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FOR THE ELIMINATION OF ALL FORMS OF
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(EAFORD)**



**RACIAL DISCRIMINATION AND
REFUGEE LAW**

by

ANIS AL-QASEM LLM PhD
Secretary General

Presented at the Seminar on
Asylum and Refugee Law in Arab Countries
Organised by U.N. High Commissioner for Refugees
at International Institute for Humanitarian Law,
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**All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
Universal Declaration of Human Rights**

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I. Refugee Law and Human Rights Law

1. The purpose of this paper, is to examine the situation where policies based on ideologies of racial discrimination lead to the creation of conditions of statelessness or refugeeism, and the effectiveness and appropriateness of present refugee law to deal with such situations. In the light of that analysis, the paper will then proceed to the consideration of specific proposals for the development of Refugee Law to improve the lot of refugees, particularly in the field of protection of human and national rights affected by policies of racial discrimination. The relevance of this subject to this seminar is vindicated by the presence of a large number of refugees in the Arab world, the Palestinian refugees, whose situation has been created by Israel policies of racism and racial discrimination. However, the implications of this paper will go beyond this specific problem and will cover the basic issue of the relationship between racial discrimination and refugee law in general.

2. It is very gratifying, as stated by M. Michel Mousalli, in his preface to the *Collection of International Instruments Concerning Refugees* (1979), to note that Refugee Law has become an important branch of International Law, which will continue towards new developments in a parallel direction to Human Rights and International Humanitarian Law. It is hoped that the word 'parallel' is not used in a strict geometric sense, for there is no doubt about the increasing convergence of the two systems and the more direct influence of Human Rights and International Humanitarian Law on Refugee Law. In fact, a proper and meaningful understanding of the term 'refugee' cannot be achieved without a proper and meaningful understanding of the norms, scope of application, the violations and remedies provided under Human Rights and International Humanitarian Law.

3. Failure to respect and observe the basic rights and fundamental freedoms of other peoples and individuals have been the main cause of the refugee problem, and the endeavour of the international community to solve the refugee problem has been directed toward assuring “refugees the widest possible exercise of these fundamental rights and freedoms” (Second preambular paragraph of the 1951 Convention Relating to the Status of Refugees).

4. With this being the main and perhaps the only object of Refugee Law, Human Rights and International Humanitarian Law should serve as one of the vital reference points to map the course, correct deviation, guide interpretation and measure the achievement of international instruments, municipal legislation and State policies and ideologies in the field of Refugee Law and their possible effects on the creation of refugee situations.

II. Racial Discrimination as a Cause of Refugeeism

a) Introductory remarks:

5. One of the main causes of refugeeism is the violation, through racial discrimination of the internationally accepted principle in dignity and rights. Many of the categories of refugees covered by article 1A (1) of the 1951 Convention who are under the protection of the international community, became refugees as a result of policies of racial discrimination.

6. Racial discrimination, as used in this paper, is a term of art with a definite legal connotation. It is important to emphasize this because many of those who attack UN General Assembly Resolutions and resolutions adopted by other organs of the United Nations system dealing with the ideologies or policies of racial discrimination, particularly in the case of zionism and Israel, display either ignorance of an internationally accepted definition of the term, or intentional misrepresentation or bad faith. The attempt to bury or discredit resolutions which diagnose and define situations of grave danger to human rights and world peace constitutes a betrayal of the aspirations of the struggle of humanity towards equal dignity for all. In truth, it is a racist attempt.

b) Definition of ‘racial discrimination’:

7. Racial discrimination is defined in article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 to 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”.

Thus, in order to determine whether an ideology or a policy has or has not the characteristics of racial discrimination, appeal can and must be made to this legal definition and not otherwise. Loose use of the term can be both misleading and dangerous, because it avoids applying the definite criteria laid down in the definition and consequently, will avoid the application of that criteria to fact situations involving actual racial discrimination.

8. In theory and in practice, the policy of racial discrimination can create, and such policies have in fact created, refugee situations because of the effect they have on the nullification or impairment of the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms.

