



International Humanist and Ethical Union

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The role of the media in fostering intercultural dialogue, tolerance and mutual understanding: freedom of expression of the media and respect towards cultural and religious diversity

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Sections 1 and 2 of this paper set out the perspective of the International Humanist & Ethical Union (IHEU) and delegate Keith Porteous Wood on freedom of expression, which are followed by extracts of supporting material from identified external sources (in italics) with commentary.

1. IHEU'S ROLE RELATIVE TO FREEDOM OF EXPRESSION

IHEU takes a particular interest in freedom of expression. It opposes ongoing attempts at the UN to make defamation of religions a legal offence internationally and has played a significant role in raising international awareness about this issue both in the political arena and in the media.

2. OVERVIEW

IHEU supports the Council of Europe's *Speak Out Against Discrimination Campaign*¹ and the initiative to broaden discussion to end discrimination against anyone based on their religion, and to encourage the media to present issues in a non-discriminatory way. This is especially important given the tendency in certain media to sensationalize stories to make good headlines, regardless of the facts and of the consequences of inflammatory articles for minority communities.

While freedom from religious discrimination is essential, freedom from discrimination by religion is also vital in any democracy in debate, reportage, creative media and any public arena. Representation of the non-religious is also essential to provide a balanced and fair debate. The UN Special Rapporteur on Freedom of Religion or Belief has noted that laws protecting religious citizens *qua religious* are inherently discriminatory against atheists, non-theists, and religious sceptics, in that they protect religion as opposed to belief or conscience². (See Section 3)

IHEU regrets the deterioration in freedom of expression in the UN Human Rights Council; any discussion of sharia law, for example, is now limited to those deemed 'experts'³.

Freedom of expression and "respect" are not necessarily in opposition. However, "respect" is a very vague word. If "respect" were interpreted as "beyond criticism or even examination" as some would wish, there is indeed a clear clash. The limits to freedom of expression are well

¹ http://www.coe.int/t/dg4/anti-discrimination-campaign/Source/concept_en.doc

² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, UN Doc. A/HRC/7/14, 7 March 2008.

³ <http://www.secularism.org.uk/discussionofreligiousquestionsno.html>

understood in international law (Articles 19 and 20 of the ICCPR) but attempts to further limit this freedom beyond a prohibition on incitement to hatred and violence run counter to the rights enshrined in the UDHR and the ICCPR.

Those ostensibly supporting freedom of expression, but imposing the conditions 'only if it is used responsibly or respectfully' or 'as long as offence is not caused' are generally seeking surreptitiously to widen the limits on the freedom of expression beyond those set out in the UDHR and ICCPR limits on incitement to hatred and violence.

While we believe that views should be expressed wherever possible in an inoffensive manner, those claiming the right not to be offended need to question whether they are showing sufficient tolerance towards cultural and religious diversity. Everyone regards some ideas as sacred or unchallengeable, but those same ideas may well be thought blasphemous or ridiculous by others. And, as Resolution 1510 (2006)⁴ of the Parliamentary Assembly of Council of Europe points out: *What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.*

Even pragmatically, stifling freedom of expression so that no one is allowed to express anything 'unpleasant' is counterproductive. It makes victims of those denied freedom of expression and insulates obnoxious views from the most effective deterrents: counterargument and criticism. "Respect" cannot be extended to cultures that violate basic human rights. These are generally also the very cultures keenest to restrict freedom of expression. It should also be remembered that believers in any one religion are not a homogenous mass and that a vocal minority – and frequently extremists – claim to speak for whole communities.

The media in general tend to offer uncritical "respect" (in just the sense set out three paragraphs above) to religious views regardless of merit. In contrast, criticism of religious views and indeed any non-religious perspectives are generally considered unworthy and inappropriate, and are blocked or ignored. Discussions of contentious subjects in the media tend to be resisted rather than being seen as an opportunity to open debates. This is the very antithesis of "respect towards cultural and religious diversity". Unless "religious" is also accepted to include "non-religious", the "dialogue" and "diversity" in the meeting's objectives will remain hollow aspirations.

