



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-fourth session

SUMMARY RECORD OF THE 1908th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 18 February 2009, at 3 p.m.

Chairperson: Ms. DAH

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial to ninth periodic reports of the Congo (CERD/C/COG/9; HRI/CORE/1/Add.79)

1. At the invitation of the Chairperson, the members of the delegation of the Congo took places at the Committee table.
2. Mr. OKIO (Congo) said that his country had adopted the principle of the universality of human rights, and that the struggle against all forms of discrimination, particularly on grounds of race, had been of fundamental importance since the Congo had achieved independence. Successive constitutions had prohibited all discrimination based on social or material situation, racial or ethnic origin, gender, education, language, religion, philosophy or place of residence. Similarly, reference to ethnicity or religion in official documents was forbidden, as were physical markings such as permanent tattoos which could denote a person's ethnic background. His Government ensured that all citizens throughout the country enjoyed the same conditions and level of development. Five years previously, a social, economic and cultural development project had been initiated to upgrade infrastructure in all regions of the country. Several health programmes had been launched for mothers and children, persons living with HIV/AIDS, victims of violence and people with disabilities. All Congolese citizens and foreigners on Congolese soil had equal access to those programmes.
3. While the Pygmy indigenous population maintained its own culture and was fully supported by the Government, some of the practices of that population did not promote good relations with the rest of the population. The Government did not tolerate such practices and encouraged the entire population to blend together. There were no territories reserved for the Pygmy people or other indigenous peoples. Measures taken to encourage social cohesion included employing indigenous people in the civil service and forestry companies, and the annual celebration of the International Day of the World's Indigenous People. Moreover, a law was being drafted to promote and protect the rights of indigenous peoples, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR).
4. Mr. MAVOUNGOU (Congo) gave an outline of the written replies (document without a symbol, available in French only). He added that the term "racial discrimination" did not exist in the Congo since everyone was considered to be Congolese. The bill relating to the promotion and protection of human rights had gained much support both domestically and internationally, and required little further work before being passed. Several civil society organizations supported the Government in its efforts to promote the rights of the indigenous peoples.
5. Mr. EWOMSAN, Country Rapporteur, recalled the Committee's concluding observations of 1999, when it had examined the situation of the Congo (A/54/18, paras. 108-115). It had noted that members of Pygmy groups continued to suffer from ethnic discrimination and had suggested that the State party should avail itself of technical assistance from OHCHR in drafting its report. That advice had been taken, leading to a frank report which contained a critical analysis of the situation with regard to racial discrimination in the State party.

6. The three civil wars in the State party between 1993 and 1999, involving armed militia, had exacerbated ethnic hatred and racial discrimination. He requested updated information on the current status of the reconciliation process and asked how the Government intended to eradicate the opposition between the north and the south of the country.

7. He requested more information on whether the National Human Rights Commission met all the conditions set out in the Paris Principles and what its role was in relation to that of the Ombudsman. He was curious about the fact that, according to the Working Group on Indigenous Populations/Communities in Africa, the Pygmy population was referred to by different names in different regions of the country, and wondered whether those names were how the Pygmies referred to themselves or simply names used by the majority population. He asked whether the State party intended to undertake a comprehensive census with a view to compiling accurate statistical data on the ethnic make-up of the country, including the non-Bantu population.

8. More information on tensions between the local population and Rwandan refugees and on the situation of refugees in general (e.g. their access to employment or naturalization) would be welcome. The State party should ensure adequate mechanisms were in place to meet the needs of refugees and adopt a law facilitating the integration of long-term refugees. It should likewise ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

9. He enquired what measures the State party intended to adopt to reduce the incidence of such infectious diseases as malaria, tuberculosis, HIV/AIDS, typhoid fever and diarrhoeal diseases, in particular among vulnerable groups including the Pygmies. Those diseases had contributed greatly to the decline in life expectancy. Noting the generally poor standard of living of the population, the need to import food and lack of access to drinking water, he asked what measures the State party envisaged to reduce disparities in the economic and social situation of the population, especially between rural and urban areas. He wondered whether the fact that the Pygmy population basically left their children to fend for themselves from the age of 10 was due to a lack of resources which prevented them from meeting their children's needs, and whether the State party intended to address that situation.

10. He welcomed the fact that international treaties, including the Convention, had constitutional status and could be invoked before domestic courts, but stressed the need to implement legislation and regulations to make that right effective and the need for criminalization of discrimination under the Criminal Code in order to allow prosecutions. The State party must likewise adopt the broad definition of discrimination contained in the Convention, in particular with regard to the notion of race.