9. It is important to note that, under the definition of racial discrimination, racial discrimination can be practised in favour as well as against persons or groups of a certain race, colour, descent, national or ethnic origin. To give, on that basis, preferential rights in any field of public life to some, even without touching the existing rights of others, will constitute racial discrimination because the enjoyment of such rights will not be on an equal footing for all.

10. It is equally important to note, that racial discrimination violations can encompass the totality or most of the rights in the political, economic, social, cultural and other fields of public life. This is because racial discrimination is based on a philosophy of superiority which has to express itself in differentiation of rights between the dominant and the dominated groups. Consequently, the result of the ideology of racial discrimination can reach the extent of physical extermination of the victims or at least cultural ethnocide so that the identity of the dominated group is destroyed. In order to maintain a privileged position for the dominant group, domination must continue and must extend to the enjoyment or exercise of any right which may in any way affect the wishes of the dominant group.

c) Effect of racial discrimination and occupation:

11. This situation is no more clearer than when the domination has come about as a result of occupation, whether it takes the form of military occupation, or an attempt at permanent colonisation. The present day glaring examples of this are Palestine and South Africa. In both instances, an immigrant group established itself in a country which is not theirs, by occupation designed to perpetuate the domination of the immigrant group. To achieve such permanent domination, it is necessary to deny any right of the indigenous population which can challenge such permanent occupation. Consequently, the national identity and the belonging of the victims to their own country become targets for severe attack. For clearly, so long as the victims continue to enjoy the inalienable rights of peoples within their own country, the dominant group cannot have the domination it aspires for.

And since occupation of the land itself, is a paramount consideration in establishing a permanent occupation, it follows that the dominant group must adopt policies of violating the right of the indigenous people to their lands and country. Once an attack is waged on the right to live on the land, a refugee situation develops and can reach the dimensions of eviction from the land either to designated areas within the country itself, or even to areas outside the territories concerned.

12. In a situation like this, two refugee categories can arise: internal refugees who lose the possibility to live on their own land and whose rights of occupation of any land within the boundary of their country have no legal protection, and external refugees who would have lost even their presence in their own country. In both instances, the rights of the refugees, who are the indigenous people, are completely subjugated to the wishes, whims, and policies of the dominant immigrant group.

13. Theoretically, internal refugees are deemed to continue to possess the nationality of their country. However, because of an ideology of racial discrimination, the rights pertaining to such nationality, which should embody equality before the law, become a mere myth. In factual situations expropriation of their land continues and restrictions on their rights in all fields persist with the consequence that at any moment in time, they can be turned into external refugees through forceful eviction or deportation or through the creation of economic or security situations which force them to leave their own country and become external refugees.

This situation we can witness in developments in South Africa where villages are being destroyed and the indigenous population thereof is being forced to leave to a designated area with respect to which they have no choice. The same can be seen in Israel where the whole population of many Arab villages are not allowed to return to their villages and lead a normal life. Similarly, Palestinian Arab land expropriated by Israel, and that constitutes more than 90% of the land area of Israel, is registered in the name of the Jewish people and no Palestinian Arab, though he may be an Israeli citizen, may purchase, occupy, lease or work on such land. The land is made exclusively for the benefit of one section of the community – for the Whites in South Africa and the Jews in Israel, and a refugee situation continues to build up as far as the discriminated against section of the population is concerned.

14. The combination of settler-colonialism with an ideology of racial discrimination, challenges the totality of the inalienable rights and human rights of the indigenous peoples and consequently it can create the most damaging refugee situation. In order to maintain permanent occupation, a continued denial of these rights by the dominant group must also be maintained. Therefore, some of the basic rights, which are guaranteed under all

international instruments, become the subject of persistent violation. In particular, the right of return and the right to self-determination would continue to receive constant denial. Thus, a situation will be created where the victims of racial discrimination insist on their right to voluntary repatriation instead of the right to apply for asylum and yet they are prevented from exercising their right of voluntary repatriation by the dominant occupier, with the result that the international community will continue to be burdened with a refugee problem the solution to which is readily available except for the policies of the perpetrator of the refugee situation. Obviously, to arrange for the asylum of millions of refugees is by far more difficult than to have them repatriated to their own country, and it should follow from this that the attempts of the international community and its agent, the United Nations High Commissioner for Refugees (UNHCR) should be directed to convince the perpetrator to comply with the requirements of International Law and the wishes of the international community and admit the victims to their country. In that case, the assistance that is given to the refugees in the reception countries can be diverted to a more permanent and productive use in resettling them within the borders of their own country.

