



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
13 September 2010
English
Original: French

Committee on the Elimination of Racial Discrimination

Seventy-seventh session

2–27 August 2010

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

Concluding observations of the Committee on the Elimination of Racial Discrimination

Morocco

1. The Committee considered the combined seventeenth and eighteenth periodic reports of Morocco (CERD/C/MAR/17-18) at its 2032nd and 2033rd meetings (CERD/C/SR.2032 and CERD/C/SR.2033), held on 16 and 17 August 2010. At its 2046th meeting (CERD/C/SR.2046), held on 25 August 2010, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined periodic reports submitted by the State party and the additional information provided orally by the delegation. It expresses its appreciation for the frank and constructive dialogue held with the delegation, which included representatives of various ministerial departments. The Committee also commends the quality of the report submitted by the State party, in conformity with the Committee's reporting guidelines.

B. Positive aspects

3. The Committee welcomes the adoption of a number of laws aimed at preventing and combating racial discrimination, in particular:

(a) The Labour Code, which, in articles 9, 36 and 478, prohibits and protects against any form of racial discrimination in the area of employment or in the exercise of a profession;

(b) The Act on the organization and operation of prison facilities, which, in article 51, stipulates that there shall be no discrimination in the treatment of detainees on the basis of race, colour, nationality, language or descent;

(c) Act No. 62-06 of 2007, amending the Nationality Code of 1958 to bring about equality between men and women through a provision enabling Moroccan mothers to transmit Moroccan nationality to their children;

(d) The Associations Act, as amended in 2002, which prohibits the establishment of associations that promote racial discrimination and stipulates that associations encouraging any form of racial discrimination shall be disbanded;

(e) Political Parties Act No. 36-04 of 2006, which, in article 4, outlaws any political party that is based on a particular religion, language, race or region or, in general terms, on postulates that are discriminatory or contrary to human rights;

(f) The 2003 Press Code, which, in article 39 bis, provides for the punishment of incitement to racial discrimination, hatred or violence in any form;

(g) Article 721 of the Code of Criminal Procedure, establishing the inadmissibility of any extradition request that is racially motivated;

(h) Act No. 09-09, of 2010, on measures to combat violence at sporting events.

4. The Committee also commends the State party's adoption, in 2004, of a Family Code that promotes the principle of equality between the sexes and aims to achieve an equitable distribution of family rights and responsibilities and thus to prevent and provide protection against double or multiple discrimination.

5. The Committee notes with satisfaction that the State party has taken steps to promote human rights, and has adopted programmes and plans to this end, in particular the plan of action for democracy and human rights launched in 2009.

6. The Committee welcomes the information provided by the State party underscoring the declaration made by Morocco under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, by virtue of which any individual or group of persons in Morocco believing themselves to be victims of racial discrimination shall henceforth be able to seek protection under the provisions of the Convention and refer any complaints to the Committee.

C. Concerns and recommendations

7. The Committee notes the explanations given by the delegation for the State party's refusal to identify ethnic groups or make distinctions between citizens on ethnic, linguistic or religious grounds. It is, however, concerned by the lack of statistical data in the State party's report relating to the ethnic composition of the population.

In the light of general recommendation No. 08 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, on the use of mother tongues, on languages commonly spoken, and on any other indicator of ethnic diversity. The Committee also recommends that it be provided with any other information drawn from targeted socio-economic research in which participation was voluntary and the privacy and anonymity of the persons concerned were fully respected, that might assist it in evaluating the economic, social and cultural situation of the Moroccan population.

8. The Committee regrets that the State party has not incorporated in its Constitution provisions on the primacy of international treaties over domestic law, in particular the Code of Criminal Procedure and the Nationality Code.

The Committee recommends that the State party incorporate provisions in its Constitution on the primacy of international treaties over domestic law, in order to ensure broad application of this principle and enable litigants to invoke the relevant provisions of the Convention before the courts.

9. The Committee is concerned that the definition of racial discrimination established in the State party's legislation is not in full conformity with the provisions of article 1 of the Convention.

The Committee recommends that the State party either amend its existing legislation or adopt new legislation specifically prohibiting racial discrimination, in order to bring its legal framework into full conformity with article 1 of the Convention.

10. The Committee is concerned that the provisions of the State party's Criminal Code do not cover in their entirety the offences envisaged in article 4 of the Convention.

