 of the Convention reads:

> "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination."

The Convention has been ratified by 170 States, and the Committee on the Elimination of Racial Discrimination has emphasized that article 4 is central to the struggle against racial discrimination by means of printed documents, films or any other media. However, some countries have made a reservation to article 4 of the Convention, and the United States upon ratification made the following reservation:

> "That the Constitution and the laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under article 4, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

In European human rights jurisprudence, criminal provisions to fight racist propaganda are accepted as necessary in a democratic society. The Committee of Ministers of the Council of Europe has issued two important recommendations to member States on hate speech: recommendation R (97) 20 and recommendation R (97) 21 on the media and the promotion of a culture of tolerance.[11] The first sets out a series of principles for Governments to apply to hate speech, in particular through the media. The latter includes an appendix containing examples of professional practices conducive to the promotion of a culture of tolerance. These relate to training (initial and continuing), media enterprises and representative bodies of media professionals, codes of conduct, broadcasting and advertising. Another important initiative taken by the Council of Europe is the addition to its Convention on Cybercrime of a protocol that criminalizes acts of a racist and xenophobic nature committed through computer systems. It was opened for signature in November 2001.[12]

Within the European Union, the European Commission has made proposals to harmonize criminal legislation in member States concerning racist propaganda. In November 2001, the Commission submitted a proposal for a European Council framework decision on combating racism and xenophobia.[13] The purpose of this proposal was twofold: first, to ensure that racism and xenophobia are punishable in all member States by effective, proportionate and dissuasive criminal penalties which can give rise to extradition or surrender, and second, to improve and encourage judicial cooperation by removing potential obstacles. One draft article concerns "offences concerning racism and xenophobia" and proposes:

> "Member States shall ensure that … public incitement to violence or hatred for a racist and xenophobic purpose or to any other racist or xenophobic behaviour which may cause substantial damage to individuals or groups concerned … is punishable as a criminal offence".

The directive will also make public dissemination or distribution of racist or xenophobic tracts, pictures or other material punishable as a criminal offence, as well as 'Holocaust denial' where it is liable to disturb the public peace.[14] The framework proposal is currently with the Council of Minister of Justice and Home Affairs in the European Union for consultation.

These initiatives are important and can contribute to the control if not the elimination of hate propaganda. As the discussion about the Internet demonstrates, however, the necessary delicate balance between the right to be free from expressions of racial hatred and to be protected from incitement to racial discrimination and violence on the one hand, and the rights of freedom of expression on the other, has not yet been found at the level of public international law.[15]

5. Media strategies to counter racism

In recent years, there has been a growing awareness in the media that they are supplying information and communicating in multicultural societies. Media professionals around the world contribute a great deal to the fight against racism and xenophobia. Coverage of the struggle against apartheid, the abuse of the rights of minorities in Africa and Europe, and the continuing focus on famine and the plight of refugees and dispossessed communities also show that journalists are increasingly alert to the dangers of discrimination.

Nevertheless, ignorance and lack of appreciation of different cultures, traditions and beliefs within the media still lead to stereotypes that reinforce racist attitudes. Editors, journalists and media staff need to understand better the potential impact of their words and images given the deeply rooted fears and apprehension of civil strife and social exclusion within society.

The International Federation of Journalists (IFJ), during the 2001 Durban Conference, called on the international community to support work being done by journalists and media staff at regional, national and international level who join together to reassert the core principles of truth telling, independence and ethical journalism. IFJ has suggested establishing a vigorous new global information strategy, building on existing anti-racism initiatives, and supporting the professional objectives of media professionals.

IFJ's Global Anti-Racism Strategy for Media Professionals

1. Editorial Independence and Effective Self-Regulation

Journalists, media organizations and media staff should reaffirm editorial independence and the right of journalists to report freely. Such freedom of expression should be balanced against the protection of the rights of others. Material that incites hatred is unacceptable. Journalists' groups should be encouraged to prepare and distribute their own guidelines and style manuals for journalists on discrimination and racism issues.

2. Diversity Within Media

Journalists' unions and media organizations should adopt recruitment policies to encourage journalists from ethnic or minority communities to enter journalism. Newsrooms should reflect the ethnic composition of society.

3. Training for Tolerance

Journalism training and education that address issues of discrimination and intolerance, and which encourage students of different ethnic backgrounds to enter journalism should be established and supported.

4. Building Industrial Cooperation and Solidarity

Dialogue within journalism towards better professional understanding of the role of the media in confronting racism should be encouraged and the creation of a global network of media players – journalists, editors and media employers – that are committed to professional excellence and positive actions to highlight the impact of racism should be supported.

