



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
19 April 2013
English
Original: Spanish

Committee on the Elimination of Racial Discrimination

Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February–1 March 2012)

1. The Committee considered the thirteenth and fourteenth periodic reports of the Dominican Republic, submitted in a single document (CERD/C/DOM/13-14), at its 2223rd and 2224th meetings (CERD/C/SR.2223 and 2224), held on 22 and 25 February 2013. At its 2231st and 2232nd meetings (CERD/C/SR.2231 and 2232), held on 28 February and 1 March 2013, the following concluding observations were adopted.

A. Introduction

2. The Committee welcomes the submission of the periodic reports, the dialogue and the replies provided by the high-level delegation of the Dominican Republic.
3. The Committee commends the active participation of the representatives of civil society in the consideration of the reports.

B. Positive aspects

4. The Committee commends the following legislative and institutional measures:
 - (a) The reform of the Constitution in 2010, which grants constitutional status to human rights, to the Ombudsman's Office and to the remedy of *amparo*; it also establishes the Constitutional Court and incorporates non-discrimination (art. 39);
 - (b) The classification of discrimination as an offence in the Criminal Code (arts. 336 and 337), the Code of Criminal Procedure (art. 11) and the Civil Code (art. 13);
 - (c) The establishment of the Inter-Agency Commission on Human Rights within the Ministry of Foreign Affairs;
 - (d) The establishment of the Human Rights Office within the Attorney-General's Office;
 - (e) The inauguration of the Constitutional Court;
 - (f) The establishment of the Inter-Agency Commission to Combat Unlawful Trafficking and Smuggling of Persons;

(g) The cultural policy of the Ministry of Culture for 2008, vindicating the African contribution to the country, and its support for the campaign for tolerance and peaceful coexistence of the Office of the United Nations High Commissioner for Refugees (UNHCR), which presented the positive contributions of migrants to Dominican society;

(h) Measures for improvement of conditions on sugar plantations, adopted between 2009 and 2010, such as the construction of schools and health centres; and of infrastructure works and transport and social welfare facilities;

(i) Discontinuance of classifications such as dark-skinned Indian or light-skinned Indian in new identity documents;

(j) Initiative to amend the electoral law to enable Dominicans to identify themselves as “negro, mulatto”.

5. The Committee recognizes the Dominican Republic’s timely solidarity with the neighbouring country, Haiti, and the economic support provided, especially in response to the natural disasters that have affected Haiti and its population, in particular the 2010 earthquake.

C. Factors limiting application of the Convention in the Dominican Republic and measures to overcome them

6. The Committee takes note of the colonial heritage and of the structural and economic constraints affecting the Dominican Republic. Nevertheless, the rights and freedoms set forth in the Convention should be protected. At the same time, the response by States to economic crises should not increase poverty or lead to a surge in racial discrimination (general recommendations No. 20 on non-discriminatory implementation of rights and freedoms (1996) and No. 33 on follow-up to the Durban Review Conference (2009)).

Denial of discrimination

7. The Committee is concerned about the State party’s firm denial — reiterated in its dialogue with the Committee — that racial discrimination exists, especially in respect of dark-skinned people of African descent, which is in itself an obstacle to the State party’s commitment to combating racism and racial discrimination. The Committee notes that the terms *indio-claro* (light-skinned Indian) and *indio-oscuro* (dark-skinned Indian), which continue to be used, fail to reflect the ethnic situation in the country and render invisible the dark-skinned population of African descent.

Structural discrimination

8. Taking into account the State party’s explanations regarding the multiracial and multicultural make-up of the Dominican Republic, the Committee recalls that cross-breeding and the integration of dark-skinned persons of African origin into the informal labour market are not sufficient as indicators to assess levels of inclusion and equality. The Committee recalls the close link between poverty and racism and the fact that structural discrimination against dark-skinned persons of African origin is apparent in the fact that they are one of the poorest population groups among the poor (Durban Declaration and Programme of Action (2001) and the Committee’s general recommendation No. 34 on discrimination against people of African origin (2011)).

Implementation of the Committee's previous recommendations

9. The Committee regrets the absence of specific information on the implementation of its previous recommendations (CERD/C/DOM/CO/12) and appreciates the need to explore with the State party new paths for dialogue to ensure that due attention is given to its recommendations and to those of other international mechanisms that have repeatedly expressed their concern about the racial discrimination, xenophobia and other related forms of intolerance that particularly affect dark-skinned persons of African descent from the Dominican Republic or Haiti as well as the Haitian irregular migrant population.

