

Using the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to Advance Human Rights at Home

What is the ICERD and why is it relevant to human rights work here?

The ICERD is one of few human rights instruments of the United Nations (UN) that the US has both signed and ratified. A number of important conventions have been signed by the government -- one to eliminate discrimination against women and another affirming the rights of children, for example -- but they have not yet been ratified or approved by the US Senate.

ICERD was ratified in 1994 and deals primarily with racism and racial discrimination. It sets certain standards for governments at the national, state, and local level to address racial discrimination in a wide range of areas.

Advocates can use the ICERD to establish human rights standards for addressing racism and racial discrimination at the local level. Issues like police brutality, access to services, prison conditions and even death penalty issues that often have disparate racial impact can be framed and concretely addressed using ICERD as a tool.

Did the US ratify ICERD in its entirety?

No, there are several reservations understandings, and declarations or RUDs, that the US government filed when they ratified the ICERD. These reservations basically fall in three categories:

- The US Constitution provides enough protection to citizens with regard to racial discrimination therefore; no new laws are needed for the US to meet its obligations under ICERD.
- The US would not ratify the section of the ICERD that urges governments to monitor and criminalize hate speech (Article 4) because of the Government's assertion that this section conflicts with First Amendment rights.
- It declares that its ratification does not make it self-executing. This means that the Convention does not have the power of law domestically so that individuals cannot sue or file complaints alleging violations. The Government has also chosen not to adopt an optional protocol that allows individuals to bring ICERD complaints against their home

country to the UN. Only those individuals from countries that have adopted this protocol are allowed to file complaints.

It is commonly thought that ICERD's focus on addressing discriminatory outcomes is at odds with US law. Although there is the increasingly pervasive legal doctrine that holds that discrimination is limited to those acts where there was intent to discriminate, there are still other legal frameworks that support the "outcome" standard in the ICERD. Title legislation under the Civil Rights Act offers one example. Even affirmative action programs and other race conscious remedies are allowed if they meet the two-pronged test of *strict scrutiny* -- compelling government interest; and the intervention is narrowly tailored to address the effects of demonstrated discrimination. Tracking and monitoring ICERD progress at the local level can help establish the basis for more comprehensive, race-conscious remedies

What are key US government obligations under ICERD?

- Monitor efforts toward eliminating racial discrimination through data collection and evaluation and provide written reports on their progress every other year.
- "Take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."
- Initiate public education campaigns to "promote understanding between all races."

Has the US ever filed a report on its progress with ICERD?

Yes, the US government filed its first report in September 2000. It was five years overdue. A copy of the US report can be found on line at http://www.state.gov/www/global/human_rights/cerd_report/cerd_toc.html

What's the process for filing ICERD reports? Are there opportunities for organizations to evaluate Government progress on the ICERD?

Governments are supposed to file progress reports every other year. The first US report was due in 1995. Reports are submitted to the Committee on the

Elimination of Racial Discrimination (CERD), the body charged with monitoring government progress on implementing the provisions of the ICERD.

In addition to reviewing each report submitted, the CERD has a rapporteur (or reporter) conduct an independent investigation of the reporting country's progress. NGOs can influence this examination by filing "shadow reports" or reports that examine a government's progress on issues related to the Convention and offer independent critique -- usually in specific issue areas. Once all the information is reviewed, the CERD holds a hearing with the Government in order to hear the Government's verbal presentation, ask questions of the reporting country, and make comments (usually both critical and praiseworthy). After the hearing, the Committee issues a written response that includes recommendations for action. The US went before the CERD in August 2001. The Committee's written response, which includes some pointed criticism of US government efforts can be found online at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/001961f8a1ae7b29c1256aa9002ae228?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/001961f8a1ae7b29c1256aa9002ae228?Opendocument)

Why does ICERD primarily deal with issues of race and ethnic discrimination?

The ICERD, like other UN conventions, is designed to be interlocking, or implemented in concert with other human rights instruments. This allows each convention to focus on specific issues as part of a comprehensive set of tools to advance human rights. Unfortunately, not all conventions are ratified. For example, conventions that deal with discrimination against women and immigrants have not been ratified by the US yet they are designed to be interlocking with ICERD. The result is that implementation of ICERD alone would result in inadequate attention to these other important issues.