5. Raising Awareness Among Journalists

Follow-up actions that support media projects to promote inclusive journalism and which highlight the positive role journalists can play in creating a culture of tolerance should be promoted. In particular, the United Nations High Commissioner for Human Rights, working with UNESCO and other relevant agencies, should support initiatives, from within journalism, to:

- monitor and report on media performance in the area of intolerance and bring discussion of these issues into the mainstream of journalism;
- establish a worldwide media campaign on journalism for tolerance to give journalists advice on how to counter hate speech and to provide information on national strategies for unions and media organizations dealing with racism issues;
- support the creation of structures for dialogue between media organizations, journalists' unions and associations and other groups concerned with the elimination of racism to strengthen the quality of media coverage.

Internet: www.ifj.org

6. Examples of good practices

Ethnic minorities will form an increasingly important sector of the population over the next few decades, and the media have a special role to play in educating the public by highlighting the growing diversity in their societies and audiences. A multicultural media policy in both reporting and employment can have a profound effect on the perceptions and attitudes of the public. The new readership or audience must be able to recognize themselves in the mainstream media output of the countries where they live. If not, they will look to other media, international newspapers and satellite, cable or Internet stations from their countries of origin or set up by their peers. Media organizations are increasingly aware of the potential of various groups in society, and many forms of positive action have been initiated within many media organizations both at national and at international level.

National initiatives

In **Belgium**, the Flemish public broadcaster VRT has drawn up an action plan focusing on two main projects: increasing employment of ethnic minority staff and establishing a balanced representation of ethnic minorities. The first goal should be achieved by screening VRT's recruitment procedures to detect possible discriminatory thresholds and by advertising vacancies via minority interest groups or networks. The public broadcaster hopes to obtain the second goal – of representation – by creating a database of professionals and experts from minority groups as a ready reference tool for journalists and programme makers. This should increase the visibility of ethnic minorities in VRT programmes.

In **Sweden**, the Swedish Broadcasting Corporation and the newspaper Dagens Nyheter recruits unemployed persons with immigrant and/or journalist backgrounds, both to give them an opportunity to work and to further their education. At Gøteborgs-Posten a consultancy group has been made up of representatives from the largest minority groups, who are invited to discuss the contents of the paper with the editors once a month. Within the Swedish Broadcasting Corporation, Sveriges Radio has adopted an active policy for increasing cultural diversity in programming and at work as well as anti-discrimination measures. The informational project Quick Response started in 1998 and monitors the news media and responds – by means of consulting a number of experts – to erroneous or biased media reports in questions involving immigration, integration, racism and xenophobia. The organization also provides journalists, students and individuals with facts and background information on questions regarding multiculturalism in Sweden.

In **Italy** the Florence-based organization Cooperazione allo sviluppo dei paesi emergenti (Development Cooperation for Developing Countries) has launched and continues to develop numerous initiatives to promote cultural diversity in the media. In 2000 a course on social communication trained migrants in the production of

multilingual media. Participants produced the first two issues of a multilingual news-paper, and contributed to the production of the radio programme Mondo Babele (World of Babylon).

In **the United Kingdom**, the regulatory framework has given greater priority to curbing racially offensive items in recent years. Most fields of the media and public relations now have established codes of practice. The broadcasting media have taken internal initiatives to improve their presentation of minorities. For example, Channel 4 includes at least three hours of multicultural programming a week and, since 1989, the BBC has set targets for the proportion of staff that should come from ethnic minorities for each directorate. By 2000 the BBC met its target of 8 per cent of staff from ethnic minority background, and a new target has been outlined to increase minority staff to 10 per cent by 2003 and to double the number of ethnic minority managers from 2 to 4 per cent.

In **Finland** the media attempt to balance the reporting of minority issues. The National Broadcasting Company, YLE, runs a weekly television programme, Bazaari, that deals with ethnic issues and uses journalists with foreign backgrounds. The main problem with it, however, is that it is aired at a bad time in the early afternoon. The second largest daily paper, Aamulehti, publishes an immigrant page with contributions from writers with foreign backgrounds.

International initiatives

Several important initiatives have been developed at international level to develop instruments for increasing cultural diversity in the media.

- The International Federation of Journalists (IFJ) and its initiative for the networking organization International Media Working Group Against Racism and Xenophobia (IMRAX) have launched numerous projects to promote tolerance in the media, including the publication of a resource manual for 'Reporting Diversity'.

- The European network Online/More Colour in the Media, coordinated by the NGO Mira Media of the Netherlands, has published a handbook for promoting diversity in the broadcast media entitled 'Tuning in to Diversity' and a handbook for trainers working for more 'colour' in the media. Online/More Colour in the Media has launched a new project to establish a European day of monitoring to monitor the media output on its representation of cultural diversity.