11. More must be done to protect the indigenous population, who were often considered subhuman and discriminated against or used as slaves in some regions and, according to the Congolese Human Rights Monitoring Centre (OCDH), rarely had identity papers. They had little access to justice and their traditional systems of justice were not recognized. Pygmy women suffered double discrimination as members of a minority and as victims of sexual violence at the hands of both fellow Pygmies and Bantus. The leaders chosen by the indigenous population and the indigenous population's land rights should be recognized by the State. The delegation should

provide information on efforts to work with the indigenous peoples to protect their land rights, promote their right to manage and exploit their land, and provide compensation to them when deprived of their ancestral lands.

12. He welcomed the holding of a workshop on indigenous rights organized in cooperation with the OCDH and attended by representatives of the Government, NGOs, women lawyers, etc. He looked forward to early adoption of the bill on the promotion and protection of the rights of the indigenous peoples but stressed the importance of ensuring enforcement of the law in practice.

13. The organization of festivals on the occasion of the International Day of the World's Indigenous People was a welcome step towards increasing awareness of indigenous issues and overcoming their situation of inferiority. However, school curricula must likewise cover indigenous peoples. Indigenous children should be encouraged to attend school and the education system should be adapted to the indigenous lifestyle. He wondered what efforts the Government envisaged in that regard.

14. He commended the State party for its efforts to increase awareness of indigenous issues and provide training to judges and officials, but reiterated that the bill on the promotion and protection of the rights of the indigenous peoples must be adopted and implemented and discrimination must be criminalized. The State party should collaborate with human rights organizations in helping indigenous peoples seek redress for violations of their rights before the courts.

15. He likewise commended the State party for organizing the International Forum for Indigenous People of Central Africa on the topic of sustainable management of forest ecosystems, and stressed the importance of giving indigenous populations the right to manage their lands and providing awareness training to "eco-guards".

16. Mr. SICILIANOS said that the State party should not take a narrow view of the term racial discrimination. It should incorporate into its legislation a definition fully in conformity with the broad definition contained in article 1 of the Convention. Discrimination based on ethnicity or origin, for example, was considered racial discrimination and the imposition of compulsory unpaid labour on the Pygmy population constituted a practice based on racial discrimination.

17. He welcomed the information that the State party was considering reform of the Criminal Code but, recalling that pursuant to article 4 of the Convention and the Committee's general recommendations VII and XV the State party had a legal obligation to make punishable by law acts of or incitement to racial discrimination, he urged it to act as quickly as possible. Criminalization of racial discrimination served as a powerful deterrent.

18. Attitudes towards, and treatment of, the Pygmy population were a source of grave concern. He would therefore welcome detailed information on the National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009-2013), including resources available, implementation mechanisms, etc. He also requested information on the status of the bill relating to sexual violence against women, on other measures to eliminate sexual violence, on measures

to provide assistance to victims, and on tensions between the local population and Rwandan refugees. The State party seemed to recognize that there were serious problems that needed to be addressed, but he emphasized that good intentions were not enough and concrete measures must be adopted.

19. Mr. KEMAL expressed grave concern at the situation of the indigenous peoples, in particular the Pygmies. The State party must conduct awareness campaigns to change public attitudes towards those peoples and ensure they enjoyed the same rights and treatment as other citizens. He also expressed concern at the levels of sexual violence against, and abuse of, Pygmy women. He suggested that rather than driving out the Pygmy population and cutting down the forest for short-term gain, it might be preferable to promote sustainable use of the forests and the Pygmy culture in order to encourage tourism. That would preserve the forests and the Pygmy culture while ensuring long-term revenues.

20. Mr. DIACONU welcomed the bill on the promotion and protection of the rights of the indigenous peoples, which should be adopted and implemented as soon as possible, and also the agreements entered into with neighbouring States on judicial cooperation. He had also noted with great interest the International Forum for Indigenous People of Central Africa, held on the Congo's initiative, on the topic of implicating indigenous people in the sustainable management and conservation of the forest ecosystems of Central Africa. That topic was an important factor in the protection of indigenous peoples and ethnic groups.

21. Referring to paragraph 152 of the periodic report, he expressed concern at the reports of discrimination by Bantus against indigenous people, who they considered as their subordinates. In that connection, he recalled that "descent" was one of the grounds included in the definition of racial discrimination contained in the Convention. Indigenous people not being allowed to live in the same village as Bantus constituted another example of discrimination on the ground of descent. In order to eradicate such practices, it was not enough to raise the awareness of Congolese citizens of the rights of indigenous peoples.