⁴ <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1510.htm#1#1>

2a. “Christianophobia” and “Islamophobia”

In the UK and elsewhere in the world, genuine intercultural dialogue is hindered by religious opposition and by accusations of “Islamophobia” or of “Christianophobia”.

Any attempt to criticise more extreme Christian beliefs and their attempted imposition on society in general is met with accusations of Christianophobia and persecution in an attempt to close down debate⁵. This has happened recently, for example, when Christian groups are demanded the right to ignore equality laws⁶. Roman Catholic child abuse has continued much longer than it would have done had the Vatican and church authorities not imposed secrecy on victims and on disclosure of suspects. Yet the Vatican has responded to criticism of its cover-ups in the media by comparing such criticism with the persecution of the Jews⁷. Similarly, in the US, Catholics have compared the refusal to let them discriminate against homosexuals with the Nazis persecuting the Jews⁸.

British Indian writer Keenan Malik has this to say about Islamophobia⁹:

‘The trouble with Islamophobia is that it is an irrational concept. It confuses hatred of, and discrimination against, Muslims on the one hand with criticism of Islam on the other. The charge of ‘Islamophobia’ is all too often used not to highlight racism but to stifle criticism. And in reality discrimination against Muslims is not as great as is often perceived - but criticism of Islam should be greater.

‘For Muslim leaders, inflating the threat helps consolidate their power base, both within their own communities and within wider society. All too often Islamophobia is used as an excuse in a way to kind of blackmail society’.

As Romy Hasan shows [*Multiculturalism: some inconvenient truths*, Politico’s 2010], the cry of “Islamophobia” is counterproductive, for

‘...this is the politics of perpetual victimhood and the accentuation of victim identity that is immediately triggered because of any perceived misrecognition. In the absence, however, of demonstrable evidence of victimisation of Muslims in Britain and other Western countries, perceived victimhood is often seen as feigned and unwarranted by large sections of mainstream society... This has led to ... the increased alienation of non-Muslims from Muslims in general....

⁵ <http://www.telegraph.co.uk/news/yourview/1571599/How-should-we-tackle-Christianophobia.html> <http://www.zenit.org/rssenglish-29688>
http://www.wnd.com/news/article.asp?ARTICLE_ID=41900

⁶ <http://www.zenit.org/rssenglish-29688>

⁷ <http://www.nytimes.com/2010/04/03/world/europe/03church.html>

⁸ <http://www.secularism.org.uk/shrieking-catholics-make-ludicro.html>

⁹ http://www.kenanmalik.com/essays/prospect_islamophobia.html

3. UN'S FORMER SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF: EXTRACTS FROM HER PRE-RETIREMENT MEETING WITH NGOS, 15 MARCH 2010

Asma Jahangir served as UN Special Rapporteur on Freedom of Religion or Belief since 2004. She retired from her position at the end of June 2010.

Ahead of her impending retirement she held a valedictory meeting with NGOs at which she summarised her thoughts on her mandate:

One of the challenges is new religious movements, often described as “awful cults” by Governments as an illegitimate way of denying them freedom. Another challenge is to raise awareness of the adverse impact of religion, often denied, on women’s rights and discrimination against women. Perhaps the greatest challenges to women’s rights, challenges that need to be pointed out, come from religion and tradition, often inextricably entwined.

Another challenge relates to eliminating restrictions on the freedom to exercise religious conscience, but this freedom cannot be unfettered; it cannot be an excuse for impinging on the rights of others.

The climate of tolerance, even at the UN, for freedom of religion or belief is waning alarmingly. The freedom to convert is basic. It is inconceivable that any country cannot accept this freedom, for to deny it is nothing other than oppression. Yet demands to allow and facilitate conversion meet with “ifs” and “buts” even at the UN.