- The organization Public Broadcasting for a Multicultural Europe (PBME) has drawn up recommendations for good practice, in consultation with members of the European Broadcasting Union Television Programming Committee.

- Several media organizations have established awards to promote tolerance in the media. Since 2000, the CivisEurope television prize has honoured programmes which take a stand against racism and xenophobia. CivisEurope is organized by ARD, First German Television Channel, represented by Westdeutscher Rundfunk,

together with the Commissioner of the Federal Government for Foreigners' Affairs, the Freudenberg Foundation and EUMC. The Race in the Media Awards is organized by the Commission for Racial Equality of the United Kingdom. The International Federation of Journalists has launched the 'IFJ Prize', Prix Europa Iris, which is awarded to television and radio programmes that contribute towards understanding and tolerance.

• An Internet guide to organizations combating racism and xenophobia in Europe has been published by EMUC and is available also on its website (www.eumc.eu.int).

7. Conclusions

The media, and especially the news media, occupy a key position in society in terms of establishing and disseminating common cultural references. The media can help people get to know each other, understand each other and learn from one another. The media have a special role to play in educating the public by highlighting the growing diversity in their societies and audiences. The new audiences must be able to recognize themselves in the mainstream media output of the countries where they live.

In a world dominated by international collaboration and increasing globalization it is necessary to get away from the "them" and "us" mindset and learn to accept difference and diversity. To bring about such a change the media must reflect cultural diversity and offer representation and a voice to all social groups and subcultures. At the same time they must avoid discriminatory practices and undertake to impart information in ways that safeguard fairness and equality.

Further reading

European Monitoring Centre on Racism and Xenophobia, *Racism and Cultural Diversity in the Mass Media – An Overview of Research and Examples of Good Practice in the EU Member States: 1995-2000*, 2002.

Article 19, *What's the Story? Results of Research into Media Coverage of Refugees and Asylum Seekers in the UK*, London, 2003.

Issues for discussion

What is the role of the media in a democracy? Do you think the media coverage of minority groups could be improved in your country? How? What can the minority communities themselves do to improve contacts with the media?

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12. Racism and gender

Sapana Pradhan-Malla

We are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights. We recognize the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination.

(Durban Declaration, para. 69)

Introduction

There has been growing recognition in recent years that racism does not always affect women and men in the same way. In some circumstances, women belonging to particular racial or ethnic groups may face dual or multiple forms of discrimination based on race, gender, religion, nationality, social class, caste, age and/or other status.[1] Discrimination based on both gender and race is where gender and race intersect (intersectionality), and can assume different forms and occur in many contexts. Women tend to face higher rates of violence because discrimination on the basis of gender finds them among the most powerless members of society. Women who face discrimination based on both ethnicity or race and gender are thus doubly at risk of violence. Therefore, an understanding of the gender dimension of racial discrimination is essential for designing responses to racial discrimination that are effective for both women and men.

Among the root causes of many manifestations of intersectionality of race and gender is the legacy of colonialism and patriarchy, which created historical and contemporary injustices based on ideologies of superiority and dominance. Patriarchal social structures continue to reinforce all forms of discrimination against women.[2]

For too long, racism and its particular impact on women have been largely ignored. A focus of the Durban Conference was the interconnections of gender and race. An earlier world conference on women's rights, held in 1995 in Beijing, recognized that

"many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees. They may also be disadvantaged and marginalized by a general lack of knowledge and recognition of their human rights as well as by the obstacles they meet in gaining access to information and recourse mechanisms in cases of violation of their rights."[3]

179

Intersectional discrimination and subordination create consequences for those affected in ways which are different from consequences suffered by those who are subject to one form of discrimination only, be it based on race, gender or some other form, such as sexual orientation, age or class. The consequences of intersectional discrimination may remain unaddressed by prevailing human rights approaches because the specific problems or conditions created by intersectional discrimination are often subsumed within one category of discrimination, such as race or gender discrimination.[4] Intersectional discrimination decreases the rights and remedies available to women and increases their vulnerability to violence and abuse.

1. Trends

The intersection of gender and racism today can be illustrated briefly by reference to a number of contexts; armed conflict, human trafficking, health-care practices, the criminal justice system, the labour market and displacement.