The Committee invites the Dominican Republic to adopt the following measures:

(a) **Set up a transitional commission to analyse, with the participation of all sectors of the State and civil society, the implications of the transatlantic traffic in persons and slavery so as to determine their historical significance in the building of national identity, the persistence of their consequences and the challenges that still remain, including the expressions of racism, racial discrimination, xenophobia and other related forms of intolerance, in particular towards the darker-skinned population of African descent from the Dominican Republic or Haiti, and identify the barriers that limit the equitable development of those populations;**

(b) **Institute a follow-up and monitoring mechanism to develop tools for the effective implementation of all the recommendations of the Committee and other international mechanisms relating to the human rights of dark-skinned persons of African descent and of irregular Haitian migrants;**

(c) **Conduct a national survey of perception and self-perception in terms of cultural identity, racism, racial discrimination, xenophobia and other related forms of intolerance;**

(d) **Implement the policy of the Ministry of Culture designed to vindicate the African contribution to the country and encourage intercultural education in schools (art. 7).**

D. Concerns and recommendations

Institutional measures

10. The Committee regrets that more than a decade after the promulgation of Act No. 19-01 (2001), no Ombudsman has yet been appointed (art. 2).

The Committee reiterates its recommendation concerning the appointment of the Ombudsman; that institution should include a section specialized in issues of racism, racial discrimination, xenophobia and related forms of intolerance, and its conformity with the Paris Principles should be guaranteed (CERD/C/DOM/CO/12, para. 10).

Legislative measures

11. The Committee is concerned that article 39 of the Constitution does not prohibit discrimination on grounds of race, and that articles 336 and 337 of the Criminal Code and the proposed amendment to the Criminal Code do not provide a definition of racial discrimination in conformity with the Convention (arts. 1, 2, 4 and 5).

The Committee reiterates its previous recommendations and urges the State party to promulgate a specific law on racial discrimination that is compatible with the Convention and ensure that legislative and political measures concerning migration do not discriminate on grounds of race, colour or national origin (CERD/C/DOM/CO/12, paras. 9 and 11).

Political measures

12. The Committee commends the National Development Plan (2010–2030) and other plans and measures relating to health, education and gender equity. However, it notes that public planning tools do not provide for specific measures to combat racial discrimination and the multiple forms of discrimination affecting dark-skinned women of African descent, and that there is no national plan for human rights (art. 2).

The Committee invites the State party to draw up a national human rights plan and a national plan of action against racism, racial discrimination, xenophobia and other related forms of intolerance, which addresses the specific manifestations of racial discrimination against women.

Statistics

13. The Committee regrets that the most recent census carried out by the National Office of Statistics in 2010 did not gather information on the ethnicity or colour of the population, that there are still no statistical data disaggregated by ethnicity and that the official figures for the Haitian population within the territory of the Dominican Republic are notoriously inaccurate.

The Committee recommends that the State party gather statistical data, disaggregated by race and ethnicity, colour, national origin, gender and the socioeconomic situation of the population, for the purpose of defining effective policies against racial discrimination (general recommendations No. 30 on discrimination against non-citizens (2004) and No. 34 (2011)).

Sugar plantations

14. The Committee commends the measures taken to improve conditions on the sugar plantations. However, the arduous living conditions of migrants of Haitian origin, particularly on the sugar plantations, are still a source of concern on account of the limited access to health services, housing, sanitation, drinking water and education (art. 5 (e) (iv) and (v)).

The Committee recommends that the State party step up its efforts to guarantee progressive access to health, sanitation, drinking water and education for the population, and in particular the dark-skinned population of African descent and to continue to improve living standards on the sugar plantations (CERD/C/DOM/CO/12, para. 18).

Social expressions of racism

15. The Committee expresses its concern about the structural and widespread racism within Dominican society, and in particular discrimination based on colour or national origin, which is apparent, inter alia, in the discrimination affecting access to places intended for use by the general public (arts. 2, 4 and 5 (f)).

Taking into account its general recommendations No. 7 on implementation of article 4 of the Convention (legislation to eradicate racial discrimination) (1985) and No. 15 on article 4 of the Convention (organized violence based on ethnic origin) (1993), the Committee reiterates its recommendations concerning the introduction of provisions to prohibit discrimination in access to places intended for use by the general public and the discrimination practised by persons, groups or organizations; public information campaigns should be undertaken against racism, xenophobia and intolerance; the mass media should not promote racial prejudice and should adopt a

code of conduct that respects the cultural identity of dark-skinned people of African descent (CERD/C/DOM/CO/12, paras. 8 and 12).