15. It is because of the very serious consequences not only to the victims but also to the international community, that racial discrimination has been treated as a crime against humanity. This was first enunciated in the Charter of the International Military Tribunal (the Nurnberg Tribunal) and later on in the International Convention on the Suppression and Punishment of the Crime of Apartheid. For this reason, if for nothing else, it is submitted that refugees who are victims of racial discrimination should call for special attention and protection by the international community, and in the absence of the possibility of bringing the perpetrators to justice in the same way as the nazi war criminals were treated for their acts of racial discrimination, the least that the international community can do is to exercise every effort to enable them to fully enjoy their inalienable rights and human rights as decreed by the international community, such as the right of return and the right to self-determination. In particular, any restrictive interpretation of existing refugee law should be removed and replaced by interpretations whose main spirit and objective are the realisation of those rights.

III. Refugee Law and Victims of Racial Discrimination

a) Definition of refugee:

16. The question which now calls for consideration is whether an individual or a group who, as a result of racial discrimination, become refugees can claim the protection provided for under the 1951 Convention, the 1967 Protocol and the Statute of the High Commissioner for Refugees. To answer this question, it is necessary to consider first the definition and

exclusions of 'refugee' under the Convention, the Protocol and the Statute, and secondly, whether racial discrimination produces the effect envisaged in that definition.

17. According to the general definition contained in the 1951 Convention and the 1967 Protocol, a refugee is a person who:

owing to well founded fear of being persecuted . . . is outside his country of nationality . . .

b) '*Persecution*' and racial discrimination:

18. The significant word to consider in this definition for the purposes of racial discrimination is "persecuted". In the *Handbook on Procedures and Criteria for Determining Refugee Status* published by the office of the United Nations High Commissioner for Refugees in September 1979, it is stated on page 14 paragraph 51 "There is no universally accepted definition of 'persecution'." Further, in paragraph 54 on page 15 of the *Handbook*, it is stated:

"Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities."

19. With respect, the criteria enunciated in the previous quotation leave much to be desired, and the examples given have no particular significance to distinguish them from the other cases of racial discrimination which are prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination 1965. If a list is to be compiled of what may be considered serious violations in the context of racial discrimination, reference has to be made to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination which noted certain rights as deserving special protection from being subject to racial discrimination. These rights are:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal

suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

20. However, it should be noted that the cumulative effect of racial discrimination encompassing rights which are not particularly enumerated in the above Article can be of such a nature as to justify giving them the character of persecution. For this reason, and because of the embracing nature of racial discrimination, it is submitted that where racial discrimination exists, persecution should be assumed. This view is supported by the fact that under the Charter of the International Military Tribunal acts of racial discrimination are considered to be crimes against humanity. Similarly, the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973, treats racial discrimination as a crime against humanity. And crimes against humanity are so serious in the view of the international community to the extent that a special Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity has been concluded on the 26 November 1968.

21. When a situation of this nature exists where an act has been declared by

International Law to be a crime against humanity, any attempt to dilute the full extent and scope of such act through consideration of the right violated can only lead to further attempts at dilution, and consequently, at further attempts to avoid international responsibility and protection for the victims of such acts.