Women and armed conflict

Intersectional subordination sometimes results from abuses that are specifically targeted at women victims of racism. This can occur in the context of armed conflicts and can be illustrated by the conflicts in places such as Bosnia and Herzegovina, Burundi, Colombia, East Timor (now Timor-Leste), Indonesia, Kosovo, Nepal, Rwanda, and Sri Lanka. In each of these conflicts women were targeted and became victims of ethnically motivated gender-specific forms of violence. In some cases women are sexually mutilated to make them incapable of reproduction. Rape and other forms of sexual violence have also been used as an instrument of genocide against particular racial or ethnic groups.[5]

During armed conflicts, women experience violence at the hands of men including the soldiers of the 'enemy' community. They may be gang-raped in front of family members, stripped and paraded naked, or have their sexual organs mutilated, tattooed or destroyed. Sometimes, as in Rwanda, intimate family members are forced to rape them in public. They may be enslaved and made to cook and clean for the men and soldiers of the other communities. After such ordeals, the majority are either killed or left to lead a life with the memories and consequences of what they have been subjected to.

Ethnic or race-based rape of women might be usefully framed as international intersectional subordination, in that the racism and sexism manifested in such violence reflect the race or ethnic-based targeting of women for an explicitly gender-based violation. The recent wars in Bosnia and Herzegovina, in Rwanda and in Kosovo confirm that sexual violence can be an instrument of terror.[6] Violence is also used to target women perceived as being part of an economically elite ethnic minority. During the civil unrest

in Indonesia in 1998, hundreds of ethnic Chinese women were specifically targeted for rape and sexual torture.[7] The Committee on the Elimination of Discrimination against Women has emphasized that all forms of gender-based violence fall clearly within the definition of discrimination.[8]

Women and trafficking

Trafficking in women can be seen as the consequence of the intersection between racial and gender discrimination. Both create dynamics of power in which women are extremely vulnerable. Women from certain racial and ethnic groups, as well as indigenous and migrant women may frequently be targeted and more vulnerable to trafficking, sexual slavery or prostitution. Racial discrimination may constitute not only a risk factor for trafficking, but it may also determine the treatment that the women receive at their destination. Trafficked women can face triple discrimination: as women, as foreigners and as prostitutes.

Women are vulnerable to trafficking because of the limited avenues for legal migration, which are affected by their lower education and employment opportunities.[9] Victims of trafficking often have little access to legal protection and may find themselves prisoners in brothels and other establishments. Trafficked women are beaten and raped to punish them for trying to escape and for refusing to have sex with customers. They are also subject to starvation, forced use of drugs and alcohol, burning with cigarettes, and isolation in dark rooms. They are effectively kept in captivity through threats to themselves or their families.

Women and health

As gender discrimination frequently coexists with racial discrimination, one effect is denial of access to health care. In many countries, but mostly in the developing countries, women from certain racially disadvantaged communities experience disproportionately high rates of HIV/AIDS. The rate of transmission among women has increased rapidly and many cases go untreated due to the unequal global distribution of HIV/AIDS drugs. Women are not only serious victims of HIV/AIDS, but they may also be stigmatized and blamed for HIV. Indeed, because of the stigma and blame, some men choose younger women and teenagers for sexual relationships to prevent, in their mind, the spread of infection. This has resulted in the trafficking of younger girls.[10]

African women's experiences with HIV/AIDS require specific gender-related attention because many women lack power over their bodies and sexual lives and cannot protect themselves from disease. Forced sterilization and other coercive birth control measures frequently target women of particular racial groups.[11] In some countries, financial or other incentives have been offered to such women to undergo sterilization.[12]

Women and access to justice

The possibility of reporting and finding a remedy for racial discrimination remains unavailable to many women due to gender-related restraints. These include denial of suffrage, lack of legal capacity, gender bias in the legal system, restrictions on women's access to public places, and discrimination against women in private spheres of life. In the United States, black and Latino women are least likely to see the men accused of raping them prosecuted and incarcerated.[13] Studies suggest that the racial identity of the victims plays a significant role in determining such outcomes.

In India, attempts by women, particularly from minority groups, to seek justice through the criminal justice system are regularly forestalled.[14] Threats and harassment by perpetrators and their communities, and the social pressures that exist within families and communities force women victims to compromise or withdraw rather than to pursue justice. Gender biases, which exist within institutions of redress, are often exacerbated by ingrained caste and other biases against members of disadvantaged communities.[15] Few cases reach the courts for trial, partly due to factors of shame and honour and partly to the complexity of legal procedures. It has been observed in many countries that the police may be indifferent to the registration of complaints involving rape. Even if cases reach the courts for trial after investigations and medical examinations, courts have not been sensitive to the trauma experienced by the rape victims, both during the commission of the offence and during the trial.[16]

