



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fifteenth to twenty-first periodic reports of the Niger*

1. The Committee on the Elimination of Racial Discrimination considered the combined fifteenth to twenty-first periodic reports of the Niger (CERD/C/NER/15-21) at its 2359th and 2360th meetings (CERD/C/SR.2359 and CERD/C/SR.2360), held on 6 and 7 August 2015, and adopted the following concluding observations at its 2380th meeting, held on 21 August 2015.

A. Introduction

2. The Committee welcomes the resumption of dialogue with the State party after a hiatus of several years, and it welcomes with satisfaction the combined fifteenth to twenty-first periodic reports. The Committee takes note of the State party's statement that political instability in recent years had prevented it from fulfilling its reporting obligations under the Convention. That notwithstanding, the Committee strongly encourages the State party to observe the established time frames when submitting subsequent reports.

3. The Committee welcomes the presentation made by the State party delegation, which included representatives from various offices of the executive branch and members of the interministerial committee. The Committee expresses its appreciation to the delegation for having borne in mind the list of themes that had been prepared. It welcomes the frank and constructive dialogue with the State party on the implementation of the Convention.

B. Positive aspects

4. The Committee welcomes with satisfaction the ratification of several international human rights instruments by the Niger during the period under review, including the following:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 24 July 2015;

(b) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 18 March 2009;

(c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 24 June 2008;

(d) The Convention on the Elimination of All Forms of Discrimination against

* Adopted by the Committee at its eighty-seventh session (3-28 August 2015).



Women, on 8 October 1999, and its Optional Protocol, on 30 September 2004;

(e) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 5 October 1998, and its Optional Protocol, on 7 November 2014;

(f) The Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, on 13 March 2012, and the Optional Protocol on the sale of children, child prostitution and child pornography, on 26 October 2004;

(g) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 7 November 2014.

5. The Committee takes note of the legislative, political and institutional measures taken by the State party in its efforts to combat racial discrimination, including the following:

(a) The Constitution of 25 November 2010, and notably article 8, which prohibits all forms of racial or ethnic discrimination and guarantees equal treatment for everyone before the law;

(b) Act No. 98-12 of 12 June 1998, on the educational system, which recognizes the right to education for all regardless of age, sex or social, racial, ethnic or religious origin;

(c) Ordinance No. 2010-035 of 4 June 2010, on freedom of the press, which prohibits defamation, including on the grounds of ethnicity or religion and with intent to incite hatred among citizens or residents;

(d) The establishment two national institutions, the National Human Rights Commission and the Office of the Ombudsman;

(e) The adoption of the National Human Rights and Justice Policy and an associated ten-year action plan for the period 2016-2025;

(f) The adoption of new article 13 of the Nationality Code on the transmission of nationality by Niger women to foreign husbands.

C. Concerns and recommendations

Definition of racial discrimination and its classification as an offence

6. While noting that, pursuant to article 171 of the Constitution, the Convention takes precedence over national law in the national legal order and can be invoked before courts of the Niger, the Committee remains concerned by the fact that the legislation prohibiting racial discrimination contains some gaps. Article 102 of the Criminal Code, for instance, states that all acts of racial or ethnic discrimination are punishable by law, but it does not define what constitutes an act of discrimination as provided in article 1 of the Convention. This could give rise to arbitrary interpretations of the law. The Committee reiterates the concern it expressed in the previous review (CERD/C/304/Add.62, para. 8) to the effect that article 102 of the Criminal Code does not cover all forms of support for or financing of racist activities, nor does it reflect article 4 (c) of the Convention (arts. 1, 2 and 4).

7. **In line with its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) Include in its legislation a definition of racial discrimination that is aligned with article 1 of the Convention and assures a strict interpretation of the

law in order to prevent any arbitrary interpretations. The Committee stresses that measures aimed at controlling and combating racist hate speech should not be used to restrict expressions of social discontent or political opposition;

(b) Align its Criminal Code with article 4 of the Convention by prohibiting the dissemination of ideas that promote racial superiority or hatred, incitement to racial discrimination or any racially motivated act of violence, and any support provided to racist activities;

(c) Take steps to ensure that the public and, especially, the justice officials responsible for enforcing the law are aware that they may invoke the Convention in any court of law.

National human rights institution

8. The Committee notes with interest the State party's efforts to launch the National Human Rights Commission through Act No. 2012-44 of 24 August 2012, which redefines its composition, organization, powers and working methods in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee regrets, however, that the National Human Rights Commission has not yet been accredited with a category A rating by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Committee also finds it regrettable that the Commission's annual reports have not yet been considered by the National Assembly and that the local and regional offices have not yet been established (art. 2).

9. The Committee recommends that the State party:

(a) Accelerate the consideration of the National Human Rights Commission's annual reports in support of its request for category A accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) Endow the National Human Rights Commission with a significant budget to allow it to carry out its annual workplan, including the establishment of offices throughout the country.

