



# 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 combined nineteenth to twenty-first periodic reports of Cuba\*

1. The Committee considered the combined nineteenth to twenty-first periodic reports of Cuba, submitted in a single document (CERD/C/CUB/19-21), at its 2660th and 2661st meetings (CERD/C/SR.2660 and 2661), held on 15 and 16 August 2018. At its 2676th and 2677th meetings, held on 28 and 29 August 2018, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the State party's combined nineteenth to twenty-first periodic reports as a single document. The Committee expresses its satisfaction at the frank and open dialogue that it held with the delegation of the State party and welcomes the additional information provided during the dialogue.

#### B. Positive aspects

3. The Committee expresses its satisfaction at the ratification in June 2013 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

4. The Committee notes the legislative measures adopted by the State party during the period under consideration, in particular:

(a) The adoption of the Labour Code, Act No. 116, of December 2013, which introduced a ban on discrimination, including discrimination based on "colour, gender, religious beliefs, sexual orientation, place of origin, disability or any other differentiation detrimental to human dignity" (art. 2 (d));

(b) The adoption of Decree-Law No. 302 of October 2012, amending the Migration Act, Act No. 1312.

5. The Committee also welcomes the efforts made by the State party to give greater prominence to the subject of racial discrimination, particularly with the adoption of the action plan for the International Year for People of African Descent and the national programme to implement it, which will include awareness-raising and exchange activities on the subject of racial discrimination and its social impact.

6. The Committee welcomes the fact that, despite the economic, commercial and financial blockade, the State party has succeeded in establishing a universal education and

\* Adopted by the Committee at its ninety-sixth session (6–30 August 2018).



health system and extending social protection coverage to the whole of the population, including people of African descent.

## C. Concerns and recommendations

### Application of the Convention

7. The Committee notes that, under the legislation of the State party, international treaties take precedence over domestic law. It regrets, however, that the State party has not provided information on cases in which the Convention has been directly applied by the courts (art. 2).

8. **The Committee recommends that the State party adopt appropriate measures, such as training, to ensure that judges, prosecutors and lawyers know the provisions of the Convention and are able to apply them in relevant cases. The Committee requests that, in its next periodic report, the State party include specific examples of cases in which the Convention has been applied by the domestic courts.**

### Demographic composition of the population

9. The Committee takes note of the action taken by the State party to introduce the ethno-racial variable in the section on self-identification in the most recent population and housing census, conducted in 2012. It is, however, concerned that the methodology used did not make it possible to obtain objective information that faithfully reflected the ethnic composition of the population of the State party (art. 2 (1)).

10. **The Committee recommends that the State party review the data-collection methodology that it uses in population and housing censuses, with a view to ensuring that the methodology is based on the criterion of self-identification. Census questions should be formulated in consultation with the population of African descent and should be able properly to reflect the ethnic composition of the population. The Committee also urges the State party to intensify its efforts to compile reliable, up-to-date and complete statistical data on the demographic composition of the population and to develop human rights and socioeconomic indicators, disaggregated by ethnic origin, gender, age, region and urban or rural area, including the most remote, that will ultimately give it a proper empirical basis for the development of policies aimed at improving the enjoyment of the rights set out in the Convention. The Committee refers the State party to its general recommendations No. 4 (1973) concerning reporting by States parties, No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention and No. 30 (2005) on discrimination against non-citizens, along with Sustainable Development Goal 10.**

### National human rights institution

11. The Committee remains concerned at the absence of a national institution responsible for the protection and promotion of human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

12. **The Committee reiterates its previous recommendation (see CERD/C/CUB/CO/14-18, para. 13) and urges the State party to establish an independent national human rights institution, in accordance with the Paris principles, with the mandate of promoting and protecting human rights and monitoring action against racism and racial discrimination. The Committee refers the State party to its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention.**