Women in the labour market

Discriminatory and exploitative labour practices disproportionately affect women of disadvantaged communities and limit their employment opportunities. Women from particular racial groups, indigenous women and other minority women seeking employment may have to resort to working in free-trade zones, the underground economy or informal sectors because of their sex, race, ethnicity and/or language limitations. In these sectors, women are increasingly subjected to poor working environments, minimal or no social protection, and low wages. Wage disparities among workers of different racial groups combine with wage disparities between women and men to leave minority women at the bottom of the labour market.[17]

Women who join the workforce to support their families, in a society where this is not the norm, are often looked at with suspicion and considered easy prey for exploitation, humiliation and sexual advances, which can lead to rape and other forms of sexual abuse. Other women are discriminated against in the labour market on the basis of religious interpretation of women's status and their role in society.

Refugee women : vulnerability and discrimination

Ethnic conflict produces many refugees and internally displaced persons. In addition to the conditions faced by male refugees, women who are refugees or internally displaced must also cope with increased vulnerability to sexual violence, domestic violence and limitations on their freedom of movement. For example, Burundian women in refugee camps in the United Republic of Tanzania have been regularly attacked while conducting daily tasks.[18] In fact, 80 per cent of the world's refugees are women and children, although these groups have traditionally been marginalized in asylum law. This is exemplified by the failure of many countries to recognize gender-based violence as grounds for asylum and can be seen in the absence of culturally and gender-sensitive procedures for refugee determination, which are crucial to enable women to describe their experiences to those who make a decision on their asylum claim. Further, increasing numbers of women are trafficking victims who suffer serious harm at the hands of traffickers. There is little recognition that the experience of being trafficked may in itself give grounds for refugee status under the 1951 Refugee Convention or other humanitarian status.

2. Racism and gender : global perspectives

The majority of the world's 1.3 billion people living in poverty are women. Women of disadvantaged racial groups are even more adversely affected by poverty, particularly because of their lack of access to education and training programmes, and limited employment opportunities. The literacy rate for women worldwide is 71.48 per cent compared with 83.71 per cent for men. Though this figure is aggregated by sex but not by race, other evidence suggests that women and girls of disadvantaged racial, ethnic, immigrant and indigenous groups have fewer educational resources. Despite shortcomings in statistics and varying definitions of 'migrant', it is known that at least 50 million women are international migrants; approximately 12 million of them are in Europe.[19]

Young women in developing countries and women of colour in the United States experience disproportionately high rates of HIV/AIDS. Of the 34 million people living with HIV/AIDS worldwide, more than 31 million live in sub-Saharan Africa, South and South-East Asia and Latin American countries. In the report on her mission to South Africa, the Special Rapporteur on violence against women pointed out that HIV-positive indicators in that country are 5.55 per cent for black women and .052 per cent for white women.[20]

Women of colour also have fewer opportunities for political empowerment. For example, in the United States only 19 of 72 Congresswomen, or 26.4 per cent, are women of colour and of the 89 women serving in State-wide elective executive offices, only five, or 5.6 per cent, are women of colour. But if in addition racial discrimination is factored in, then the opportunities for assuming political power are even more limited.

There are also racial differentials in maternal and infant mortality rates, with indigenous women in some countries experiencing higher maternal mortality than women of other groups. For example, indigenous women in Peru experience maternal mortality rates twice as high as the general population.[21] The average infant mortality rate of 80 per 1,000 in Guatemala jumps to 160 per 1,000 in the highland Indian areas.[22] In Australia, the aboriginal population is at up to 10 times greater risk of maternal death than the non-aboriginal population. In the United States, Latina women are twice as likely as white women to die in childbirth; African American women are four times as likely as white women to die in childbirth. Differences exist even in the same cities, in the United States, where the black population has a relative risk of maternal death 4.3 times higher than the non-black population.[23] In South Africa, the Special Rapporteur on violence against women reports that while maternal mortality is 2.6 per 100,000 births for black women, it is only .003 per 100,000 births for white women. Higher rates can result from the fact that ethnically marginalized groups have poorer socio-economic status than mainstream communities and less access to necessary health care.

3. The international response

Various human rights instruments exist to protect and provide remedies to the victims of race and gender discrimination:

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966

ICERD defines and condemns racial discrimination and commits States to change national laws and policies which create or perpetuate racial discrimination. One of the main objectives of the Convention is to promote racial equality. As such the Convention not only aims to achieve de jure racial equality but also de facto equality, which allows the various ethnic, racial and national groups to enjoy the same social development.