Practice of slavery and descent-based discrimination

10. The Committee notes that the State party has taken additional steps to repress slavery by allowing associations to bring legal action for redress in cases of slavery. The Committee however remains deeply concerned by the continued practice of slavery among certain ethnic groups, as it perpetuates descent-based discrimination across generations and violates the fundamental rights and freedoms of the victims, including their right to own property and the right to freely choose a spouse. The Committee takes note as well of the statement made by the State party delegation that reform of the Criminal Code and greater public awareness are needed in order to eradicate descent-based racial discrimination (arts. 1, 2, 3 and 5).

11. In line with its general recommendation No. 29 (2002) on descent-based discrimination, the Committee recommends that the State party:

(a) Enforce the law, in particular article 270 of the Criminal Code, with a view to combating the continued inhumane practice of slavery and achieving its complete elimination;

(b) Conduct broad-based awareness, education and information campaigns for the population, especially among traditional leaders, religious

leaders, opinion makers and other moral authorities, about the harm that the practice of slavery or servitude causes to victims;

(c) Include all forms of activities to combat slavery and servitude in the National Human Rights and Justice Policy and the associated ten-year action plan for the period 2016-2025, in close collaboration with civil society organizations. The Committee requests the State party to include information on progress made in this regard in its next periodic report;

(d) Take the necessary steps to align its legislation, including the Criminal Code, with international legal instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Lack of racial discrimination complaints filed

12. The Committee is concerned at the lack of complaints filed for racial and ethnic discrimination, including slavery, and at the absence of sentences handed down by State party courts in this area. The Committee furthermore regrets the lack of information on any cases of racial discrimination addressed by the National Human Rights Commission and the Office of the Ombudsman (art. 6).

13. The Committee:

(a) Recalls that, in line with its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the lack of complaints or legal actions for racial discrimination is not necessarily a positive consideration for a State party. The absence of complaints may be a sign of victims' lack of familiarity with the legal and judicial recourse available, lack of trust in the court system, fear of reprisal or authorities' unwillingness to prosecute the perpetrators of such acts;

(b) Recommends that the State party step up efforts to inform NGOs, national institutions and the victims of racial discrimination about available legal and judicial recourse for cases of racial discrimination and ensure that mechanisms such as the National Agency for Legal and Judicial Assistance and the legal defence support networks facilitate access to justice for the country's most disenfranchised population groups. The Committee requests the State party to include in its next periodic report information on the steps taken in this regard, including statistical data on complaints filed, prosecutions launched and sentences handed down by the courts for slavery and racial or ethnic discrimination.

Customary practices that are harmful to women

14. While taking note of the State party's efforts in support of women's rights, the Committee nevertheless remains concerned by the fact that women in the Niger, especially those born into families of slaves, are victims of multiple forms of discrimination related to gender, ethnicity and descent. The continued existence of some traditional practices prevents women from fully exercising some of the rights protected under the Convention, such as the right to own or inherit land and the right to freely choose a spouse. The Committee regrets that the State party has not yet adopted the draft Family Code (arts. 2 and 5).

15. In line with its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party urgently take the necessary steps to halt descent-based discrimination

against women, especially slavery or servitude, forced or early marriages and trafficking in women. In addition to implementation of the National Gender Policy and the associated ten-year action plan for the period 2008-2018, the Committee recommends that the State party promptly adopt the Family Code and enforce its implementation. The State party should also conduct awareness campaigns directed at the public and, especially, at traditional community and religious leaders with a view to gradually eliminating customary practices that are harmful to women and assuring that women can enjoy full exercise of their rights.

Special measures

16. The Committee notes with interest that article 10 of the Constitution provides for special measures in respect of certain categories of citizens with regard to elected office; as a result of these measures, minority groups enjoy representation in the National Assembly. However, to ensure equality before the law and in practice for everyone, the Committee notes that a number of other special measures still need to be taken, in particular with regard to the enjoyment of economic, social and cultural rights by some groups, notably nomadic populations (art. 1, para. 4; art. 2, para. 2 and art. 5).

17. In line with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party continue to implement special measures, including with regard to the right to education, employment and housing, and to adopt a comprehensive strategy on the situation of persons belonging to minority groups and those self-identifying as indigenous peoples. The Committee also recommends that the State party take the necessary steps to strengthen its mobile schools programme with a view to boosting enrolment and literacy rates within nomadic populations. The State party should also open more mobile clinics for nomadic populations in order to ensure adequate access to health services, including especially obstetrical care.

Exploitation of natural resources

18. The Committee is concerned by the harmful effects on the environment, health and safety of groups living in regions where the country's natural resources (especially uranium) are exploited. It is concerned by information indicating the absence of serious consultation with the communities involved about the impact of extractive activities on racial and ethnic minorities, such as water pollution and restricted access to water. The Committee is similarly concerned at the poor management of these resources, which do not appear to be benefiting the regions concerned despite the levying of a mining royalty of 15 per cent that is to be paid to the communes in which exploitation activities are under way (arts. 2 and 5).

