



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the fifteenth to the nineteenth periodic reports of Mauritius, adopted by the Committee at its eighty-second session (11 February–1 March 2013)

1. The Committee considered the combined fifteenth to nineteenth periodic reports of Mauritius (CERD/C/MUS/15-19 and Corr.1) at its 2219th and 2220th meetings (CERD/C/SR.2219 and 2220), held on 20 and 21 February 2013. At its 2229th meeting (CERD/C/SR.2229), held on 27 February 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined fifteenth to nineteenth period reports submitted by the State party, which conforms to the Committee's guidelines for the preparation of treaty-specific reports, despite the delay in its submission. The Committee also welcomes the submission of the common core document (HRI/CORE/MUS/2008).

3. The Committee appreciates the open and frank dialogue it had with the high level delegation and welcomes the supplementary information provided during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the strengthening of the human rights infrastructure in the State party, including:

(a) The broadening of the mandate of the Human Rights Commission and the enhancement of its operational capacity through the amendment to the Human Rights Act;

(b) The adoption of the 2012-2020 National Human Rights Action Plan and the establishment of a multi-stakeholders Committee to monitor its implementation.

5. The Committee welcomes the adoption of laws which strengthen the legal protection against racial discrimination, including:

(a) The Equal Opportunities Act of 2008 and subsequent amendments which prohibit discrimination by individuals against others in all fields of public life; define indirect discrimination and discrimination by victimization; and shift the burden of proof to the alleged discriminator;

(b) The Information and Communication Technologies Act of 2001 which enables the prosecution of hate or racist speech on the Internet.

6. The Committee welcomes the creation and the work of the Equal Opportunities Commission.

7. The Committee welcomes the measures taken to promote cultural rights, such as:

(a) The inscription of Aapravasi Ghat and of *Le Morne* as heritage sites with a view to protect and promote the cultural heritages of slave and indentured labourer descents;

(b) The establishment of language unions, cultural trust funds and centres;

(c) The inclusion of Kreol Morisien and 'Bhujpuri' as heritage language / mother tongue in the primary school curricula.

8. The Committee welcomes the creation and the work of the Truth and Justice Commission; the documentation of historical accounts of slavery and indentured labour; the studies on the consequences of slavery and indentured labour for descendants of slaves and indentured labourers; and the recommendations made by the Commission.

C. Concerns and recommendations

Application of the Convention in the domestic legal order

9. The Committee notes that the domestication of human rights treaties ratified by the State party is one of priority actions identified in the National Human Rights Action Plan adopted in 2012.

The Committee recommends that the State party incorporate the International Convention on the Elimination of all forms of Racial Discrimination into its national legislation and take into consideration the relevant recommendations in its concluding observations (CERD/C/MUS/CO/15-19) in the process of harmonizing its legislation with the Convention.

Grounds of discrimination

10. The Committee notes the ongoing revision of the Equal Opportunities Act with a view to extending the State party's capacity to address discrimination (arts. 1 and 5(d) (vii)).

The Committee encourages the State party in this revision, in accordance with the Convention, to add 'language' as a protected ground under the Equal Opportunities Act, as recommended by the Equal Opportunities Commission. In view of the intersectionality between religion and ethnicity in the State party and insofar as the population of the State party affirms identity through religious affiliation, the Committee encourages the State party to guarantee the right of everyone to freedom of religion without distinction as to race, colour, descent, or national or ethnic origin.

Incitement to hatred and violence

11. The Committee notes the affirmation by the delegation that, in addition to article 282 of the Criminal Code which prohibits incitement to racial hatred, existing provisions of the Criminal Code enable the prosecution of other criminal acts enumerated in article 4 of the Convention (art. 4).