In order to monitor and review actions taken by States to fulfil their obligations, the Convention established the Committee on the Elimination of Racial Discrimination. The Committee has recently issued general recommendation No. 25, recognizing that some forms of racial discrimination have a unique and specific impact on women.[24] Accordingly, the Committee is encouraging States parties to incorporate gender analysis in their reports. For instance, States parties are requested to describe factors affecting and difficulties experienced in ensuring the equal enjoyment of rights by women, to provide disaggregated data by gender and race and to report on steps taken to remedy forms of racial discrimination against women.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

CEDAW is a specific and the most important instrument that addresses gender-based issues providing special measures to women. The Convention is comprehensive as it includes various rights of women, including educational, economic, social and cultural, as well as addressing various forms of violence against women. Its Optional Protocol provides a complaint mechanism for individual victims.

International Covenant on Civil and Political Rights (ICCPR), 1966

ICCPR provides civil and political rights urging the States parties to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status. States further undertake to ensure the equal right of men and women to the enjoyment of all rights set forth in the Covenant.[25]

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

ICESCR provides various measures in the economic, social and cultural sphere and urges the States parties to guarantee the rights enunciated in the Covenant without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

United Nations Protocol on Trafficking, 2000

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, is the most important legal instruments protecting the rights of trafficked victims, as well as for prosecuting the crime of trafficking. Important features of the Protocol include the duties to provide permanent or temporary residence to victims of trafficking as well as ensure that victims of trafficking are not prosecuted as illegal migrants. The Protocol requires States parties to take effective legislative and administrative measures to address the crime of trafficking. The United Nations Protocol can be used and should be used by women's groups as an effective tool to ensure that women and children are protected from this crime.[26]

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

Another significant document that ensures rights of migrant workers is the Convention on the Protection of the Rights of All Migrant Workers and Their Families, 1990. The provisions of this Convention are examined in chapter 8.

From the perspective of women's rights and racial discrimination it may be helpful to identify the main policy implications for States that can be drawn from these various international norms.

The right to equality

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.[27] The law therefore prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Freedom from exploitation

Appropriate measures need to be taken, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women. No one shall be held in slavery and the slave trade in all its forms shall be prohibited.[28]

Elimination of the social and economic inequalities between citizens

Equal right of men and women to the enjoyment of all economic, social and cultural rights needs to be ensured. All appropriate measures, including legislation, need to be enacted to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.[29]

Special measures to eliminate discrimination against women

States can take special measures for the elimination of all forms of discrimination based on gender and race. CEDAW requires States parties to adopt "temporary special measures aiming at accelerating de facto equality between men and women".[30] Further, it explicitly mentions that any special measures taken with the objective of achieving equality may not be considered discriminatory including measures aimed at protecting maternity.[31] CEDAW obligates States parties to take such measures in "all fields, in particular in the political, social, economic and cultural fields" to ensure the full development and advancement of women, for the purpose of guaranteeing to them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.[32] Furthermore, States parties are also requested to revise, enact and apply all necessary laws and policies

to promote de facto equality for women.[33] This obligation, imposed by article 2, goes beyond law reform and requires States parties to ensure the practical realization of the principle of equality for women. However, the special measures taken for the de facto equality between men and women are to be discontinued when objectives of equality of opportunity and treatment have been achieved.[34] CEDAW has now adopted general recommendation No. 25, which is an important guidance for States on temporary special measures.[35]

Special measures for the advancement of certain racial or ethnic groups

ICERD is the first international human rights instrument that has recognized substantive equality by holding States parties accountable for taking affirmative measures to ensure the development and protection of vulnerable groups. The Convention provides that when the circumstances so warrant, States parties should, in the social, economic and cultural and other fields, take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedom.[36]

4. Examples of good practices

Individual States have taken various steps to combat gender and racial discrimination. Over the past half-century, many States, particularly newly independent countries, have enacted constitutional provisions of non-discrimination and equality on the basis of sex, race and ethnicity. Countries have adopted legislation that addresses the needs and concerns of different vulnerable groups and have criminalized any form of discrimination, including in the field of sexual orientation. In some countries, discrimination is defined and criminalized through interpretation of laws by the courts.

A number of countries have enacted legislation with temporary special measures for the advancement of disadvantaged groups especially on the basis of race, caste, ethnicity and gender. For example, in India quotas have been introduced in civil service occupations and in respect of school admission to address the existing disparities between Dalits and non-Dalits. Similarly, seats are reserved in the local government to increase the participation of women and caste-based discriminated and other disadvantaged groups in Nepal.

The boxes below illustrate several examples of NGO initiatives to combat gender and racial discrimination.