22. Consequently, it is submitted that the only criterion which should apply is whether an act of racial discrimination as defined in International Law, has been committed or not. If it is established that such an act has been committed, and the victim has become a refugee, then the machinery of international protection should automatically apply without any further investigation as to the type of right which has been affected by the act of racial discrimination.

c) Internal refugees of racial discrimination:

23. It should be noted further that the definition of 'refugee' in the 1951 Convention which requires that the person has to be 'outside his country of nationality' to be treated as a refugee, fails to deal with the situation of those who become internal refugees, particularly for reasons of racial discrimination. The first civil right protected from racial discrimination by the International Convention on the Elimination of All Forms of Racial Discrimination is 'the right to freedom of movement and residence within the border of the State'. Surely, this includes the right to live in one's habitual place of residence, such as one's ancestral village. This Right is being severely violated in both South Africa and Israel. Villages are even completely destroyed to make any continued living or return impossible. The inhabitants of at least 12 villages in Gallilee, northern Israel, and three villages in the Jerusalem area, are not permitted to return to their villages, despite, in some cases, judgments of the Israeli Supreme Court declaring their right to return. Provision is needed to assure them of 'internal' voluntary repatriation. It should be mentioned that questions of racial discrimination which raise the very serious charge of crimes against humanity cannot accept the defence of non-interference in the internal affairs of the country concerned. This is a question of international responsibility in a situation fraught with danger to the basic concept of respect of the principle of equality in dignity and rights enshrined in the Charter of the United Nations.

d) Exclusion:

24. We pass now to consider the exclusions which prevent the enjoyment of the rights guaranteed under the 1951 Convention and the Statute of the High Commissioner for Refugees.

25. The exclusion which concerns us in this paper and which, in practice, has had a far reaching effect is the exclusion referred to in Article 1 D of the 1951 Convention which reads as follows:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than United Nations UNHCR protection or assistance.”

The exclusion in the Statute of HCR is worded differently as a general provision without the limitation in time conveyed by the words ‘*at present*’ in the Convention. Clause 7(c) of the Statute provided that the competence of HCR shall not extend to a person ‘who continues to receive from other organs or agencies of the United Nations protection or assistance’.

26. Commenting on this Article 1 D, the *Handbook on Procedures and Criteria for Determining Refugee Status* published by the office UNHCR 1979, para- graph 142 p.33 states:

“Exclusion under this clause applies to any person who is in receipt of protection or assistance from organs or agencies of the United Nations other than UNHCR. Such protection or assistance was previously given by the former United Nations Korean Re-Construction Agency (UNKRA) and is currently given by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). There could be other similar situations in the future.”

e) Discussion of interpretation of exclusion provisions:

27. This interpretation, which is supported by *prima facie* considerations, tends to confuse the basic difference between substance and machinery and to lose sight of the main objective of the Convention and, when applied to the Office of UNHCR, of the main purpose of creating that Office. It treats substance and machinery as mutually exclusive. The substance is the rights of the refugees and the obligations of the Parties to the Convention. Those rights and obligations exist independently of any machinery, whether it be the Office of UNHCR or any other UN agency who are merely instruments of implementation. These agencies can vary considerably in their terms of reference as to the functions they can perform, but they normally fail, as in the case of UNRWA, to create rights for the refugees and obligations to be met by the reception countries.

Historically, the exclusion was introduced at the request of some Arab members of the United Nations without any consideration of the nature of the provision as finally agreed or the competence of UNRWA as compared with that of UNHCR. Failure of UNRWA and the reception country to provide protection to the Palestinian refugees during and after the Israeli invasion of Lebanon, emphasised the inadequacy of the situation and exposed the illegality of the interpretation of the exclusion provision on the basis of its history and implementation.

28. The confusion has arisen from the use of the word ‘or’ in the phrase ‘protection or assistance’ and the interpretation treated ‘or’ as a disjunctive

preposition. To begin with, there is considerable judicial authority which supports the view that 'or' should be interpreted as 'and' where such interpretation is more conducive to the realisation of the aim of the legal instrument. Secondly, if 'or' is to be interpreted in the disjunctive sense, the words following it should, ultimately, lead to the same result which flow from the words preceding it. Otherwise, there will be no proper alternative. A proper interpretation should lead to the conclusion that the final effect of assistance is the same as the final effect of protection and that such protection or assistance provided by the agencies under consideration should be at least equal to those provided for in the Convention or the Statute of the Office of UNHCR. Otherwise, the refugees for whose benefit these agencies are created, although they are recognised as refugees within the definition in both the Convention and the Statute, yet they will be deprived of the rights under the Convention and of the greater protection that can be given by the High Commissioner for Refugees. They become refugees and not refugees at one and the same time.

