



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
16 August 2013
English
Original: French

Committee on the Elimination of Racial Discrimination Sixty-fifth session

Summary record of the 1644th meeting

Held at the Palais des Nations, Geneva, on Monday, 2 August 2004, at 3 p.m.

Chairperson: Mr. Yutzis

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Tenth to eighteenth periodic reports of Madagascar (CERD/C/476/Add.1; HRI/CORE/1/Add. 31/Rev.1)

1. *At the invitation of the Chairperson, the members of the delegation of Madagascar took places at the Committee table.*
2. **Ms. Rambeloson** (Madagascar) said that the preparation of reports represented a significant financial burden for developing countries, which explained why Madagascar, which had ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 7 February 1969, had not submitted any reports to the Committee since 1986, while still respecting its international commitments — as demonstrated by the progress made in the combat against discrimination during that period.
3. **Mr. Rakotoniana** (Madagascar) said that Madagascar was a multi-ethnic state of 17 million people, in which the 18 principal ethnic groups coexisted with other population groups including Indians, Chinese and Europeans, more recent immigrants from Asia (Indonesia, Malaysia) and East Africa, and Arab immigrants.
4. Madagascar had incorporated various international human rights instruments into the preamble to its 1992 Constitution, including the International Bill of Human Rights and the African Charter on Human and Peoples' Rights; article 40 of the Constitution laid down the principle of the promotion and protection of human rights. The country had set up several legal and administrative bodies to deal with human rights issues, in particular the Office of the Ombudsman (Médiateur) and the National Human Rights Commission. Malagasy law also provided for the possibility of lodging complaints and obtaining compensation in the event of violation of the rights set out in the Convention, the provisions of which were directly applicable under domestic law.
5. The Act of 29 December 1989 prohibited political organizations or parties which called into question, directly or indirectly, the unity of the nation or which advocated totalitarianism or ethnic, racial or tribal segregation.
6. Madagascar had also ratified, on 16 May 1986, the International Convention on the Suppression and Punishment of the Crime of Apartheid and had participated in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001. Madagascar had had no diplomatic or economic relations with South Africa during the apartheid era.
7. With a view to the elimination of all forms of racial discrimination, Madagascar had defined as criminal behaviour (article 115 of the Criminal Code; article 14 of the Constitution; article 75 of the law on communications) any dissemination of ideas which were founded on the superiority of one race or one group of people or which encouraged or justified any form of hatred or discrimination based on racial or ethnic origin, among others. Likewise, the Constitution recognized the right of all Malagasy citizens to vote or to be elected, without distinction as to race or ethnic origin.
8. Equal access to justice was also guaranteed by law, and state-funded, free-of-charge legal assistance in criminal cases was provided for anyone unable to pay for a lawyer.
9. Also worthy of note was the recent establishment of a new mechanism for the defence and protection of human rights, the High Council to Combat Corruption, which heard complaints in that area and whose role was to settle differences out of court. Failing that, the Council could refer complainants to the competent legal bodies such as the

criminal court, since the Council lacked the competence to conduct an investigation of the complaints brought before it.

10. Madagascar had no displaced persons on its territory but was hosting 40 refugees from member countries of the African Union, who were being sponsored by the United Nations Development Programme (UNDP).

11. As part of its combat against unequal access to employment, Madagascar had ratified 35 International Labour Organization (ILO) conventions and had set up, within the ministry department for employment and social welfare, several bodies responsible for protecting the rights of all workers, including the National Employment Council and the regional employment councils, which ensured that there was no discrimination with regard to social benefits.

12. Madagascar had instituted free and compulsory primary education for all, without distinction as to race, or ethnic or racial origin, and had made human rights education compulsory at all levels of instruction in order to disseminate human rights principles as widely as possible. Training was provided to that end to law enforcement officials — judges, lawyers and police officers.

