



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Seventy-eighth session

14 February–11 March 2011

Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Cuba

1. The Committee on the Elimination of Racial Discrimination considered the fourteenth to eighteenth periodic reports of Cuba, submitted in a single document (CERD/C/CUB/14-18), at its 2055th and 2056th meetings (CERD/C/SR.2055 and 2056), held on 16 and 17 February 2011. At its 2077th meeting (CERD/C/SR.2077), held on 3 March 2011, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party and the opportunity thus offered to resume its dialogue with the State party after an interval of more than 12 years. The Committee invites the State party to submit its future reports regularly and in full conformity with the guidelines for the presentation of reports (CERD/C/2007/1).

3. The Committee welcomes the presence of a large, high-level delegation and expresses its appreciation for the extensive and detailed replies given to the many questions that it asked.

B. Positive aspects

4. The Committee notes with interest the establishment of a series of commissions to analyse and study racial discrimination in Cuba, such as the Commission against Racism and Racial Discrimination of the Cuban Writers and Artists Union (UNEAC) and the inter-agency commission coordinated by the José Martí National Library.

5. The Committee also notes with interest the establishment of a coordinating group under the direction of the Central Committee of the Communist Party of Cuba to examine the issue of race and propose relevant actions.

6. The Committee welcomes the programme of activities for 2011 in commemoration of the International Year for People of African Descent (resolution 64/169 of 18 December 2009).

7. The Committee is pleased that the State party is participating, through the Fernando Ortiz Foundation, in the Slave Route Project that the United Nations Educational, Scientific and Cultural Organization (UNESCO) has been carrying out since 1994.

8. The Committee, aware of the economic obstacles facing the country, notes with appreciation the advances that it has made towards achieving the Millennium Development Goals and is pleased to see that several of the targets have already been reached and that significant progress has been made towards attaining others.

C. Concerns and recommendations

9. The Committee regrets that the information contained in the State party's periodic report is not sufficiently specific and, in particular, that information on the practical implementation of national legislation on racial discrimination is lacking.

The Committee wishes to remind the State party that the periodic reports to be submitted under article 9 of the Convention should reflect in all their parts the actual situation as regards the practical implementation of the Convention and should include information on progress achieved during the reporting period (CERD/C/2007/1, para. 6).

10. The Committee regrets that it has not received information on proceedings initiated or sentences handed down during the reporting period for the commission of acts that run counter to the Convention, as provided for by article 295 of the Criminal Code. While the Committee takes note of the delegation's explanations about the mandate and functions of the Office of the Attorney General of the Republic, it remains concerned by the lack of reported cases, prosecutions and convictions relating to acts of racial discrimination during the reporting period (art. 6).

In reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the absence of cases may be due to the victims' lack of information about the existing remedies, and it therefore recommends that the State party ensure that national legislation contains appropriate provisions regarding effective protection and remedies against violation of the Convention and that the public at large is properly informed about their rights and the legal remedies available if those rights are violated.

11. The Committee notes with concern that the State party's criminal legislation does not classify racial motivation as an aggravating circumstance with regard to criminal responsibility (arts. 4 and 6).

The Committee recommends that the State party amend its legislation to make racial motivation an aggravating circumstance in the commission of crimes.

12. The Committee takes note of article 120 of the Criminal Code, which provides for punishments of from 10 to 20 years' imprisonment or the death penalty for the crime of apartheid (art. 4).

While it notes with appreciation the classification of apartheid as a criminal offence, the Committee invites the State party to consider the possibility of abolishing the death penalty or, failing that, to formalize the current de facto moratorium on the death penalty.

13. The Committee notes that the State party has still not made plans to establish an independent body to monitor, supervise and assess the progress made in combating racism and racial discrimination, identify manifestations of indirect discrimination and submit proposals for improvements (art. 2, para. 1).

The Committee encourages the State party to set up such an independent body or to establish an independent national human rights body, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, adopted by the General Assembly in its resolution 48/134 of 20 December 1993, annex).

14. While the Committee notes the State party's opinion that "racial prejudices have little place in today's Cuba" and are "expressed mostly in the most intimate areas of life, usually in the relations between couples", it remains concerned by the prevalence of deeply rooted negative racial stereotypes and prejudices and by their sexist dimension (arts. 5 and 7).

The Committee encourages the State party to continue its efforts to put an end to racial stereotypes and prejudices, particularly through awareness campaigns and public education programmes in schools and in the workplace. The Committee urges the State party to ensure that the media avoids stereotypes based on racial discrimination.

The Committee reminds the State party of the need to mainstream a gender perspective into all policies and strategies for combating racial discrimination in order to counteract the multiple forms of discrimination to which women may be subject, bearing in mind general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

15. While noting the State party's efforts to increase representation of the black and mestizo population in public service positions, the Committee is aware of the difficulty of identifying policies that might successfully rectify the situation of groups that historically have been excluded as a result of the combined effects of racial discrimination and economic deprivation (art. 2, subparas. 1 (a) and (b)).