Should we be dealing with racial discrimination by itself? How do these other issues fit in?

One framework for understanding how different forms of oppression and bias relate or “fit” together is called “intersectionality”. The term, which is gaining greater cachet in human rights and academic circles, is really just a fancy term for the relationships between factors like race, class, gender, sexual orientation, nation status, age, and physical ability. The World Conference Against Racism, Xenophobia, and Related Intolerance (WCAR) made intersectionality a central theme in documents, speeches, and proceedings. These materials are available online. The ICERD can offer an important starting point for developing such a comprehensive framework. Tools for monitoring bias can be easily amended to include other forms of discrimination besides that which is related to race. However, racial discrimination is a huge problem that requires specific attention and remedies that, say, dealing only with class will address. It’s important that an intersectionality approach is not used in order to avoid the challenges and controversy often associated with racial justice work.

It’s also important to note that although other conventions may not yet be ratified, they can still be leveraged to encourage governments to work up to international standards despite the absence of formal obligations. Within Amnesty, some coalitions use the International Code of Conduct for Law Enforcement Officials to guide local policing standards. A number of women’s groups have used the Convention to Eliminate Discrimination Against Women (CEDAW) to establish human rights standards with regard to the rights of women. The Women’s Institute for Leadership Development for Human

Rights worked successfully to pass an ordinance that codified CEDAW standards into San Francisco local law. (See http://www.wildforhumanrights.org/cedaw_around_us.html for more details).

What can you do?

At the national level, there is a need to monitor US government compliance with ICERD including advocacy for a national monitoring and implementation body. There is currently no central office responsible for providing oversight, coordination, and management of the ICERD reporting, evaluation and implementation process. Groups can campaign for the establishment of such an office that is adequately funded and has NGO oversight.

ICERD requires reporting and monitoring at the state and local level, too. The federal government should establish a process with clear timelines and milestones for engaging state and local government in this process, however; local and state governments don't have to wait. Advocates can work to establish local ICERD mechanisms right now.

In addition to efforts to establish ICERD monitoring systems, the Convention can be used to develop more issue specific campaigns.

Police Brutality

Collect and publish race data on police incidents. Get the local police department to keep good track of the race of officers and civilians involved in police stops and other incidents. This data should be made available at least annually, preferably quarterly in published form and the agency's database available online or by e-mail request.

Review recruitment and hiring practices and recommend policies that will help further diversify the staff.

Review stops and incidents of brutality and compare to reveal disparate racial/ethnic impact. Strengthen and clarify consequences for discriminatory behavior. Training to more effectively deal with communities is another intervention that can help departments better meet ICERD standards.

Have the police department adopt ICERD as a standard for policing and establish a community task force to help them implement it.

Other Forms of Administration of Justice and Governance

Have local government monitor possible bias in prosecutorial discretion with regard to charges, pleas and sentencing -- especially with regard to death sentencing. The more evidence gathered near the root of the problem, the stronger the case to prove sentencing bias – including capital punishment. Be sure to include the treatment of juveniles in any monitoring and data collection program.

Have local government adopt ICERD as a standard for policymaking and establish a community task force to help them implement it. Such an implementation plan should keep track of governmental decisionmaking and assess it against Convention standards. Findings of bias establish the groundwork for remedies because they help local jurisdictions meet standards of strict scrutiny described above. One such tool for monitoring local government policy across a range of factors is the Equity Impact Report available at www.arc.org/gripp.

Get government to establish ongoing training opportunities for staff and officials to better understand ICERD and other tools to address discrimination. New recommendations for training can be developed based on the outcome of data collection and reports.

Prison Conditions and Rights of Prisoners and Ex-Offenders

Compare budgets and services available at a "regular" prison and prisons designed for "upscale" offenders. How does race and class play a role in the allocation of resources and services? Is this really justified? ICERD offers a lot of possibilities when it comes to access to public services. As public entities, prisons should not discriminate when it comes to access to medical treatment, adequate nutrition and safety.

Get states to establish voting rights for ex-offenders by bringing their policies up to ICERD standards. ICERD calls for equal voting rights, an end to discrimination against ex-offenders, and the elimination of any policy that affects racial and ethnic communities disproportionately.