Action against racism and sexual violence and exploitation

A German initiative for women is called Agisra, which means Workshop on International Racism and Sexual Violence and Exploitation. Agisra aims to support and help women confronted with various problems such as lack of residence status; threat of deportation; isolation; physical and psychological disorders; debts; threats and violence from traffickers, pimps, clients and husbands. The goal of Agirsa is also to increase migrant women's self-awareness and to help them to organize themselves autonomously. Agisra provides safe houses, helps women who want to return to their country and creates awareness against violence to migrant women and networks to combat the crime of trafficking.

Discriminatory law against prostitute women

In Nepal, a discriminatory law against prostitute women was recently repealed. This was a great achievement towards protecting the Badi community from a lower caste stratification in Nepal, whose members practise prostitution as a profession and were visibly victimized by this discriminatory law. The Forum for Women, Law and Development (FWLD), an NGO in Nepal, filed a public-interest litigation (PIL) complaint against the rape law that discriminated against prostitutes in Nepal. The law imposed a minimum punishment for raping a prostitute that was much less severe than the penalty for raping any other women. The court declared the law ultra vires, unconstitutional and discriminatory against women. It found that the provision discriminated against them without any reasonable grounds, construing them as lower-class.

5. Conclusion

The gender dimensions of racial discrimination are complex and varied. Yet, this very complexity necessitates greater attention from States, national institutions, civil society and the United Nations. Although advances have been made in addressing the intersection of gender and racial discrimination, a more structured approach is needed to eliminate the multiple forms of discrimination to which women may be subjected. States need to accede to or ratify all international agreements that call for the elimination of discrimination, in particular ICERD and CEDAW. They need to implement these agreements fully into national law and to involve women's organizations in that process. Information should be gathered on the intersection of race and gender, focusing on issues that specifically affect women of racially disadvantaged groups. The individual complaint mechanisms provided by article 14 of ICERD and CEDAW's Optional

Protocol should be extensively used, and a public information drive undertaken so that people are informed of their existence. The Durban Conference called for national action plans to eliminate racial discrimination and all of these steps should be a part of such action plans.

At the international level, effective coordination needs to be established between various regional and international human rights systems that are concerned with the protection of victims of racial discrimination. CEDAW and CERD Committees should increase information-sharing and cross-referencing, and consider joint consultations and joint recommendations. In the context of the intersectionality of race and gender, it is important that the CERD and CEDAW Committees work closely to provide recommendations to strengthen legislation, policies and programmes to address the multiple discriminations experienced by women in racially, ethnically and economically marginalized communities. Both Committees should monitor the implementation of such recommendations at the domestic level.

Further reading

Office of the United Nations High Commissioner for Human Rights, *Gender Dimensions of Racial Discrimination*, 2001.

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Review of reports, studies and other documentation for the Preparatory Committee and the World Conference, General Introduction: Background and Conceptual Aspects of Intersectionality*, A/CONF.189/PC.3/5.

Issues for discussion

In what ways does the author claim that the intersection between gender and race disadvantages women? What are the circumstances in which women suffer racial discrimination of a different kind or to a different degree than men, or in which discrimination primarily affects women? Low political participation and a low level of representation of a group in political institutions contribute to the marginalization of that group's issues and interests. What do you know about political participation and the level of representation of women in your country?

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[1] A clear example of multiple discriminations is the case of Dalit women, who face the triple discrimination of caste, class and gender.

[2] See also the section on race, gender, class and HIV/AIDS in chapter 6.

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[5] Amnesty International, *Racism and the Administration of Justice*, AI index: ACT 40/020/2001.

[6] Reports of the Special Rapporteur on violence against women: E/CN.4/1998/54/Add.1, Rwanda; E/CN.4/2001/73, sect. V.F, Kosovo.

[7] Amnesty International, *Paying the Price for Stability*, AI Index: ASA 21/12/98.

[8] General recommendation No. 18.

[9] Issues around women and trafficking have been explored extensively at the Asia-Pacific Seminar of Experts in Preparation for the World Conference against Racism: Migrants and Trafficking in Persons with Particular Reference to Women and Children, 5-7 September 2000, Bangkok, Thailand.

[10] See also chapter 6.

[11] See Report of the Special Rapporteur on violence against women on policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, E/CN.4/1999/68/Add.4.

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[15] See, for instance, Bitu, N., *Double discrimination of Roma women*, EGM/GRD/2000/EP.6; Report of the Special Rapporteur on violence against women on the mission to Brazil, E/CN.4/1997/47/Add.2.

[16] Supra note 3, see chapter IV, section D.

[17] See also discussion in chapter 4.

[18] Supra note 3, see chapter IV, section E.

[19] See European Women's Lobby, *Combating racism and gender discrimination in the European Union*, March 2001; Healey, J.F., *Race, Ethnicity, Gender and Class*, 1995.