Racial discrimination in the workplace

16. The Committee is concerned about the requirement for a “*buena presencia*” (good appearance) which is frequently applied for appointment to a skilled job: its ambiguous nature means that it may give rise to discriminatory practices. The Committee also expresses its concern about the exploitation of irregular migrants, mainly those of Haitian origin who, due to lack of documentation, work under oral contracts or in the informal sector, have limited access to social security benefits and do not exercise their rights for fear of being fired or deported (art. 5 (d) (i)).

The Committee recommends that discrimination against dark-skinned people of African descent, including irregular migrants, in the workplace should be terminated (general recommendation No. 34 of the Committee (2011)), and that the ILO Discrimination (Employment and Occupation) Convention 1958 (111) should be applied.

Multiple discrimination

17. The Committee is concerned about the difficulties faced by dark-skinned Dominican women of African descent in securing skilled employment, social safeguards and political representation and regrets the absence of any information on the measures taken in this respect (arts. 2, 5 (d) (i) and 5 (e) (iv)).

Taking into account its general recommendation No. 25 on gender-related dimensions of racial discrimination (2010), the Committee recommends that the State party include the gender perspective in plans and policies for development and employment and adopt special measures to facilitate access by women of African descent to skilled employment, in accordance with the Committee’s general recommendation No. 32 on the meaning and scope of special measures in the Convention (2009) (CERD/C/DOM/CO/12, para. 19).

Racial discrimination with respect to identity documents and nationality (art. 5 (d) (iii))

18. The Committee commends the introduction of the Late Declarations Unit, mobile units for late declarations of birth, centres issuing identity cards and several branches of the Civil Registry Office with a view to overcoming the lack of documentation. Nevertheless, the Committee is concerned about the serious problem of under-registration affecting the registration system, whose impact is greatest on the poorest members of the population.

The Committee urges the State party to continue its policy of issuing identity cards and to resolve the structural problem affecting registration.

19. The Committee is concerned about: (a) the State party’s refusal to issue duplicate birth certificates, identity cards and passports to Dominicans of Haitian origin; (b) the fact that young people who have turned 18 since 2007 are unable to obtain an identity card owing to the retroactive application of the Migration Act (No. 285-04); (c) the refusal to issue birth certificates for children of Dominicans of Haitian origin. These all lead to a situation of statelessness (art. 1 (3) and art. 5 (d) (iii)).

The Committee recommends that the State party: remove the administrative obstacles to issuing identity documents to Dominicans of Haitian origin and restore any such documents that have been confiscated, cancelled or destroyed by the authorities; ensure that Dominican citizens of Haitian origin are not deprived of their right to

nationality; and adopt non-discriminatory policies with regard to identity documents, guaranteeing due process (CERD/C/DOM/CO/12, para. 16).

20. The Committee regrets that the constitutional framework on migration, as reflected in article 18 of the Constitution, does not fully meet international standards with regard to nationality and that, despite the provisions of article 18, paragraph 2, of the Constitution and article 150 of the Migration Act (No. 285-04), legislation relating to nationality is being applied retroactively, to the detriment of Dominicans of Haitian origin and Haitian migrants (art. 1 (3) and art. 5 (d) (iii)).

The Committee recalls that the scope of national sovereignty with regard to nationality is limited in terms of respect for human rights, specifically the principle of non-discrimination, and invites the Dominican Republic: to implement the recommendations made by various human rights mechanisms; to respect the principle of non-discrimination in access to nationality, in conformity with the Committee's general recommendation No. 30 (2004); and to implement the national plan for regularizing illegal immigrants, as provided for in article 151 of the Migration Act (No. 285-04), giving priority to those who have resided in its territory for a long period (CERD/C/DOM/CO/12, para. 14).

Deportations

21. The Committee is concerned about the recurring reports of mass, indiscriminate and arbitrary deportations of citizens of Haitian origin, which violate the protocol in force with Haiti and the guarantees of due process set out in the Migration Act (No. 285-04), and about the lack of official statistics on deportations (arts. 5 (a) and 6).

The Committee recalls its previous recommendation and its general recommendation No. 30 (2004) to ensure that deportation laws do not discriminate among non-citizens on the basis of "race", colour or ethnic or national origin, and requests that non-citizens should not be subjected to mass deportations and deprivation of due guarantees; that the Haitian-Dominican Joint Commission be reactivated again; and that official data be gathered on numbers of deportees, disaggregated by gender and national or ethnic origin (CERD/C/DOM/CO/12, para. 13).