13. The report had been drafted in cooperation with non-governmental organizations (NGOs) and civil society, testimony to the Government's willingness to broaden the debate and do everything possible to ensure respect for, and promotion and protection of, human rights, with a view to eliminating discrimination in all its forms, in particular racial discrimination.

14. **Mr. Amir** (Rapporteur for Madagascar) noted with satisfaction that Madagascar had renewed its dialogue with the Committee and that since 2002 the Government had been working to end the serious political crisis that had shaken the country, by encouraging national reconciliation and striving to eliminate all forms of racial discrimination and other sources of tension.

15. Some positive aspects were that persons of Indo-Pakistani, Chinese, Comorian and French origin had been elected to the Parliament, and legislation facilitating foreigners' access to land ownership had been adopted in 2003. In the cultural and social arena, the Office of Mass and Civic Education was endeavouring to promote human rights education by focusing on the combat against racial discrimination. The creation of the National Human Rights Commission, in 1996, and the High Council to Combat Corruption, in 2003, were other encouraging signs.

16. In the area of employment, the Act of 3 September 2003 prohibited any discrimination within the public service based on sex, religion, opinion, financial situation, political beliefs or membership in a trade union.

17. Under the Malagasy penal framework, any act of racial discrimination as defined by the Convention was punishable by law. The organization of continuing education sessions for law enforcement officials was a significant advance.

18. With regard to article 5 of the Convention, Madagascar hosted refugees on its territory but had not ratified the 1951 Convention relating to the Status of Refugees. With regard to article 6, Madagascar affirmed that it ensured effective protection and remedies to everyone within its jurisdiction. Under article 115 of the Criminal Code, the denial of a person's rights on grounds of race, colour, ethnic identity or origin, and incitement to discrimination or hatred were punishable offences. Madagascar was also considering a revision of its legislation to harmonize it with article 6 of the Convention in order to prevent all practices of racial discrimination.

19. The failure to define the concept of “minority” clearly in the report was a matter of concern. Furthermore, what specific measures did Madagascar intend to take under article 2 of the Convention to eliminate all forms of racial discrimination and promote understanding between races? The report described the competent judicial institutions in the area of human rights protection, but failed to provide any information on how perpetrators of violations were punished and their victims compensated. It was regrettable that Madagascar had still not made the declaration under article 14 of the Convention and had not ratified certain fundamental international treaties such as ILO Convention No. 169 (1989) concerning indigenous and tribal peoples and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

20. The situation of children remained worrying. Child exploitation and child labour, children living in the streets and not going to school, and the detention of children were unacceptable. Moreover, neither the Constitution nor the law set forth the conditions under which boys could be recruited into the Malagasy army, including the minimum age required.

21. With regard to gender equality, article 8 of the Constitution provided that all citizens were equal before the law, yet the minimum age for marriage was 17 years for boys and only 14 years for girls. Furthermore, by law, education was compulsory up to age 17 for boys only, a flagrant violation of the principle of non-discrimination.

22. **Mr. Sicilianos** welcomed the fact that the report under consideration had been prepared by a drafting committee which had included NGOs and that individuals of foreign origin were members of Parliament. He requested more detailed information on discrimination against foreigners, to which reference was made in paragraph 20 of the report. There was a dearth of information on positive measures benefiting minorities as recommended in article 2 of the Convention, and on article 4(b) of the Convention. The delegation might also wish to explain why the State party had not ratified the Convention relating to the Status of Refugees and had prohibited ethnic groups from establishing their own associations. Additional information on the competencies of the Ombudsman and the National Human Rights Commission would be welcome.

23. **Mr. Valencia Rodríguez** welcomed the important measures taken by Madagascar to promote the defence of and respect for human rights, but pointed out that the exclusion of children without birth certificates was a problem that should be remedied immediately.

24. It would be useful to know the precise outcome of the training on basic aspects of human rights provided to judges, lawyers, prison officials and other law enforcement officers. Malagasy authorities should also entrust the Ombudsman and the National Human Rights Commission with the authority to investigate the complaints brought before them.