The Committee welcomes the special measures and affirmative action taken to improve representation of the population of African descent within public service and State enterprises and encourages the State party to step up its efforts to this end, taking into account the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures.

The Committee urges the State party to actively monitor the incidence of racial discrimination in those segments of the population where levels of exclusion or economic marginalization remain high.

16. The Committee takes note of the information provided by the delegation on measures adopted by the State party to combat trafficking in human beings, particularly trafficking in women and children for the purpose of sexual exploitation, but regrets the lack of information on the scale of the domestic trafficking problem and its incidence among the population of African descent (art. 5, subpara. (b)).

The Committee requests that the State party include in its next periodic report detailed information, disaggregated by sex, age, ethnic group and nationality of the victims, on the number of investigations, convictions and sentences handed down in cases of trafficking in human beings for purposes of sexual or labour exploitation.

17. The Committee takes note of information provided by the delegation which indicates that the Cuban authorities are close to concluding their study of the Protocol to Prevent,

Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) (art. 5, subpara. (b)).

The Committee encourages the State party to accelerate its ratification procedures in respect of the Palermo Protocol.

18. The Committee takes note of the information provided by the delegation on current initiatives to amend the legislation governing migration (Act No. 1312 on Migration and Act No. 1313 on the Status of Foreigners, both of 1976) and the 1948 Citizenship Act. It regrets, however, the fact that very little official information is available on irregular immigration in the period under consideration and, in particular, arrivals of Haitian boat people and their subsequent repatriation under the Tripartite Memorandum of Understanding signed by Cuba, Haiti and the International Organization for Migration (IOM) in February 2002 (art. 5, subparas. (d) and (e)).

The Committee recommends that the State party amend its legislation on migration and the status of foreigners and its laws on citizenship without delay in order to prevent statelessness.

In accordance with general comments No. 11 (1993) and No. 30 (2004) on non-citizens, the Committee urges the State party to guarantee respect for the rights and freedoms of non-citizens present in Cuban territory, regardless of whether or not they have documentation or whether their status is regular or irregular.

19. The Committee is concerned about the lack of an enabling legal framework for the local integration of persons present in Cuban territory who require international protection (art. 5, subparas. (d) and (e)).

The State party should adopt the legislative and administrative measures necessary to guarantee protection for refugees, asylum-seekers and stateless persons.

The Committee strongly encourages the State party to consider the possibility of ratifying the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

20. The Committee takes notes with concern of the explanation provided by the State party in relation to the application of article 215 of the Criminal Code, which establishes that illegal entry into Cuban territory is a criminal offence and that border control personnel “shall return all persons who attempt to enter the country without satisfying immigration requirements” (art. 5).

The Committee would like to have additional information on the mechanisms in place to ensure that decisions concerning the return or expulsion of foreigners at Cuban borders conform to the standards and principles established in international human rights law, in particular the principle of non-discrimination.

21. The Committee urges the State party to ratify the international human rights treaties that it has not yet ratified, particularly those instruments that are directly related to racial discrimination, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of which were signed by Cuba in February 2008, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

22. In the light of its general comment No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when the State party incorporates the Convention into its domestic legal order, it give effect to the Durban Declaration and Programme of Action, approved in September 2001 at 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. The Committee requests that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action in the country.

23. 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 of 16 December 1992. In this connection, the Committee refers to General Assembly resolution 61/148 of 19 December 2006 and to General Assembly resolution 63/243 of 24 December 2008, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

24. The Committee recommends that the State party continue its consultations and expand its dialogue with civil society organizations working to protect human rights, particularly those working to combat racial discrimination, in connection with the preparation of its next periodic report.

25. Noting that the State party submitted its core document (HRI/CORE/1/Add.84) in June 1997, the Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those relating to preparation of the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (see HRI/GEN/2/Rev.4, first section).

26. The Committee encourages the State party to consider the possibility of making the optional declaration provided for in article 14 of the Convention whereby it would recognize the competence of the Committee to receive and consider communications from individuals.

27. 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 10, 14 and 20 above.

28. The Committee wishes to draw the State party's attention to the particular importance of the recommendations contained in paragraphs 11 through 13 and requests that the State party provide detailed information in its next periodic report on the specific measures taken to act upon these recommendations.

29. The Committee recommends that the State party submit its nineteenth to twenty-first periodic reports in a single document by 16 March 2013 at the latest and notes that, in preparing those reports, it should follow the guidelines for the Committee-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1) and that it should address all of the points raised in the present concluding observations. The Committee also urges the State party to observe the 40-page limit for treaty-specific reports and the 60–80 page limit for the common core document (see the harmonized guidelines on reporting contained in document HRI/GEN/2/Rev.6, para. 19).