The accepted wisdom is that it is countries with largely poor and uneducated populations that are the most intolerant. This is incorrect. Some of the worst intolerance she has seen has comes from educated people in rich countries. Intolerance is not the result of poverty, it is a mindset that must not be accepted or tolerated.

Where some countries could play a role in bridging freedom of religion and local constraints, they have exploited the tensions rather than helping build bridges.

Article 18 (the right to freedom of thought, conscience and religion) requires freedom of expression, for which we must also fight.

She singled out the Islamic Sharia as being a particular problem and an obstacle to her mandate, and stressed the importance of fighting for equal rights.

She concluded by expressing her concern at the recurring attempts to introduce resolutions on defamation of religion, which sees as partly connected with the objective of advancing the Sharia. She believes it is essential to resist and urged that this issue be brought more effectively to the attention of the media and the ears of the UN in New York.

She observed that countries supporting defamation of religions frequently want to silence minorities from expressing dissent.

And finally, Dr Jahangir pointed out that the non-religious were also protected by the right to freedom of religion or belief, and underlined the importance of including the non-religious and women in dialogue.

4. COUNCIL OF EUROPE

4a. The dangers of unduly limiting freedom of expression

Government refusal or inability to resist attempts to stifle discussion and creative expression is in direct contravention of the Council of Europe's White Paper¹⁰ on Intercultural Dialogue. This stresses the importance of open discussion to prevent conflict and support equality for all.

The White Paper states that: *Intercultural dialogue has an important role to play in this regard. It allows us to prevent ethnic, religious, linguistic and cultural divides. It enables us to move forward together, to deal with our different identities.*

It warns of the dangers of blocking free discussion and expression:

The breakdown of dialogue within and between societies can provide, in certain cases, a climate conducive to the emergence, and the exploitation by some, of extremism and indeed terrorism.

Segregated and mutually exclusive communities provide a climate that is often hostile to individual autonomy and the unimpeded exercise of human rights and fundamental freedoms.

It has all too often led to human catastrophe whenever there was a lack of openness towards the other¹¹.

4b. Giving and Taking Offence

One recommendation and one resolution by the Parliamentary Assembly of Council of Europe are especially relevant here. It should be recalled that individuals have rights, organisations and beliefs do not.

¹⁰ http://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf

¹¹ Ibid, point 2.4

4b. (i) Recommendation 1805 (2007)¹²

This states that

1. Freedom of expression is not only applicable to expressions that are favourably received or regarded as inoffensive, but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the Convention. Any democratic society must permit open debate on matters relating to religion and religious beliefs.

4. the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence.

5. in a democratic society, religious groups must tolerate, as must other groups, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insults or hate speech and does not constitute incitement to disturb the peace or to violence and discrimination against adherents of a particular religion. Public debate, dialogue and improved communication skills of religious groups and the media should be used in order to lower sensitivity when it exceeds reasonable levels.

The refusal by the Organisation of the Islamic Conference (OIC) to allow Islamic issues to be openly discussed and the actions of Christian, Hindu and Sikh groups in the UK (for example, shown on page 11) are clearly in breach of these recommendations.

13. In this context, the Assembly recalls its Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists and strongly condemns the death threats issued by Muslim leaders against journalists and writers.

17. The Assembly recommends that the Committee of Ministers:

17.7. condemn on behalf of their governments any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters.

4b. (ii) Resolution 1510 (2006)¹³

This states that:

1. The Parliamentary Assembly of the Council of Europe reaffirms that there cannot be a democratic society without the fundamental right to freedom of expression. The progress of society and the development of every individual depend on the possibility of receiving and imparting information and ideas. This freedom is not only applicable to expressions that are

¹² <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>

¹³ <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1510.htm#1#1>

favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of the population, in accordance with Article 10 of the European Convention on Human Rights (ETS No. 5).