22. Legislation was required to prohibit and punish racial discrimination. The proper place for such provisions was the Criminal Code, not the Constitution, which could not be applied by the courts.

23. Mr. de GOUTTES joined Mr. Diaconu in calling for the bill on the promotion and protection of the rights of the indigenous peoples - a key instrument - to be adopted as soon as possible. He requested statistics on the composition of the population, including the number of indigenous peoples. Referring to paragraph 122 of the periodic report, he asked for information on the outcome of the consultation of indigenous peoples on water and forest management. He expressed concern that the level of representation of indigenous people in public office was insignificant, and asked for more information on the reported cases of violence and abuse of power against indigenous peoples mentioned in paragraph 80 of the report.

24. Recalling the peremptory nature of the provisions of article 4 of the Convention, he said that the measures described in paragraphs 67-71 of the report were insufficient, and that it was necessary to declare the acts specified in article 4 as offences punishable by law. He therefore

hoped that the Congo would bring its Criminal Code into line with that article. With regard to the application of article 6, he noted that no complaints of racial discrimination had been lodged. However, that was not necessarily a positive thing; it could indicate citizens' lack of awareness of their rights, fear of reprisals, or distrust of the judicial system.

25. According to paragraph 33 of the report, the National Human Rights Commission had not yet held its first meeting. He asked why that was, and whether the Commission's membership was in conformity with the Paris Principles. In view of the number of refugees in the Congo, he suggested that the Government should consider the adoption of national legislation on the issue of refugees and asylum. He asked whether the Government envisaged recognizing the competence of the Committee to consider communications from individuals claiming to be victims of violations, as provided for under article 14 of the Convention.

26. Mr. MURILLO MARTÍNEZ welcomed the measures described in paragraphs 57-64 of the report, including the annual celebration of the International Day of the World's Indigenous People, aimed at guaranteeing indigenous people full enjoyment of their fundamental human rights and freedoms. He requested information on the impact of those measures.

27. With regard to equality of access of indigenous people to the courts, he suggested that it might be useful to promote the use of customary law alongside the regular judicial system. Customary law was fully recognized in his country, Colombia, and had proved to be a useful dispute settlement mechanism.

28. Mr. PETER expressed concern at the negative connotations of the word "Pygmies" used to describe the Baka indigenous people of the Congo and said that he would appreciate clarification of the appropriate terminology. He requested information on the outcome of the investigations carried out into the alleged assaults on the Baka by law enforcement officers and eco-guards, described in paragraph 81 of the report.

29. He would be interested to hear more about the "powerful opposition" to the bill on the promotion and protection of the rights of the indigenous peoples, referred to in paragraph 58 of the report. Who exactly was against the bill, and what were the reasons for that opposition? He would like to know whether the Government's intention in drawing up the bill had been to protect the Baka or to "civilize" them. He asked whether the information on average life expectancy provided in paragraph 16 of the report applied to the Baka.

30. Mr. CALITZAY said that he would appreciate clarification of reports received of identity cards being sold to indigenous people. Lack of identity documents caused all manner of problems for indigenous people, and in some cases led to them being considered as illegal aliens or abused by police. He expressed concern at the unequal access of indigenous people to the courts, particularly in the case of disputes involving Bantus, and at the lack of legal security for indigenous people vis-à-vis land titles. Both problems were compounded by the subordinate relationship between indigenous peoples and Bantus.

31. He joined his colleagues in requesting more information about the reported cases of violence and abuse of power by law enforcement officers against indigenous people, described in

paragraphs 80 and 81 of the report. He welcomed the inclusion in the bill on the promotion and protection of the rights of the indigenous peoples of provisions relating to consultation of indigenous peoples. If the bill were adopted, it would be the first time ever that the right of indigenous peoples to be consulted was enshrined in legislation, in keeping with the spirit of the recently adopted United Nations Declaration on the Rights of Indigenous Peoples.

32. Mr. DANIELSEN asked whether national courts and administrative authorities were empowered to review national legislation in the light of the Congo's international obligations, for example those contained in the International Convention on the Elimination of All Forms of Racial Discrimination. In other words, he would like to know if Congolese citizens could invoke the Convention directly before the courts when claiming violations by the authorities, even when those claims had no basis in, or were at variance with, national legislation. Information on relevant case law would be appreciated. If there was no case law, he would like to know the reason why.

33. Mr. MURILLO MARTÍNEZ asked whether the Ministry for the Advancement of Women and the Integration of Women in Development, referred to in paragraph 119 of the report, was headed by a woman, as was the case with the Directorate General of Taxes.