### Situation of human rights defenders

13. The Committee is deeply concerned about allegations of harassment, assault, intimidation, threats, disqualification and criminalization directed against human rights defenders, particularly leaders of civil society, journalists, media professionals and human

rights defenders working against racial discrimination and for the human rights of people of African descent. The Committee is concerned that, according to reports received, human rights defenders and leaders of civil society who defend the rights of people of African descent have on repeated occasions been detained for short periods of time or been prevented from leaving the country to attend meetings organized by international human rights mechanisms. In particular, the Committee notes with concern information received concerning the travel restrictions placed on human rights defenders, preventing them from participating in the Committee's consideration of the report submitted by the State party. The Committee regrets that the State party does not acknowledge that these events occurred and has accordingly taken no measures to investigate or prevent them (arts. 2 and 5).

**14. The Committee urges the State party to:**

**(a) Adopt effective and timely measures to prevent acts of harassment, assault, intimidation, threats, disqualification and criminalization against human rights defenders, in particular against leaders of civil society, journalists, media professionals and human rights defenders who work against racial discrimination and for the human rights of people of African descent;**

**(b) Establish an independent national mechanism for the protection of human rights defenders, institute appropriate prevention strategies and provide for the allocation of sufficient human, financial and technical resources for its effective functioning;**

**(c) Investigate all acts of harassment, assault, intimidation, threats, disqualification and criminalization against human rights defenders and duly punish those responsible;**

**(d) Adopt the necessary measures to ensure that human rights defenders, particularly leaders of civil society and human rights defenders who work against racial discrimination and for the human rights of people of African descent, are not subjected to arbitrary restrictions that prevent them from attending and participating in meetings and activities conducted by international human rights mechanisms;**

**(e) Conduct information and awareness-raising campaigns on the essential work carried out by human rights defenders, with a view to fostering a safe environment that is conducive to their carrying out their work, free of any kind of intimidation, threats, attacks or reprisals.**

**Definition of racial discrimination**

15. The Committee observes that the State party has included in its legislation provisions prohibiting racial discrimination and notes that the process of drawing up a new Constitution and a new Criminal Code is currently under way. It is, however, concerned that provisions contained in the current legislation and in the draft Constitution are not in full conformity with article 1 of the Convention and do not cover acts of direct or indirect discrimination (arts 1 (1) and 2 (1) (d)).

**16. The Committee recommends that the State party review the legal provisions prohibiting racial discrimination in the current legislation and ensure that, in drawing up a new Constitution and Criminal Code, it include a definition and a clear and explicit prohibition of racial discrimination that incorporates all the requirements and elements contained in article 1 (1) of the Convention, and, in addition, address acts of direct or indirect discrimination. The Committee recommends that, in drawing up the new Criminal Code, the State party classify as offences the activities set out in article 4 of the Convention, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech. The Committee also reiterates its previous recommendation and urges the State party to ensure that racial motivation, or motivation based on colour, descent or national or ethnic origin, is considered an aggravating circumstance when penalties are imposed for an offence.**

### **Discrimination against people of African descent**

17. The Committee takes note of the State party's interpretations as regards the non-existence of institutional and structural discrimination in the State party. Nonetheless, it considers that, as a result of the historical legacy of slavery, people of African descent in the State party continue to be the victims of racism and structural discrimination, as evidenced by the inequality gap in the exercise of their economic, social and cultural rights by comparison with the rest of the population. The Committee is concerned at the challenges faced by people of African descent in gaining access to the labour market, their low rates of representation in decision-making positions, in both the public and the private sector, and the poverty levels that affect them disproportionately (arts. 2 and 5).

18. **Taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party intensify its efforts to adopt and implement the special measures required to put an end to the structural discrimination that affects the population of African descent, with a view to, inter alia:**

(a) **Improving the living conditions of this population by guaranteeing it protection against discrimination by State bodies and public officials or by any individual, group or organization;**

(b) **Eliminating all obstacles that impede the effective enjoyment by this population of its economic, social and cultural rights, especially in the areas of work, housing, political participation and representation in decision-making positions;**

(c) **Combating the poverty, social exclusion and marginalization that disproportionately affect the population of African descent.**

19. Although the Committee welcomes the information provided during the dialogue on the drafting of a national plan on the eradication of all forms of racial discrimination, it regrets not having received information on the impact and the practical results of the implementation of the social programmes and the multisectoral policy to eliminate any remaining vestiges of racial discrimination (arts. 2 and 5).