3. *Freedom of thought and freedom of expression in a democratic society must, however, permit open debate on matters relating to religion and beliefs. The Assembly recalls in this regard its Recommendation 1396 (1999) on religion and democracy. Modern democratic societies are made up of individuals of different creeds and beliefs. Attacks on individuals on grounds of their religion or race cannot be permitted but blasphemy laws should not be used to curtail freedom of expression and thought.*

7. *Blasphemy has a long history. The Assembly recalls that laws punishing blasphemy and criticism of religious practices and dogmas have often had a negative impact on scientific and social progress.*

11. *What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.*

5. UNITED NATIONS

5a. Defamation of religion

Laws against blasphemy and defamation of religions used to stifle dissent and valid criticism are becoming more prevalent. A blasphemy law became effective in 2010 in Ireland and attempts to introduce an international obligation to enact defamation of religions legislation through the United Nations are ongoing and intensifying.

Resolutions combating defamation of religion have been adopted by the Commission and by the Council every year since 1999, and by the UN General Assembly since 2007. Again in 2010, the United Nations Human Rights Council (UNHRC) has passed a resolution proposed by the OIC that urges the creation of laws in member states to prevent criticism of religion (namely, Islam)¹⁴.

In a statement, a coalition of NGOs said the “defamation of religion” resolution “*may be used in certain countries to silence and intimidate human rights activists, religious dissenters and other independent voices,*” and to restrict freedom of religion and of speech. The resolution, its critics said, would also restrict free speech and even academic study in open societies in the West and elsewhere¹⁵.

Ramifications for the media are serious. Encouraging the media to open debates and be non-discriminatory is pointless if the media cannot even begin to discuss certain subjects without

¹⁴ <http://www.secularism.org.uk/108265.html>

¹⁵ <http://www.secularism.org.uk/108265.html>

fear of retribution or without self-censorship. *The UNWatch website writes of fears that any new “complementary standards” may negatively impact existing international law protecting the freedom of expression, by which countries would gain new legal instruments with which to suppress newspaper articles, cartoons and other forms of expression deemed offensive on the grounds of racial discrimination*¹⁶.

US Secretary of State Hillary Clinton commented on the 2010 adoption of the resolution that *any effort that could lead to the criminalization of the defamation of religion is “a false solution, that exchanges one wrong for another.” We are convinced,” said Secretary Clinton, “that the best antidote to intolerance is not the defamation of religion’s approach of banning and punishing offensive speech, but rather, a combination of robust legal protections against discrimination and hate crimes, proactive government outreach to minority religious groups, and the vigorous defense of both freedom of religion and expression.”*¹⁷

5b. The effect of defamation resolutions

The effect of the adoption by the Human Rights Council of the defamation resolutions has been to increase the level of immunity enjoyed by the Islamic states from investigation and exposure of their abuse of human rights. Not only does the concept of defamation of religion have no validity in international law, the resolution is unnecessary because the problem it purports to address, increasing discrimination and incitement to hatred experienced by Muslims, is already dealt with under international law. Article 20 of the ICCPR specifies the steps that states must take to outlaw incitement to hatred or violence. It therefore suggests that the OIC may have another reason for pushing these resolutions; namely, extending restrictions on freedom of expression such as blasphemy laws that already exist in Islamic states into international law, and thereby silencing critics of Islam in the rest of the world.

It is not just debate in the West that will suffer from the silencing of debate.

*UN Watch executive director Hillel Neuer commented*¹⁸ *“The first to suffer will be moderate Muslims in the countries that are behind this resolution, like Iran, Saudi Arabia, Egypt, and Pakistan, where state-sanctioned blasphemy laws stifle religious freedom and outlaw conversions from Islam to other faiths”.*

The attempt to stifle debate goes even further: when IHEU tried to make a brief joint statement at the UNHRC about honour killings, female genital mutilation and stoning, they were constantly interrupted by the Egyptian representative who accused the NGOs of trying to “crucify Islam”. IHEU has also been accused of ‘inciting hatred’ by the same delegation, and on