34. Mr. OKIO (Congo), responding to the questions raised concerning the use of the word "Pygmy" in the report and its potentially pejorative connotations, said that a French term had been used as French was the official language of the Congo. In his native region, Pygmies were known as "Bachua" and, to the best of his knowledge, similar names were used in neighbouring countries. The term "Pygmy" did not exist in his mother tongue or in other native languages of the Congo; it had been used to describe a group of indigenous peoples, just as the word "Bantu" was used to describe a number of ethnic subgroups.

35. Most of the questions raised at the meeting had been on the rights of the indigenous people, a subject to which he would return in more depth the following day. As far as women's rights were concerned, women participated fully in the economic and political life of the country, having the right to education, to equal pay and to apply for any post for which they were qualified. As in every region of the world, they bore a disproportionately large burden of household tasks. The Ministry for the Advancement of Women was indeed headed by a woman, who had devoted many years of her life to that cause, which she defended vigorously; furthermore, there were many women in ministerial posts in the Congo.

36. It was the responsibility of "eco-guards" to guard the forests: they were State employees and not paramilitaries, but their training encompassed a paramilitary component in order to enable them to respond to attacks by, and deter, poachers.

37. On the question whether traditional justice mechanisms could be used to resolve the problems affecting Pygmies, although traditional justice was used and recognized in the Congo, he was not aware of a traditional justice system that was recognized as belonging to the Pygmies. The difficulty in resolving some of the problems affecting the Pygmies was compounded by the fact that they were a nomadic people; they often chose to move from one area to another of their own volition and not because they were forced to do so by the Bantu.

38. The report lacked data relating to the indigenous population because they were not available. A thorough census had yet to be conducted as the Government did not have the means to reach the peoples concerned. It would only be possible to provide approximate data on the numbers of people dwelling in the forests at the current time.

39. Concerning the current status of the bill on the promotion and protection of the rights of the indigenous peoples, the President of the Congo had given the text his full backing and it was hoped that it would be enacted in a very few months, unless members of parliament decided otherwise.

40. On the issue of civil status, many Pygmies and many Bantu had no identity papers. During general election campaigns, political parties encouraged people to obtain identity cards so that they could exercise the right to vote and, in certain cases, even paid for them. Otherwise, villagers did not see the value of identity cards unless they wished to travel from one region to another, when their papers would be checked. The Government would shortly take action to reach those people who had not yet been issued with identity cards. It was true that difficulties were occasionally encountered where people travelling without identity cards were subjected to police checks, but the authorities did make efforts to understand the particular problems faced by indigenous people in such cases.

41. He acknowledged that Pygmies could be paid lower wages than their Bantu counterparts, but believed that the Government would be better equipped to respond to that problem once the bill on the promotion and protection of the rights of the indigenous peoples had been passed.

42. The relatively low number of indigenous children attending school was due in part to the nomadic traditions of the Pygmies: in his experience, the children might attend school for three months and then disappear as their families moved on. The nomadic tradition also affected their rights to land and to the delineation of areas of land. The land belonged to the State and the indigenous people had the same rights as other citizens to use and cultivate it. There were certainly conflicts between the indigenous peoples and the Bantu who tried to deprive them of their land rights and it was hoped that the forthcoming bill would help to resolve those issues. There were also cases where Pygmies were able to exercise their right to cultivate the land and sell their produce.

43. His Government was committed to protecting the rights of the indigenous peoples, although its legislation could be further updated in order to more fully implement the Convention in that regard.

44. Mr. PROSPER asked whether any ethnic tensions had arisen within the Congo or along its borders as a result of the difficult situations in neighbouring countries and whether the Government had taken any steps to alleviate them or to prevent their escalation. On the subject of identity cards, he wished to know whether they included information concerning the ethnicity of the holder, or merely details such as name and place of birth.