29. In passing, the above-quoted interpretation which envisages, in the last sentence, the application of the exclusion to future agencies seems to fail to note the words '*at present*' which qualify the persons receiving the protection or assistance. It seems that the only persons excluded are Palestinian refugees prior to 1951. Palestinians who became refugees after that date, such as the 1967 refugees, do not fall within the exclusion and should enjoy the protection of the Convention.

30. The main purpose of the Convention as stated in the second preambular paragraph is:

“To assure refugees the widest possible exercise of these fundamental rights and freedoms”

and these fundamental rights and freedoms are the fundamental rights and freedoms which, in accordance with the first preambular paragraph of the Convention, have been affirmed by the Charter of the United Nations and the Universal Declaration of Human Rights. Consequently, the fundamental rights and freedoms guaranteed by the Convention go far beyond the mere provision of assistance, unless the word assistance is interpreted to mean assistance aiming at the realisation of those fundamental rights and freedoms, without discrimination. However, if the extent of the assistance provided is limited in its nature to attending to some of the basic material needs of the refugees, such assistance will naturally fall short of the protection envisaged by the Convention, and set out in its various Articles.

31. Similarly, it should be assumed, particularly when dealing with such basic issues as fundamental rights and freedoms, that when a exclusion is applied it should not be prejudicial to the enjoyment or exercise of such

fundamental rights and freedoms. This is the more important because of the specific provisions in the definition of racial discrimination as having:

“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.”

32. It is a principle of legal interpretation that exclusions or exemptions have to be narrowly interpreted, and, in any case, in the present discussion, to justify the exclusion, it must be shown that the agencies are, by their respective statutes, empowered and in a position to provide at least the same protection and assistance provided for in the Convention and the Statute of the UNHCR. If they provide in protection or assistance, less than that which can be provided by the UNHCR, then we are left with a legal vacuum which is abhorable to legal thinking, unless it can be definitely shown that the legal provision is absolutely incapable of an interpretation which can fill the vacuum.

33. When one considers the kinds of activities that can be carried out by the UNHCR, one will immediately observe that such activities cover both protection and assistance; protection of rights and assistance in the material sense. However, when one considers the activities of UNWRA for example, one finds that such activities are limited to ‘direct relief and works programmes’ and nothing more. Thus it is a flagrant violation of the principles of legal interpretation to equate what UNHCR can provide with what UNWRA for example can provide in order to justify the exclusion of refugees who receive only relief from UNWRA.

34. It is certainly understandable that there should be an urge toward avoiding duplication. However, when the matter is considered carefully, duplication can easily be avoided. UNWRA’s work will be limited to what it is authorised to do, namely, the provision of ‘direct relief and work programmes’, and the rest should be undertaken by UNHCR. In this way duplication can be avoided and both the material and fundamental rights and freedoms of the Palestinian refugees and refugees in similar situations can be attended to.

It should be remarked that UNWRA was created for a specific purpose under very pressing circumstances which called then for material attention and which therefore is of a very limited nature, whereas both the Convention and the Statute of UNHCR are of a general nature to provide what the international community deems appropriate for the protection of the rights of refugees.

35. Under paragraph 2 of Chapter 1 of the Annex to the Statute of the Office of UNHCR, the High Commissioner is required to direct his work, as a

rule, to groups and categories of refugees. This type of work is very appropriate, particularly when it is recalled that one of the main aims of the Statute is to achieve voluntary repatriation of refugees. Needless to say, that the provision of 'direct relief and works programmes' as is the role of agencies like UNWRA, is far from the role of working towards voluntary repatriation; and any attempt by agencies like UNWRA at voluntary repatriation or re-settlement or even assimilation will be treated as *ultra vires* the resolution of the General Assembly establishing UNWRA. More examples can be given to show the limitations on the powers of UNWRA and similar agencies to handle refugee situations which are assumed to be handled under Refugee Law, and consequently, it is submitted that the interpretation given to the exclusion clause is incorrect and defeats the very purpose of the international community in providing international protection under an international authority.

36. No refugees may be excluded from the Convention or the Statute of UNCHR unless they receive at least the same protection provided for in the Convention under an international authority having at least powers equivalent to those of UNHCR.

