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of any kind such as race, colour, sex and the like: see, for example, the Universal Declaration of Human Rights 1948, article 2; the International Covenant on Civil and Political Rights 1966, article 2; the European Convention on Human Rights, article 14; and the Refugee Convention itself in article 3 provides: 'The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.'

99. But the ICPR goes further, in article 26: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee 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.'

100. The International Convention on the Elimination of all Forms of Racial Discrimination 1966 provides in article 2: '(1) States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.'

101. Racial discrimination is defined in article 1 in terms of distinctions which have the 'purpose or effect of nullifying or impairing the recognition, or 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.' Article 1(2) states that the Convention does not apply to distinctions, exclusions, restrictions or preference made between citizens and non-citizens, but this certainly does not mean that States Parties can discriminate between non-citizens on racial grounds.

102. It was the existence of these and other instruments, some only in draft at the time, together with the principle of equality enshrined in the Charter of the United Nations and emphasised in numerous resolutions of the General Assembly, which led Judge Tanaka and the dissenting minority of the International Court of Justice in the South West Africa Cases (*Ethiopia v. South Africa*) (*Liberia v. South Africa*) (second phase) [1966] ICJ Rep 6, 293 to conclude that 'we consider that the norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law ...'

103. The General Assembly has 'urged all States to review and where necessary revise their immigration laws, policies and practices so that they are free of racial discrimination and compatible with their obligations under international human rights instruments' (UNGA Resolution 57/195, para 16, adopted 18 December 2002; see also UNGA Resolution 58/160 adopted on 22 December 2003). The UN Committee on the Elimination of Racial Discrimination has expressed its concern at the application of section 19D, which it considers 'incompatible with the very principle of non-discrimination' (UN doc CERD/C/63/CQ/11, para 16, 10 December 2003). A scheme which is inherently discriminatory in practice is just as incompatible as is a law authorising discrimination.

104. As to remedy, the conclusion is that discrimination is inherent in the operation of the scheme itself. It is therefore more appropriate to make a general declaration, rather than the more specific one sought by appellants. The refusal of leave to enter to far more Roma than non-Roma is only objectionable if some Roma were wrongly refused or some non-Roma were wrongly

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