The Committee calls upon the State party to cover in its legislation all aspects of article 4 by ensuring that the dissemination of ideas based on racial superiority or

hatred as well as organizations which promote and incite racial discrimination are prohibited. The Committee also recommends that the State party ensure that racial motivation is considered as an aggravating circumstance in the sentencing of crimes. In this regard, the Committee draws the attention of the State party to its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on article 4 of the Convention and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

Legal remedies for victims of racial discrimination

12. While acknowledging the merit of reconciliation in dealing with cases of discrimination, as prescribed by the Equal Opportunities Act, the Committee is worried that the approach may not always be appropriate in view of the severity of some offences of racial discrimination (arts. 1, 4 and 6).

Recalling its general recommendation No. 26 (2000) on article 6 of the Convention, the Committee recommends that the State party ensure that acts of racial discrimination, as defined by article 4, are punishable in the State party's legislation and that they be dealt with and made to carry sanctions proportional to their gravity.

Cases relating to racial discrimination

13. The Committee regrets the paucity of information on complaints and court cases relating to racial discrimination in the report of the State party (art. 6).

The Committee requests the State party to provide in its next periodic report more detailed information as well as statistics on cases relating to racial discrimination dealt with by courts as well as by non-judicial mechanisms such as the Human Rights Commission, the Ombudsman and the Equal Opportunities Commission. In this regard, the Committee refers the State party to its general recommendation No. 31 (2005).

Special measures

14. The Committee notes with concern that the State party's legislation does not provide for special measures to remedy disadvantaged situations experienced by certain ethnic groups. The Committee also notes that, while the Equal Opportunities Act aims to achieve an equitable, fair and just society, its implementation is posited only on the principle of meritocracy (arts 1, 2 and 5).

The Committee calls upon the State party to consider the implementation of special measures with a view to accelerating the achievement of full and equal enjoyment of human rights by disadvantaged groups. The Committee recommends that special measures be considered to address under-representation of any ethnic group in the field of private and public employment and education. The Committee also urges the State party to raise awareness among the population that special measures are necessary for achieving substantive equality and that their implementation is compatible with the principle of fairness. In this regard, the Committee draws the attention the State party to its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of all Forms of Racial Discrimination.

Identity and ethnic relations

15. The Committee is concerned that the current political classification of the population combines in the same community of 'General Population' groups such as the Creoles and the Franco-Mauritians which do not share the same identity. The Committee is moreover

concerned that the constitutional classification, established in 1968, may no longer reflect the identities of the various groups in the State party (arts. 1, para. (1) and 4).

The Committee calls on the State party to lead a consultative reflection on the classification of the various groups of the population. In this regard, the Committee recommends that the State party be guided by the principle of self-identification and refers the State party to its general recommendation No. 8 (1990) on identification with a particular ethnic group.

16. The Committee is disturbed by the existence of hierarchy along skin colour, ancestry, caste and racial lines in the State party's society, whereby groups are perceived as, or feel, superior or inferior to others. The Committee also regrets that only a few of the recommendations of the Truth and Justice Commission are being implemented (arts. 4 and 7).

The Committee urges the State party to condemn and take action to eliminate ideas of racial or ethnic superiority by taking measures such as campaign programmes to raise awareness of equality of all and to eliminate negative prejudices regarding certain groups. The Committee also urges the State party to prioritize the implementation of the recommendations of the Truth and Justice Commission, especially those relating to creating a "less racist and elitist society," including through urgent allocation of resources for this purpose.

Collection of demographic data

17. The Committee notes the view of the State party that the collection of data by ethnicity is divisive (arts. 2 and 5).

The Committee is of the opinion that the collection of such data is useful for the State party to define and apply adequate policies aimed at eliminating different forms of discrimination on grounds of race, colour, descent, ethnic or national origin. The Committee, noting the recommendation of the Truth and Justice Commission to gather data disaggregated by gender and ethnic community on social, political and administrative structures of the society, encourages the State party to reconsider this view in line with the Committee's reporting guidelines (CERD/C/2007/1). The Committee encourages the State party to consult its constituency in the consideration of the most appropriate approaches to this collection of data.

Political representation

18. The Committee regrets that it has not been given information about the representation of each community in the State party's political bodies. Moreover, the Committee notes that the State party intends to engage in a process of review of its electoral system with a view to achieving a 'more equitable system which promotes nation building and provides for better representation of women' (art. 5 (c)).