A misunderstanding of the nature of the agency in question should not prevent the adoption of the proper interpretation which looks beyond the letter to get to the spirit and objective and in order to avoid international discrimination against a certain group of refugees who need international protection.

c) Obligation of voluntary repatriation:

37. The most flagrant examples of racial discrimination are directed, and have been directed in the past, against groups who share in common race, colour, decent, national or ethnic origin. In situations like this, the solution to the problem is first of all in the preservation of their identity, national and cultural, and secondly in serious attempts at achieving voluntary repatriation and thus reducing the magnitude of the problem of refugees.

38. In order to realize the first objective, namely, the preservation of their identity, national and cultural, it will be necessary for them to exercise all the rights which enable them to preserve such identity. The exercise of such rights depends upon the attitude of the reception country and the efforts of the UNHCR to assist in that direction. It is felt that one of the main activities in this field by the UNHCR is to encourage the establishment by the refugees of institutions which express their national and cultural identity, particularly in preparation for the exercise of their fundamental right of self-determination and right of return to their country. This point leads one to re-emphasise what has already been said at the outset of this paper concerning the inter-connection between Refugee Law and Human Rights and International Humanitarian Law. The right of return is one of

the very basic rights guaranteed under the Universal Declaration of Human Rights and its violation is strictly prohibited under the Inter national Convention on the Elimination of All Forms of Racial Discrimination. However, in order to exercise that right effectively, the group concerned must be enabled to organise itself in such a way as to facilitate the exercise of such right. In other words, an active role is required from the UNHCR to end a situation which was created by acts of racial discrimination, in the discharge of his obligation, "to direct his attention, as a rule, to groups and categories of refugees."

d) Additional powers to UNHCR:

39. Because of the immensity of the refugee problem and where a refugee situation has been created by reason of violation of mandatory international law instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination, and because of the difficulties that victims may face in protecting their rights against the perpetrator of acts of racial discrimination, it is suggested that the UNHCR should be given the power, as the representative of the international community, to institute legal proceedings internationally and municipally, against the State guilty of acts of racial discrimination, in order to protect, as far as possible, the rights of refugees and establish definitively the responsibility of the State in question. For example, where the property of refugees have been expropriated, the UNHCR should have the power to institute legal proceedings on behalf of the refugees to have such expropriation annulled. Similarly, where a group of refugees declare their determination at voluntary repatriation and the authorities of their country of origin refuse such repatriation, the UNHCR should have the power again to institute legal proceedings first to establish, in a judicial manner, the right of return, and, secondly, to establish the violation of that right by the State concerned.

In other words, the UNHCR should have sufficient powers, in the name of the international community, at least to obtain declaratory judgments in favour of the rights of his constituency, namely the refugee.

40. This procedure is of particular importance because, under the present International Conventions, the victims of racial discrimination who become refugees have no legal recourse recognised by such international instruments to obtain a legal remedy, not even a declaratory judgment of their rights. They do not even have the right to draw the attention of committees established under such Conventions to the violations from which they suffer. They have no access to these Committees. And thus, the agony of the victims does not have a proper legal machinery through which to express itself with the hope of having the cause of the agony removed: and the only way left to them would be to resort to violence. In fact, violence against racial discrimination is an expression of the failure of the international

system to remedy the causes which made such violence the only alternative route to move the international community to act.

41. In conclusion, it must be emphasised that failure to provide adequate protection to the refugees in reception countries and failure to provide opportunities for the exercise of their fundamental rights and freedoms are the more important causes of the depressing situation in which refugees find themselves. If the international community wishes to eliminate the refugee problem, more attention should be given first to monitoring policies and ideologies which have the seeds of creating refugee situations, such as policies and ideologies of racial discrimination, and secondly, to enable the refugees to exercise their inalienable rights as recognised by the international community. The purpose of monitoring is to alert the international community to the on-coming danger and, perhaps, to prevent it, before it happens; and the purpose of enabling the refugees to exercise their inalienable rights is to eliminate the refugee situation and to remove serious causes of local and international tensions.

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