[20] Report of the Special Rapporteur on violence against women on the mission to South Africa E/CN.4/1997/47/Add.3, para. 8 (on the issue of rape in the community).

[21] See chapter 5.

[22] Jonas, S., *The Battle for Guatemala: Rebels, Death Squads, and United States Power*, Boulder, Westview, 1991.

[23] A/CONF.189/PC.1/17, para. 32.

[24] CERD recommendation No. 25 (gender-related dimensions of racial discrimination), CERD/C/56/Misc.21/Rev.3.

[25] ICCPR, article 3.

[26] See also chapter 8.

[27] UDHR, article 7; ICCPR, article 26; CEDAW, article 2.

[28] UDHR, article 4 ; ICCPR, article 8 ; CEDAW, article 6 ; UN Protocol against Trafficking.

[29] ICESCR, article 3 ; CEDAW, article 3.

[30] CEDAW, article 4 (1).

[31] Ibid., article 4 (2).

[32] Ibid., article 3.

[33] Ibid., article 2.

[34] Ibid., article 4 (1).

[35] General recommendation No. 25 adopted in January 2004.

[36] ICERD, article 2 (2).

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Katarina Tomaševski, Professor of International Law and International Relations at the University of Lund and External Lecturer at the Centre for Africa Studies, University of Copenhagen, was Special Rapporteur of the United Nations Commission on Human Rights on the right to education from 1998 to 2004. She established the Right to Education Project (www.right-to-education.org) and has published extensively on human rights topics, including *Education Denied : Costs and Remedies*, Zed, London, 2003 (published in Spanish as *El asalto a la educación*, Intermon-Oxfam, Barcelona, 2004).

Cristina Torres Parodi, a regional adviser on public policies at the Pan American Health Organization (PAHO) since 1990, is responsible for mainstreaming and developing health policies sensitive to ethnic/racial minorities. She has published articles on ethnic and racial origins as macro determinant on health status and access to the health-care services.

Leila Zerrougui, a Supreme Court judge and Professor at the National Institute of Magistrates of Algeria, is Chairperson-Rapporteur of the Working Group on Arbitrary Detention of the Commission on Human Rights. Previously she was Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on discrimination in the criminal justice system, and is a former member of the Working Group on Minorities. She has published extensively on the administration of justice and human rights.

Websites

Intergovernmental Organizations

International Labour Organization
www.ilo.org

International Organization for Migration
www.iom.int

Office of the High Commissioner for Human Rights
www.ohchr.org

United Nations Children's Fund – Voices of Youth
www.unicef.org/voy

United Nations Development Programme
www.undp.org

United Nations Educational, Scientific and Cultural Organization
www.unesco.org

United Nations High Commissioner for Refugees
www.unhcr.ch

Joint United Nations Programme on HIV/AIDS
www.unaids.org

World Health Organization
www.who.int

World Trade Organization
www.wto.org

Regional Organizations and Initiatives

América Indígena (UNESCO)
www.america-indigena.org/unesco/spa/

Asian Migrant Centre
www.asian-migrants.org

Council of Europe
www.coe.int

European Commission against Racism and Intolerance
www.coe.int/ecri

European Monitoring Centre on Racism and Xenophobia*
www.eumc.eu.int

Forum for Women, Law and Development
www.fwld.org.np

Inter-American Development Bank
www.iadb.org

Pan American Health Organization
www.paho.org

Youth Caucus against discrimination (Americas)
caucusjovenes.tripod.com.pe/caucusjovenes

International Non-Governmental Organizations

Amnesty International
www.amnesty.org

Anti-Racism Information Service
www.antiracism-info.org

Anti-Slavery International
www.antislavery.org

Article 19
www.article19.org

Diversity at Work
www.diversityatwork.com

Free the Slaves
www.freetheslaves.net

Global Rights
www.globalrights.org

Human Rights Watch
www.hrw.org

International Confederation of Free Trade Unions
www.icftu.org

International Commission of Jurists
www.icj.org

International Council on Human Rights Policy
www.international-council.org

International Federation of Journalists
www.ifj.org

International Forum on Globalization
www.ifg.org

International Movement Against All Forms of Discrimination and Racism
www.imadr.org

Migrants Rights International
www.migrantwatch.org

Penal Reform International
www.penalreform.org

Simon Wiesenthal Center
www.wiesenthal.com

Tolerance
www.tolerance.org

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* See also European Monitoring Centre on Racism and Xenophobia: Internet Guide on organizations combating racism and xenophobia in Europe, EUMC (2003), *www.eumc.eu.int*.