25. Some ethnic groups migrated with the seasons in order to find work. It would be useful in that regard to have more information about the situation of members of the Betsileo and Merina ethnic groups, particularly in terms of equality of salaries and access to health services and social benefits, and to know whether members of those groups had the right to establish or join a union.

26. The delegation might also wish to clarify whether the laws promulgated in 2003, which authorized foreigners to acquire real estate, applied to all foreigners or solely to those who had become citizens. Additional information concerning the situation of ethnic minority groups that were disadvantaged with regard to the right to housing would also be appreciated.

27. Inequalities also existed with regard to the right to work and the right to education and it was particularly important to recommend to the authorities that they should improve educational infrastructures, especially in rural areas where minority groups lived, and

pursue their efforts in the field of education, one of the most effective instruments in the combat against poverty.

28. **Mr. Avtonomov** applauded the State party for entrusting a committee composed of members of government, civil society representatives, and NGOs from the six autonomous provinces with the task of drafting the periodic reports submitted in application of international human rights instruments. Incidentally, the delegation might wish to provide more detail on the matter of the autonomous provinces and to clarify whether that status was linked to the different ethnic groups living in those provinces. He welcomed the fact that the State party acknowledged the existence of serious economic and social difficulties resulting from the political troubles, and of problems linked to tribalism and social exclusion, and that it was determined to address them.

29. The National Human Rights Commission, the exact composition of which was not known, appeared now to have no more than a theoretical existence, owing to a lack of genuine expertise. In Madagascar, nationality was granted automatically only in the case of a child born to a Malagasy father. What was the status of children born in the territory but without Malagasy nationality and how could it be obtained?

30. **Mr. Thornberry** requested more details about the law by virtue of which no political party or organization could continue to exist if its goals directly or indirectly tended to jeopardize the unity of the nation or stemmed from a segregationist platform of an ethnic, tribal or sectarian nature.

31. The disparities in health care demands could not, contrary to what was stated in the report, be explained by geography alone but might also be determined by ethnic or racial origin.

32. In the field of education, the State party's strategy to combat poverty made education a top priority and emphasized the importance of taking account of the country's moral and cultural values in programme execution, which could only be applauded; it would nevertheless be interesting to know whether that particular cultural identity was the only one on which the strategy focused.

33. The use of the principle of *fihavanana*, a combination of tolerance and conviviality, to combat discrimination based on race and ethnic origin was very interesting, as was the settlement of differences of that kind by the customary authorities.

34. **Mr. Kjaerum** said that the Amnesty International report for 2004 claimed that acts of violence had been committed against persons of Merina origin in the autonomous provinces and that members of that community, as well as members of the Indo-Pakistani community, had been subjected to acts of vandalism. The views of the Malagasy Delegation on that matter would be welcome.

35. The delegation might also clarify whether, under the law governing civil servants, Malagasy nationality was the basic requirement for recruitment into government service, even for low-ranking posts.

36. **Mr. Tang** said that the many detailed tables contained in Madagascar's periodic report made it possible to get a clear picture of the situation; he nevertheless regretted the absence of information on the ethnic composition of the population.

37. What sanctions were applicable in the case of racist acts? Malagasy law appeared to grant the victims the right to compensation for damages, but the report under consideration failed to give any specific examples of cases of compensation. It would be helpful if the delegation were to provide more details on that matter and if Madagascar's next report were to provide the missing information.

38. **Mr. de Gouttes** said that the situation in Madagascar had significantly improved since 2002 and the resolution of the political crisis. The discrimination that persisted was more economic than ethnic or racial and the main problems to be solved were to guarantee the enjoyment by all of economic and social rights and to eliminate poverty. The delegation had provided interesting explanations regarding the measures taken by the authorities in the areas of medical care, the combat against AIDS, social benefits, and education, but in future, it would be important to ensure the effective monitoring of the implementation of all those measures.