¹⁶ <http://blog.unwatch.org/index.php/2010/03/23/strains-emerging-on-defamation-of-religion-ahead-of-important-vote/>

¹⁷ <http://www1.voanews.com/policy/editorials/Defamation-Of-Religion-Resolution-90884719.html>

¹⁸ <http://www.secularism.org.uk/nss-raises-alarm-over-new-islami.html>

another occasion was prevented from speaking about the lack of conformity of sharia law with international human rights law, when Pakistan objected that it was ‘insulting to our faith to discuss sharia law in this forum’ – a complaint that was upheld by the Council president.

A spokesperson for human rights group Amnesty International said the move was consistent with attempts by some governments to create no-go zones in the council. *“If Pakistan can come and say that the murder of women for some perverse sense of honour has nothing to do with universally recognised human rights, we’re in trouble.”*¹⁹

None of the resolutions against “defamation of religion” have yet been given the force of international law. But UN resolutions create precedents that shape the creation of future laws. Indeed the OIC has stated that, ultimately, it seeks a “new instrument or convention” on the issue of religious defamation. The General Assembly was even asked to include this language in the founding charter of the Human Rights Council but it was refused. Furthermore, UN resolutions tend to influence national laws and jurisprudence. Even non-binding UN resolutions may be cited as international sanction for new or existing national laws. In fact, the OIC lobbied national delegations to adopt the General Assembly Resolution, which stated that “defamation of religions and prophets is inconsistent with the right to freedom of expression.”

Before universally binding language restricting established rights in the name of combating defamation of religions is placed in international instruments, it is imperative that the international community analyze this novel restriction on freedom of expression in the light of currently existing international law²⁰.

6. CASE STUDIES OF RELIGIOUS ATTEMPTS TO PREVENT FREEDOM OF EXPRESSION

In the UK, the blasphemy laws were abolished in 2008 after a prolonged campaign by parliamentarians and pressure groups, principally the National Secular Society. However, it now appears that there are attempts to reintroduce them by stealth. For example, a Christian group attempted to get a work of art banned²¹. The crime of religiously aggravated offence introduced in 2006 represents a new kind of blasphemy law and the crime of religiously aggravated insulting behaviour carries a sentence of up to 7 years in prison. Professional offence-takers in religious communities have already begun to exploit this new avenue of restricting criticism and comment about their beliefs²².

¹⁹ <http://www.secularism.org.uk/97633.html>

²⁰ <http://www.iheu.org/speaking-freely-about-religion-religious-freedom-defamation-and-blasphemy>

²¹ <http://www.secularism.org.uk/attempttoreintroduceblasphemylaw1.html>

²² <http://www.secularism.org.uk/atheist-sentencing-creates-a-new1.html>

Some states are already using the concept of the defamation of religions to silence dissenting voices. This trend has recently been condemned by the UN Working Group on Arbitrary Detention in the case of the Egyptian writer, Kareem Amer. Amer was convicted of insulting the religious Al Azhar Institute and the Head of State. The UN Working Group on Arbitrary Detention stated: *[d]efamation of religions may offend people and hurt their feelings but it does not directly result in a violation of their rights to freedom of religion. International law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the population or from the State prescribed one.*

The Working Group declared Amer's detention for exercising his freedom of expression arbitrary and in contravention of Article 19 of the ICCPR, among other rights.

In addition to national abuse of blasphemy laws, the danger of internationalising concepts of defamation or blasphemy was highlighted by a 2008 case in Jordan. A Jordanian court issued a summons, on charges of "blasphemy", to eleven Danes for drawing and reprinting cartoons depicting the Prophet Mohammed. According to Danish reports, Jordanian lawyers are hoping the case "will help establish an international law against slandering religion."²³

The fatwa issued against Salman Rushdie for *The Satanic Verses* is a well-known case but many do not make international headlines. Some examples:

In the UK, a national chain of bookshops was threatened by a homophobic preacher and as a consequence cancelled a reading at a Cardiff branch by Welsh poet Patrick Jones²⁴.