Recalling its general recommendations No. 1 (1972), No. 7 (1985) and No. 15 (1993), which stipulate that the provisions of article 4 are mandatory and preventive in nature, the Committee recommends that, in its next round of general reform of the justice system, the State party incorporate within its Criminal Code provisions giving full effect to article 4 of the Convention, and in particular provisions that make the dissemination of racist ideology a specific offence. The Committee also recommends that the State party make racist motives an aggravating circumstance in racial discrimination under its criminal legislation.

11. The Committee notes the information that the State party has provided about steps taken to promote the Amazigh language and culture, particularly in education, and to strengthen the resources of the Royal Institute for Amazigh Culture. The Committee is nonetheless concerned that the Amazigh language is not consistently recognized as an official language in the State party's Constitution, and that some Amazighs continue to suffer racial discrimination in accessing employment and health services, as well as in other areas, especially if they do not speak Arabic (art. 5).

The Committee recommends that the State party step up its efforts to promote the Amazigh language and culture, particularly through the teaching of this language and culture, and take additional steps to ensure that Amazighs are not subject to racial discrimination, in particular as regards access to employment and health services. It also encourages the State party to consider making the Amazigh language an official language under the Moroccan Constitution, and to provide literacy training for the Amazigh in their own language. Lastly, the Committee recommends that the State party give special attention to the development of regions inhabited by the Amazigh in the context of the work of the Consultative Committee on Regionalization.

12. The Committee is unclear as to the meaning and scope of the concept "Moroccan name" referred to in article 21 of Act No. 37-99 of 2002 on civil status, the application of which continues to prevent civil registrars from registering certain names, including Amazigh names in particular (art. 5).

The Committee recommends that the State party clarify the meaning and scope of the concept "Moroccan name" as used in its legislation. It also recommends that the State party ensure that its civil registrars adhere fully to the provisions of the Ministry of Internal Affairs Circular of March 2010 on choice of given names, which stipulates that all citizens shall have the right to register the names of their choice, including Amazigh names.

13. The Committee notes with concern the lack of a legislative and institutional framework providing protection for refugees and asylum-seekers, the difficulties

encountered by these groups in accessing employment, and the discrimination they suffer in accessing health care, social services and housing.

The Committee recommends that the State party establish a legal and institutional framework that clarifies asylum procedures, provides protection for the rights of refugees and asylum-seekers, particularly in relation to access to employment and housing, and shields these groups against all forms of racial discrimination.

14. The Committee is concerned about information indicating that non-citizens without residency permits, particularly nationals of sub-Saharan countries, are the victims of racial discrimination and xenophobia. It regrets the fact that they are often detained without the benefit of legal safeguards and are sometimes denied access to the courts. It also notes with concern that the principle of non-refoulement is not applied correctly by the State party (art. 5).

In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take steps to protect non-citizens without residency permits against racial discrimination and xenophobia, to ensure that they benefit from all legal safeguards when placed in detention, and to facilitate their access to the courts. The Committee also recommends that the State party ensure that the principle of non-refoulement is correctly applied.

15. The Committee is concerned that counter-terrorism measures are applied in a manner that does not always guarantee full respect of human rights, particularly in the case of non-citizens (art. 5).

The Committee recommends that the State party take steps to ensure that persons suspected of terrorist activity benefit from fundamental legal safeguards, particularly when the suspects are foreign nationals, in the light of the statement on racial discrimination and measures to combat terrorism adopted by the Committee on 8 March 2002 (A/57/18, para. 514).

16. The Committee notes with concern that the Nationality Code does not allow Moroccan women to transmit their nationality to husbands of foreign origin, on an equal basis with Moroccan men (art. 5).

The Committee urges the State party to revise its Nationality Code so that Moroccan women are able to transmit their nationality to husbands of foreign origin and thus enjoy rights equal to those enjoyed by Moroccan men.

17. The Committee is concerned that the Family Code is not uniformly applied to all Moroccans throughout the country. It is also concerned that ignorance of the Code on the part of judges in remote parts of the country could lead to double or multiple discrimination (art. 5).