20. **The Committee recommends that the State party intensify its efforts to draw up a national plan on the eradication of all forms of racial discrimination, ensuring that it contains clear and specific goals and mechanisms for assessing results, and provide for the allocation of the human, technical and financial resources required. The Committee urges the State party to ensure that both the drafting and the implementation of the plan are conducted with the effective participation of the population of African descent and of all those groups of national or ethnic origin who continue to face discrimination and social exclusion.**

### **Access to justice**

21. While the Committee takes note of the information provided on efforts to increase the number of avenues and mechanisms for channelling complaints relating to racial discrimination, it is concerned by the fact that, to date, only one case of racial discrimination has been brought before the courts and by the lack of information on cases that have been reported and investigated (arts. 2 and 6).

22. **The Committee reminds the State party that the absence of judicial proceedings and convictions for acts of racial discrimination may be due to the victims being unaware of existing legal remedies. The Committee therefore recommends that the State party:**

(a) **Ensure that all complaints relating to racial discrimination are investigated thoroughly and independently;**

(b) **Adopt effective measures to ensure that all victims of racial discrimination have easy access to timely and effective legal remedies and to compensation;**

(c) **Conduct regular training for public officials, prosecutors, judges, magistrates and law enforcement personnel to ensure the effective implementation of the Convention and of legislation concerning racial discrimination;**

(d) **Enable the public prosecution service to act ex officio in criminal cases involving racial discrimination;**

(e) **Organize campaigns to raise awareness among persons protected under the Convention of its provisions and the legal framework providing protection against racial discrimination;**

(f) **Introduce tools for accessing information on crime and violence, including the variables of the victims' colour, national origin or ethnic origin or any other relevant variable of intersectional discrimination.**

#### **Prison population**

23. The Committee regrets the lack of comprehensive information on the ethnic or national origin of persons deprived of their liberty (arts. 2 and 6).

24. **The Committee recommends that the State party ensure that the variable of ethnic or national origin or descent is used in detention registers as a means of obtaining reliable information on the prison population and requests that it provide such information in its next report.**

#### **Multiple forms of discrimination against women**

25. The Committee is concerned at reports describing the multiple forms of discrimination that women of African descent continue to face in the State party, as they encounter greater obstacles in obtaining access to the labour market, opportunities for political participation and representation and decision-making positions (art. 5).

26. **The Committee recommends that the State party, bearing in mind the Committee's general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination, mainstream a gender perspective in all policies and strategies to combat racial discrimination as a way of addressing the multiple forms of discrimination affecting women of African descent. The Committee also recommends that the State party redouble its efforts to eliminate the structural barriers preventing women of African descent from obtaining access to the labour market, opportunities for political participation and representation and decision-making positions.**

#### **Return of migrants in an irregular situation**

27. Notwithstanding the information provided by the delegation during the dialogue, the Committee remains concerned about the adverse effects of the application of article 215 of the current Criminal Code, which criminalizes illegal entry into the national territory, as it pertains to the return of migrants in an irregular situation (art. 5).

28. **The Committee recommends that the State party, in drafting its new Criminal Code, consider eliminating the offence of illegal entry into the national territory and take the steps necessary to ensure that the provisions relating to the return of foreign nationals are in conformity with the standards and principles of international human rights law, in particular the principle of non-discrimination.**

#### **Trafficking in persons**

29. The Committee notes with satisfaction the measures taken by the State party to combat trafficking in persons, including the adoption of the 2017–2020 National Action Plan to Prevent and Combat Trafficking in Human Beings and to Provide Protection for Victims. However, the Committee regrets the lack of information disaggregated by sex, age, ethnic group and nationality of the victims that prevents it from assessing the extent of this phenomenon among the population of African descent or of other ethnic or national origins (art. 5).

