

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Forty-eighth session

26 February - 15 March 1996

General Recommendation XX(48) on Article 5

1. Article 5 of the Convention contains the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights have been elaborated in the Covenants. All States parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights.
2. Whenever a State imposes a restriction upon one of the rights listed in article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that the restriction, neither in purpose nor effect, is incompatible with article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to inquire further to make sure that any such restriction does not entail racial discrimination.
3. Many of the rights and freedoms mentioned in article 5 are to be enjoyed by all persons living in a given State, such as the right to equal treatment before tribunals; some others are the rights of citizens, such as the rights to participate in elections, to vote, and to stand for election.
4. The States parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention one by one.
5. The rights and freedoms referred to in article 5 of the Convention and any similar rights shall be protected by a State party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case it is the obligation of the State party concerned to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

1147th meeting
8 March 1996