The Committee recommends that the State party take all necessary steps to ensure that the Family Code is applied fully and uniformly throughout Morocco and that none of the more vulnerable segments of its population, particularly women and children living in remote areas, suffer double or multiple discrimination. The Committee draws the State party's particular attention to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

18. The Committee notes the various avenues of redress open to persons wishing to lodge a complaint of racial discrimination. However, it is concerned that access to justice remains difficult for certain vulnerable persons. The Committee is also concerned by that fact that the State party has provided insufficient information on complaints lodged, prosecutions initiated, and convictions and sentences handed down (art. 6).

(a) Referring to general comment No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that an absence of complaints and litigation by victims of racial discrimination may be indicative of a lack of specific relevant legislation, ignorance of the remedies available, fear of social censure or reprisals, or unwillingness to institute legal proceedings on the part of the competent authorities. The Committee recommends that the State party:

- Seek to raise awareness of legislation on racial discrimination, ensure that the public in general, and members of vulnerable groups in particular, notably the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, are informed of the avenues of legal redress available to them, simplify these remedies and facilitate access thereto
- Consider using “discrimination testing” as admissible proof of discriminatory behaviour

(b) The Committee also recommends that the burden of proof be reversed in the State party’s legislation where complaints of racial discrimination are pursued under civil law;

(c) Lastly the Committee recommends that, in its next report, the State party include comprehensive details of complaints lodged, prosecutions brought, and convictions and sentences handed down for acts of racial discrimination.

19. The Committee is concerned that vulnerable segments of the population who do not speak Arabic, particularly the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, continue to encounter communication difficulties in contacts with the judiciary at every stage of the legal process – a situation likely to result in violations of their right to equal treatment, protection and effective redress before the courts (arts. 5 and 6).

The Committee recommends that the State party ensure full application of articles 21, 73, 74 and 120 of the Code of Criminal Procedure, guarantee the availability of interpretation services by training a greater number of sworn interpreters, and ensure that litigants from vulnerable population groups who do not speak Arabic, in particular the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, may benefit from proper administration of justice.

20. The Committee notes the measures and initiatives adopted by the State party to guarantee human rights training and raise awareness, including, in particular, the national plan of action to promote a culture of human rights launched in 2006. However, the Committee is concerned that racist stereotypes persist and that the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers continue to be viewed in a negative light by the rest of the Moroccan population (art. 7).

The Committee recommends that the State party step up its efforts to provide human rights training, placing a particular focus on the fight against racial discrimination, as well as its efforts to raise awareness of the need for tolerance, interracial or inter-ethnic understanding and intercultural relations among law enforcement officials — specifically, police officers and gendarmes, members of the judiciary, prison officers and lawyers — and also among teachers. It also recommends that the State party continue its efforts to raise public awareness and knowledge of the importance of cultural diversity, understanding and tolerance, especially in respect of vulnerable population groups and the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers in particular.

21. Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights treaties to which it is not yet a party, but which could have a bearing on the question of racial discrimination for which a solution is sought and have particular resonance in the recent history of Morocco, such as the International Convention for the Protection of All Persons from Enforced Disappearance adopted in 2006.
22. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.
23. The Committee recommends that, in connection with the preparation of its next periodic report, the State party continue its consultations and extend its dialogue with civil-society organizations working in the field of human rights, especially those working to combat racial discrimination.
24. 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 the States Parties to the Convention (see CERD/SP/45, annex) and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee draws attention to paragraph 14 of General Assembly resolution 61/148, in which the Assembly strongly urged States parties to the Convention 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.
25. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the concluding observations issued by the Committee after consideration of the reports be distributed in the official language and other commonly used languages, as appropriate.
26. Noting that the State party submitted its core document in 2002, the Committee encourages the State party to submit an updated version, of between 60 and 80 pages, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).
27. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests that the State party provide information on its follow-up to the recommendations contained in paragraphs 11, 13 and 14 above within one year of the adoption of the present concluding observations.
28. The Committee also wishes to draw the State party's attention to the particular importance of the recommendations contained in paragraphs 7, 9, 10, 18, 20 and 26, and requests that the State party provide detailed information in its next periodic report on the specific steps taken to effectively implement these recommendations.
29. The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports in one document no more than 40 pages long, due on 17 January 2014, taking into account the guidelines for the CERD-specific document which

the Committee adopted at its seventy-first session (CERD/C/2007/1), and that it address in this document all points raised in the present concluding observations.