39. The situation of certain minorities nevertheless remained problematic, as did the situation of rural populations and the most underprivileged sectors of the population. According to some sources, members of the Indian community had been victims of vandalism, and many cases of political, social, cultural and ethnic exclusion persisted. He would appreciate hearing the delegation's views on that matter.

40. The report under consideration contained very useful information, in particular on the penal law provisions that criminalized acts of racism and discrimination, and Malagasy law appeared to be comprehensive in that regard, although criminalization of racist organizations did not seem to be part of the legal arsenal. The rules of customary conciliation under the authority of the customary chiefs appeared to play an important role in the resolution of inter-ethnic conflicts, as did the principle of traditional social conviviality, the *fihavanana*. More information about that principle would be welcome.

41. The report failed to provide details about the ethnic composition of the population and the core document noted only that the State party had 18 ethnic groups; the next periodic report should provide that missing information. Furthermore, since neither the Constitution nor the civil service regulations contained a definition of racial discrimination, he wondered whether the State party planned to incorporate the wording of article 1 of the Convention in its domestic law.

42. According to the report, complaints concerning racial discrimination were very rare; what measures did the Government plan to take to inform the people of their rights in respect of protection against discrimination? In particular, what role would the Ombudsman and the National Human Rights Commission play in that regard? Did the Government intend to make the declaration provided for under article 14 of the Convention?

43. **Mr. Lindgren Alves** asked whether the State party had taken steps to implement the Durban Declaration and Programme of Action. He would appreciate more information on the civil and political rights guaranteed by the Constitution, in particular the grounds on which the courts could deprive an individual of his or her right to vote. Since the State party acknowledged that the term "racial discrimination" should be included in its legislation, what specific measures had it taken to that end?

44. The delegation might also explain how the State party planned to collect information on the ethnic composition of the population given that, from the time that Madagascar had gained its independence, it had been prohibited by law to ask citizens to which ethnic group they belonged.

45. **Mr. Pillai** asked whether the term "foreign communities" used in paragraph 44 of the report applied to non-citizens living in Madagascar or to Malagasy citizens of foreign origin.

46. Inequalities in the exercise of economic, social and cultural rights were apparently linked mainly to place of residence. The delegation might therefore wish to explain how the 18 Malagasy ethnic communities were distributed and whether they lived in clearly identifiable geographical zones, because the literacy rates table contained in the report showed that disparities existed not only between urban and rural zones but also between

different rural zones. More information on the measures taken to reduce inequalities in access to health care would also be welcome.

47. It would be helpful to have more information from the delegation on the functioning and coordination of the activities of the three human rights institutions, in particular with regard to follow-up of the complaints brought before them. Could the delegation explain the meaning of the words “*investigative powers*” in the last sentence of paragraph 38 of the report?

48. With regard to freedom of expression, he wished to know whether racist organizations could be subject to the measures described in paragraph 107 of the report and whether action had already been taken under article 115 of the Criminal Code.

49. **Mr. Cali Tzay** asked whether the human rights training sessions provided to law enforcement officials, and in particular to members of the judiciary, had yielded positive results.

50. Since inequalities in the health field were, according to the report, linked to geographical distance from medical centres and not to membership in an ethnic group, he wished to know which ethnic groups lived in rural areas and how the education budget was apportioned between urban and rural zones.

51. **Mr. Boyd** wished to know whether the troubles of 2001 had been exacerbated by inter-ethnic tensions and whether the strategy described in paragraph 108 of the report had led to an improvement in the situation.

52. He asked whether the Malagasy law under which perpetrators of racist acts were subject to public prosecution or civil suits had already been invoked before the court and, in particular, whether individuals had been prosecuted following the troubles in 2001.

53. The delegation might also wish to provide information about whether the State party had set up a mechanism to inventory complaints of racial discrimination and to ensure that they were followed up, and whether it had a body that could investigate allegations of racial discrimination by law enforcement personnel.

The meeting rose at 6 p.m.