Racial discrimination in the judicial system

22. The Committee takes note of the "Improving access to criminal justice in the Dominican Republic" project, but is concerned about the absence of complaints of racial discrimination before the courts. The Committee recalls that a lack of complaints, rather than implying the non-existence of racial discrimination, may indicate the existence of flaws in the justice system (art. 6).

The Committee invites the State party to take note of general recommendation No. 31 (2005) of the Committee on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recommends that it: establish effective mechanisms and remedies for investigating discriminatory conduct on the part of public officials and individuals; adopt an effective system of penalties; guarantee appropriate reparation for victims; and make the general public aware of their rights and available legal remedies in cases of racial discrimination (CERD/C/DOM/CO/12, para. 20).

Judgement of the Inter-American Court of Human Rights

23. The Committee is concerned that the judgement of the Inter-American Court of Human Rights in the case of the Yean and Bosico girls has not been fully complied with.

The Committee invites the State party to give full effect to the above-mentioned judgement.

Smuggling and trafficking of persons

24. The Committee has been informed of the weak enforcement of Act No. 137-03 on smuggling of migrants and trafficking in persons, the lack of sufficient funds for implementing the national plan of action against trafficking in persons and migrant smuggling, the absence of investigations into cases of trafficking in persons, and the lack of measures for the rehabilitation and protection of victims (art. 5 (e) (i)).

The Committee suggests that the State party: gather official data on victims of trafficking in persons, disaggregated by gender, age, race, colour and national origin; step up the fight against trafficking in persons, through the effective implementation of Act No. 137-03; reinstate meetings of the Inter-institutional Committee Against Trafficking in Persons and Migrant Smuggling and the Inter-institutional Committee for the Protection of Migrant Women; investigate cases of trafficking in persons and prosecute offenders; and adopt measures to protect the victims (CERD/C/DOM/CO/12, para. 17).

Refugees

25. The Committee takes note of the measures adopted to issue documents to Haitian refugees. However, some Haitian refugees have been refused renewal of their documents, exposing them to the risk of deportation and to difficulties in accessing basic services. In addition, some asylum applications remain unresolved, pending a decision by the National Commission for Refugees (CONARE).

The Committee urges CONARE to resolve all outstanding asylum applications, in conformity with the Presidential Order of October 2012, and to issue residence permits to refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR).

E. Other recommendations

Ratification of other treaties

26. The Committee encourages the State party to ratify the international treaties to which it is not yet a party, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Convention on the Reduction of Statelessness (1961) and the Convention relating to the Status of Stateless Persons (1954).

Amendment of article 8 of the Convention

27. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 15 January 1992 at the Fourteenth Meeting of the States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment concerning the financing of the Committee and to notify the Secretary-General expeditiously, in writing, of their agreement to the amendment.

28. The Committee urges the State party to consider making the optional declaration provided for in article 14 of the Convention.

Durban Declaration and Programme of Action

29. 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 implementing the Convention in its domestic legal order, in particular articles 2 and 7 of the Convention, take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. 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.

Consultations with civil society organizations

30. The Committee recommends that the State party consult widely with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

Dissemination of reports and concluding observations

31. The Committee recommends that the State party should make its reports available to the general public as soon as they are submitted, and that it ensure that the Committee's concluding observations are also publicized and disseminated in the official languages and, if appropriate, in other languages commonly used in the State party.

Follow-up to concluding observations

32. Pursuant to paragraph 1 of rule 65 of the rules of procedure, the Committee requests that the State party, within one year of the adoption of these concluding observations, provide information on its follow-up to the recommendations contained in paragraphs 11, 19 and 21.

Paragraphs of particular importance

33. The Committee also wishes to draw the attention of the State party to the particular importance of the special recommendations contained in paragraphs 9, 15 and 16 above, and requests it to include in its next periodic report detailed information on concrete measures taken to implement these recommendations.

Core document

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

Preparation of the next periodic report

35. The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports, in a single combined document, by 24 June 2016 at the latest, taking due account of the guidelines on the Convention-specific document that were adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that in that document it

respond to all the questions raised in the present concluding observations. The Committee also urges the State party to adhere to the limit of 40 pages for treaty-specific reports and 60–80 pages for the core document (see the harmonized guidelines on reporting contained in document HRI/GEN.2/Rev.6, para. 19).