30. **The Committee recalls its previous recommendation and requests that the State party include in its next periodic report information disaggregated by sex, age, ethnic group and nationality of the victims and on the number of investigations conducted, convictions obtained and sentences imposed in cases of trafficking in human beings for purposes of labour or sexual exploitation. The Committee encourages the State party to pursue its efforts to combat trafficking in persons and to take all measures necessary to ensure the effective implementation of the 2017–2020 National Action Plan to Prevent and Combat Trafficking in Human Beings and to Provide Protection for Victims.**

#### **Excessive use of force**

31. The Committee is concerned about allegations of excessive use of force by law enforcement officials against people of African descent and about the lack of adequate information on the steps taken by the State party to investigate such cases (arts. 5 and 6).

32. **The Committee recommends that the State party:**

(a) **Take effective steps to prevent the excessive use of force, ill-treatment and abuse of authority by law enforcement officials against persons of African descent by ensuring respect for the principle of proportionality and strict necessity in the use of force and conducting training on the use of force and the restoration of law and order using conventional means;**

(b) **Ensure that all complaints of excessive use of force, ill-treatment and abuse by law enforcement officials are effectively and thoroughly investigated and that, where substantiated, the perpetrators are prosecuted and punished, taking into account the gravity of such acts;**

(c) **Ensure that persons of African descent who have been victims of excessive use of force by law enforcement officials have access to effective remedies and to compensation, and that they do not face reprisals for having lodged a complaint.**

#### **Combating racial stereotypes**

33. While the Committee recognizes the State party's efforts to combat racial discrimination, it is concerned that these efforts have not been sufficiently effective in combating the racial stereotypes and prejudices that remain entrenched in Cuban society (arts. 2 and 7).

34. **The Committee encourages the State party to conduct regular public awareness-raising and educational campaigns on the pernicious effects of racial discrimination and to promote understanding and tolerance among the groups from different ethnic or national backgrounds present in the State party with the aim of combating racial stereotypes and all forms of discrimination.**

### **D. Other recommendations**

#### **Ratification of other treaties**

35. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying the fundamental United Nations human rights treaties to which it is not yet a party, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.**

### **Follow-up to the Durban Declaration and Programme of Action**

36. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party, when incorporating the Convention into its domestic legislation, bear in mind the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party provide, in its next periodic report, specific information in this connection.

### **International Decade for People of African Descent**

37. In the light of General Assembly resolution 68/237 declaring 2015–2024 the International Decade for People of African Descent and resolution 69/16 on the programme of activities for the implementation of the International Decade, the Committee recommends that the State party include, in its next periodic report, specific information on the implementation of the action plan for the International Year for People of African Descent and on the practical measures taken in this connection, bearing in mind the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

### **Dissemination of information**

38. The Committee recommends that the State party make its reports available to the public as soon as they are submitted and that it disseminate widely the present concluding observations.

### **Consultation with civil society organizations**

39. The Committee recommends that the State party step up its efforts to establish constructive cooperation with civil society human rights organizations, in particular those working to combat racial discrimination, and that it hold broad consultations in preparing its next periodic report and in its follow-up to the present concluding observations.

### **Declaration under article 14 of the Convention**

40. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

### **Follow-up to the present concluding observations**

41. In accordance with article 9 (1) of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests that the State party provide information, within one year following the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 14 (d) and (e) (situation of human rights defenders), 20 (plan for combating racial discrimination) and 22 (c) and (f) (access to justice).

### **Paragraphs of particular importance**

42. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 16 (definition of racial discrimination), 18 (discrimination against people of African descent) and 32 (excessive use of force) and requests that, in its next periodic report, the State party provide detailed information on the specific measures taken to implement them.

### **Preparation of the next periodic report**

43. The Committee recommends that the State party submit its combined twenty-second to twenty-sixth periodic reports in a single document by 16 March 2023, taking into account the reporting guidelines adopted by the Committee at its seventy-first

**session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**

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