Get state and local correctional facilities to keep track of data with regard to access to services like drug treatment and medical care by race. For juvenile detention facilities, have agencies track whether inmates get access to schooling and the quality of schooling offered. Require community oversight when appropriate and make sure any data gathered is, as allowable by law, made available for public use.

Health and Health Care

Get states and local health departments to track public spending on health by neighborhood and develop policies that guarantee equal access to care (i.e., equal distance to hospitals and treatment facilities, financing, access to specialists, etc.)

Have local jurisdictions track access to things that help us get healthy or make us sick (i.e., food outlets, parks and safe places to play, etc.). Where are pollutants concentrated (freeways, diesel stations, manufacturing, etc.)? How are these allocated? What is the racial impact?

Have hospitals and treatment facilities track access to key procedures, pain medication, consultation, etc., by race. Better records help yield a stronger case in the long run. Records need not breach patient confidentiality. There are a number of jurisdictions and hospital systems already tracking patient access to certain heart procedures and pain medication.

Housing and Land Use

Get local government to track the impact of their policies on the demographic of neighborhoods. Are there historic business districts where people of color owned significant stake? What happened to them? Often these districts were destroyed by freeways, power lines and other public actions in the past. Get cities and counties to investigate the racial impact of their policymaking on wealth, family cohesion and more. Who is moving out? Who is moving in? How are these factors shaped by race and income?

Have governments assess how tax dollars are being used to attract new residents or businesses. Are there clear demographic groups being recruited? Where are investments being made and whom are they likely to benefit most?

Education

Push school boards (local and state) for adequate disaggregated data collection on student treatment, access to services, building conditions and more that tracks inequities and trends.

Develop outcome goals for student treatment and educational attainment. The CERD is not just about opportunity. Outcomes matter.

Require cultural competence training and advocate for more culturally competent, anti-racist curricula, teaching and counseling methodologies.

Hate Crimes

Create better mechanisms for tracking and monitoring hate crimes and monitoring law enforcement and judicial handling of these crimes.

Develop a clear definition and protocol for charging perpetrators of hate crimes and other related issues in the administration of justice including provision for training and professional development to help agencies implement the protocol.

Get government to allocate resources for a public education campaign on hate crime prevention that is administered with community input and oversight.

Get local school board to adopt curricula that has an anti-racist, anti-bias, multi-cultural, human rights focus to help foster an environment of understanding and mutual acceptance.

Work to include safety from hate crimes in any definition of domestic security. At the national level, advocates can encourage Congress and other federal policymakers to take legislative action (pass a law) or administrative action (departmental rulemaking). Local governments can pass resolutions and send copies to Congress, the White House, and other relevant federal agencies to encourage federal policy in this direction.

A Word on Media

Framing domestic problems as human rights violations can garner fresh interest in old stories. One angle to take: stress the importance of our local and national government becoming more engaged as global citizens, of getting "in step" with international standards. Talking about how the Convention is implemented in other countries, like the extensive ICERD work in Britain for example, can help demonstrate that these policies are widespread.

Another important international perspective is found in the CERD response to the US government's ICERD progress report. This document provides a weighty "second opinion" as the CERD analysis is among the few "official" UN critiques of US race relations. Its findings can be used to show international support for local racial justice initiatives. For example, the Committee strongly urged the US to enact a moratorium on executions due to the evidence of racial bias in capital sentencing and executions. When talking with reporters, be sure to have on hand:

- ✓ copies of the Convention
- ✓ the CERD report
- ✓ available fact sheets and data on your campaign issues
- ✓ a list of expert sources with phone numbers and e-mail addresses

Helpful Resources

US Human Rights Network features a range of important resources
www.ushrnetwork.org

Dr. Vernellia Randall's excellent online resource www.racism.org for copies of CERD reports and other resources on international law and racism

United Nation High Commissioner for Human Rights www.unhchr.ch
There is an extensive list of human rights instruments such as the Code of Conduct for Law Enforcement Officials www.unhchr.ch/html/intlinst.htm

www.runnymedetrust.org offers resources on how the ICERD is being integrated into policymaking at virtually every level of government in Britain.

Higher Ground's Equity Impact Report tool to monitor multiple impacts in local policymaking.