A statue by the artist Terrence Koh at the Baltic Centre for Contemporary Art in Gateshead provoked outrage and condemnation by Christians²⁵.

Behzti, a play which depicted a rape in a Sikh temple, provoked violent protests and thousands of pounds of damage at the Birmingham Repertory Theatre in December 2004. The theatre was forced to cancel the play on safety grounds and playwright Gurpreet Kaur Bhatti fled into hiding after receiving death threats²⁶.

The London exhibition of the work of Maqbool Fida Husain was closed after threats of violence from Hindu fundamentalists in 2006²⁷.

Despite winning many awards, *Jerry Springer – the Opera* was beset by street protests, threats to theatres and the publicizing of private addresses of BBC executives after it was shown on television²⁸, which caused fear in their families.

²³ <http://www.iheu.org/speaking-freely-about-religion-religious-freedom-defamation-and-blasphemy>

²⁴ <http://news.bbc.co.uk/1/hi/wales/7725790.stm>

²⁵ <http://www.dailymail.co.uk/news/article-505880/Controversial-statue-Jesus-erection-offends-gallery-visitors.html>

²⁶ <http://news.bbc.co.uk/1/hi/entertainment/4170297.stm>

²⁷ <http://www.guardian.co.uk/commentisfree/2006/may/28/arts.comment>

²⁸ http://en.wikipedia.org/wiki/Jerry_Springer:_The_Opera

7. THE LAW

Case law on artistic freedom of expression is currently not clear. For example, in *Wingrove v The United Kingdom*, it upheld the decision of the British Board of Film Classification to refuse certification to a film on the grounds that it could be considered blasphemous by Christians.²⁹ In *Otto Preminger Institute v Austria*, the Court ruled in favour of the Austrian government's banning and confiscation of a film deemed offensive to Catholics³⁰.

However, during the Preminger trial it was stated that the free interplay of ideas on religious matters may include criticism and even hostility: "Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith."³¹

The Court has affirmed the value of pluralism and religious dissent. In *Erbakan v. Turkey*, the Court commented: "freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."³²

In this case, restriction of speech on grounds of incitement required an actual risk of harm or imminent danger for society³³. Elsewhere, however, a variety of much weaker tests have been employed; for example, the criterion that offending statements are "of a nature as to raise or strengthen" racial hatred; or such that one can "reasonably anticipate" a causal relationship between the statements and an environment of racial hatred³⁴. The problem with these weaker tests is that, absent some showing of actual risk, they do not demonstrate that restrictions on speech are necessary to protect the rights of others. So, it seems that the Court's understanding of incitement often exceeds that which would be permitted under Article 10(2) of the Convention and Article 19(3) of the ICCPR³⁵.

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²⁹ *Wingrove v The United Kingdom* (1996) 24 EHRR 1, E Ct HR

³⁰ *Otto-Preminger Institute v Austria* (1994) 19 ENRR 34, E Com HR

³¹ *Otto-Preminger v Austria*, op cit, para. 47

³² *Erbakan v. Turkey*, 6 July 2006, Application No. 59405/00 para 17

³³ *Erbakan v. Turkey*, 6 July 2006, Application No. 59405/00, para. 68. In the original: "un risque actuel" and "un danger imminent pour la société."

³⁴ See *Faurisson v. France*, UN Doc. CCPR/C/58/D/550/1993 (1996); *Malcolm Ross v. Canada*. UN Doc. CCPR/C/70/D/736/1997 (2000).

³⁵ Even more far-reaching is the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), which entered into force in 1969. General Assembly Resolution 2106A(XX), 21 December 1965, entered into force 4 January 1969. It not only prohibits incitement to racial discrimination and acts of racially motivated violence, but also the dissemination of ideas based on racial hatred or racial superiority. Many of the states party to CERD have registered