The Committee recommends that the State party ensure that the new electoral system addresses obstacles to the participation in political life by, and adequate representation of ethnic groups. The Committee requests the State party to include in its next periodic report information on the representation of each ethnic group in the various appointed and elected public bodies, including also details about the participation of women from such groups.

The Creoles

19. The Committee notes with concern that the Creoles remain significantly disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the

implementation of a range of measures benefiting the most disadvantaged segment of the population (art. 5 (e)).

The Committee recommends that the State party continue to address the disadvantages experienced by the Creoles in the enjoyment of economic, social and cultural rights by implementing measures commensurate with the problem. The Committee requests the State party to include in its next periodic report information on progress achieved in this regard.

Languages

20. Noting the information provided by the delegation that Creole is the common language spoken by all groups in the State party and welcoming the introduction of the teaching of Creole and Bhojpuri in primary education, the Committee regrets that it has not been given information on the status of the Creole language as well as the language of teaching in the State party (art. 5 (c)).

The Committee requests the State party to ensure that proper status is given to the languages spoken by the various groups of the population. The Committee also calls on the State party to eliminate language barriers to equality and to the enjoyment of civil and political rights as well as economic, social and cultural rights, in particular the right to education.

Situation of the Chagossians

21. While welcoming the measures taken by the State party to alleviate the sufferings of the Chagossians displaced from the island of Diego Garcia and other islands of the Chagos archipelago, the Committee remains concerned that they have not been able to exercise their right to return to their land (arts. 5 (d), 11).

The Committee recommends that the State party continue to seek all possible ways for remedying the injustice done to the Chagossians displaced mainly from the island of Diego Garcia and other islands of the Chagos archipelago.

Migrant workers

22. The Committee remains concerned at reports of poor working and living conditions of migrant workers, despite the measures taken such as the adoption of the Occupational Safety and Health (Employees' Lodging Accommodation) Regulation in 2011. (arts. 1 and 5).

The Committee calls on the State party to ensure effective investigation, prosecution and sanction of employers responsible for violations of the rights of migrant workers and to make sure that applicable laws enable an adequate protection of migrant workers. The Committee draws the attention of the State party to its general recommendations No. 30 (2004) on non-discrimination against non-citizens.

Gender-related dimension of racial discrimination

23. The Committee expresses concern at the exception to the principle of non-discrimination provided for under Section 16 (4) of the Constitution regarding the application of personal law, which violates the provisions of the Convention insofar as it affects women of certain ethnic groups because of their religious affiliation (art. 5).

The Committee urges the State party to abrogate the exception to the principle of non-discrimination provided for under Section 16 (4) of the Constitution in the context of the constitutional reforms. The Committee refers the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

De facto segregation

24. The Committee regrets that the report of the State party did not provide information on the measures taken to give effect to the provisions of article 3 of the Convention (art. 3).

The Committee requests that the State party include in its next periodic report information on the legislative, judicial, administrative or other measures taken to prevent, prohibit and eradicate de facto racial segregation. The Committee also advises the State party to ensure that its social housing programme does not result in a situation of residential de facto racial segregation. In this regard, the Committee refers the State party to its general recommendation No. 19 (1995) on racial segregation and apartheid.

D. Other recommendations**Ratification of other treaties**

25. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the 1990 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to Durban Declaration and Programme of Action

26. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Amendment to article 8 of the Convention

27. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Declaration under article 14

28. The Committee encourages the State party to make the declaration under article 14 recognizing the competence of the Committee to receive and consider individual complaints.

Consultation with organizations of civil society

29. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights

protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

30. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

31. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 11 and 12 above.

Paragraphs of particular importance

32. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 18, 20 and 21 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

33. The Committee recommends that the State party submit its twentieth to twenty-second periodic reports in a single document by 29 June 2015, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (s HRI/GEN.2/Rev.6, chap. I, para. 19).