ORGANIZATIONAL AND OTHER MATTERS

Forum on Minority Issues

45. Mr. THORNBERRY recalled that he had been requested by the Committee to attend, as its representative, the first Forum on Minority Issues which had taken place on 15 and 16 December 2008 at the Palais des Nations. He had been appointed rapporteur for the inaugural session, the purpose of which had been to draft recommendations on the theme of education and minorities. The draft recommendations, on which he had worked with the United Nations Independent Expert on Minority Issues, were still being finalized following receipt of many comments; it was hoped that they would be presented by the Independent Expert to the Human Rights Council at its next meeting.
46. The Forum had been well and broadly attended, including by States parties, with representatives from every continent and a significant body of experts. The presence of experts from other treaty bodies and United Nations agencies had provided an opportunity to exchange views and to hear their excellent input.
47. The draft recommendations covered many issues dealt with regularly by the Committee. Their core principle was the theme of education as a basic human right which was grounded in international standards and conventions. The theme of access to education and the psychological, geographical, financial and language barriers to access had been explored. Governance and the participation of members of minority groups in the design of educational institutions and structures had been discussed. The delivery of the curriculum, staffing and institutional frameworks were also of importance. Curriculum content and language issues had been examined. A range of matters concerning segregation and desegregation had been discussed; it was felt that different standards had been developed at different times during the era of the United Nations and they were not always good bedfellows. Early approaches had perhaps been overly integrationist and, with the development of standards for minorities and indigenous peoples, a more autonomous approach to the idea of education standards had been brought into play. The concept of an indigenous people's control over its own educational institutions was a major issue.
48. The idea of the school as a building designed for sedentary populations would need to be re-examined in the light of its relevance to nomadic populations. Strategies could be further used to develop intra-community education, to challenge the statist nature of education and to emphasize its primary role, which was to draw out the potential of human individuals in their many cultural contexts. State education was not, ipso facto, a good thing: it could be used for very negative purposes, for assimilation and to create cultural hegemony, thereby belittling indigenous cultures.
49. The Independent Expert had suggested that the recommendations could be circulated to the treaty bodies for review and possible further action, perhaps through inclusion in general recommendations. If the Committee wished to consider adoption of the recommendations, some of the terminology would have to be changed to accommodate the Committee's slightly different

focus on ethnic and national origin. The Independent Expert had warned against embracing an unduly Eurocentric approach and had advocated moving away from identity-centred rights towards the economic and social sphere in order to examine, specifically, the influence of poverty and, generally, a much wider span than that usually found in the traditional field of minority human rights. The Committee might wish to examine the recommendations at its next session if they had been submitted to the Human Rights Council by that time.

50. Mr. EWOMSAN said that the topic appeared fascinating; there was always a hidden purpose behind the education agenda and that was nowhere more obvious than in the case of indigenous peoples, where schools had been used to create social hegemony. He believed there was merit in examining how schools could be adapted to take account of different ways of life, to encourage diversity and, above all, to develop humankind.

51. Mr. MURILLO MARTÍNEZ asked whether the concept of “minorities” had been debated in the Forum.

52. Mr. AMIR said that it would be useful to gain a deeper understanding of the role of the school and its use as a tool of social integration. He wondered whether, particularly for indigenous peoples in rural areas, traditional roles might be reversed, so that the community and its children played an active role in assimilating the teacher and the school.

53. Mr. de GOUTTES supported the views expressed by Mr. Ewomsan and Mr. Amir. Nevertheless, he was reluctant to embrace Mr. Thornberry’s proposal for intra-community education in view of the risk that a school of that kind could become isolated from the outside world; he favoured an educational approach based on openness.

54. Mr. DIACONU drew attention to the important historical role of the State in providing education; even private education was still supervised by the State, and it was the duty of all schools to provide equal opportunities and equal access to work and life in society. What defined discrimination in education had still to be debated. Were single-sex schools, faith-based schools which selected pupils on the basis of their religion, or schools which favoured one language over another discriminatory?

55. Mr. LINDGREN ALVES, supporting the remarks made by Mr. de Gouttes, said that he wished to learn the criteria used by the Forum to define the “minorities” invited to participate in the debate.

56. Mr. THORNBERRY, responding to the questions raised on the definition of “minorities”, said that the Forum secretariat had drawn up the list of invited minority groups, although he believed the process had been largely through self-definition. The Forum had not attempted to define “minorities”, nor indeed did indigenous forums embark on such projects. The Forum had been a heterogeneous group and, as far as he was aware, the recommendations would not seek to define the term “minorities”. If the Committee were to adapt aspects of the recommendations, it might well need to produce a sharper definition of the groups it had in mind.

57. Responding to the point about community education raised by Mr. de Gouttes and the interesting questions raised by Mr. Diaconu, he said that community education should encompass vulnerable communities and those whose cultures had been denigrated; intra-community education in that context could be a social defence, or a means of redress or recovery of cultural self-confidence. The Committee might wish to explore ideals based on inclusive approaches. Minority rights existed in part as a defence against the external world; the relationship between intra-community education, the rights of individuals and human rights would form part of an ongoing discussion. The idea of intra-community education should not be dismissed, but linked in some way with general principles of non-discrimination and the idea of an inclusive society.

The meeting rose at 6.05 p.m.