19. While taking note of the efforts deployed to better manage the country's resources, the Committee recommends that the State party:

(a) Strengthen safety and protection measures for the exploitation of natural resources in order to rigorously enforce provisions to protect the environment and the health of local residents. The Committee recommends that the State party declare a moratorium on projects for which independent studies on the human rights impact have not yet been commissioned or completed and that it engage in a public consultation with local communities with a view to securing their agreement and consent;

(b) Guarantee access to appropriate quality and quantities of water for populations in the areas where they have traditionally lived, especially in the Aïr region;

(c) Engage in consultations with the population, or their representative associations, to ensure that their rights are not violated and, in cases of expropriation in the public interest, that they receive indemnification. The State party should also ensure that uranium mining activities are conducted in such a way as not to harm people's health or the environment. Lastly, the Committee invites the State party to institute arrangements for regular inspections of such sites as well as effective monitoring of how funds transferred to local governments are managed.

Management of conflicts between nomadic populations and other groups

20. While noting with interest the official adoption of the practice of joking kinship, a cultural form of conflict resolution between communities that is supposed to foster social cohesion between different ethnic groups, the Committee is concerned by information indicating the existence of tension, and even conflicts, between nomadic groups and the rest of the population, especially sedentary farmers. The Committee welcomes the adoption of the Rural Land-Use Code, the Water Resources Code and the Pasture Resources Code to address recurrent problems associated with nomadic farming, but it is concerned by the contradictory provisions between Codes, especially with regard to access to water. In this connection, the Committee regrets that the Pasture Resources Code, which was adopted in 2010 and grants a series of rights to nomads, has not yet been promulgated (arts. 2, 5 and 7).

21. The Committee recommends that the State party:

(a) Publicize and disseminate throughout the country the practice of joking kinship as a tool to settle conflicts between communities, and conduct awareness-raising activities among the respective communities or ethnic groups;

(b) Harmonize the legislation that has been adopted to resolve issues between practitioners of pastoral and sedentary farming (Rural Land-Use Code, Water Resources Code and the Pasture Resources Code) by conducting a cross-reading of the Codes to ensure they complement each other and fulfil the role that each should have;

(c) Promulgate the 2010 Pasture Resources Code and adopt the necessary implementing legislation for its effective application.

Human rights training and awareness-raising

22. Although training in human rights is included in some schools' curricula and is provided to some groups of professionals, the Committee is concerned by the continued presence of certain discriminatory sociocultural practices and attitudes based on regionalism, ethnocentrism, slavery and servitude, which point to the need for additional efforts to disseminate broadly the provisions of the Convention and human rights standards (art. 7).

23. The Committee recommends that the State party take steps to expand human rights training on the provisions of the Convention and other human rights standards beyond the officials responsible for enforcing legislation to include other professional groups, such as politicians, journalists and traditional and religious leaders, with a view to strengthening national cohesion and eliminating all forms of discriminatory practice based on ethnicity or descent.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

24. In line with its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference and acknowledging the State party's efforts in this regard to date, the Committee recommends that the State party fully implement the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference held in Geneva in April 2009, when applying the Convention in its national legal order. The Committee invites the State party to assess to what extent its National Human Rights and Justice Policy and associated ten-year action plan for the period 2016-2025 are aligned with the Durban Declaration and Programme of Action.

International Decade for People of African Descent

25. Pursuant to General Assembly resolution 68/237, in which the Assembly proclaimed the International Decade for People of African Descent (2015-2024), and General Assembly resolution 69/16 on the programme of activities for the implementation of the International Decade, the Committee recommends that the State party formulate and launch an appropriate programme of measures and policies. The Committee also requests the State party to include in its next report detailed information on specific steps taken in this regard, bearing in mind the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Competence of the Committee to consider individual complaints

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

Amendments to article 8 of the Convention

27. 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 States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. The Committee refers to resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their national ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dialogue with civil society

28. The Committee recommends that the State party continue and expand its dialogue with civil society organizations active in the human rights sphere, especially those working to combat racial discrimination, as part of the preparations for its next periodic report and implementation of the present recommendations.

Dissemination

29. The Committee recommends that the State party take steps to ensure that its periodic reports are easily accessible to the public as from the time of their submission and that the Committee's concluding observations on those reports are circulated in a timely fashion in the State party's official language and national languages. The

Committee also requests the State party to disseminate the Convention and the Committee's general recommendations among all interested parties.

Follow-up to concluding observations

30. Pursuant to article 9, paragraph 1, of the Convention and to rule 65 of its rules of procedure, the Committee requests the State party to report, within the year following the adoption of the present concluding observations, on action taken to follow up on the recommendations contained in paragraphs 9, 11 (b), 21 and 23 above.

Paragraphs of particular importance

31. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 11, 15 and 19, and requests that the State party include in its next periodic report detailed information on the specific appropriate steps taken to effectively implement these recommendations.

Preparation of the next report

32. The Committee recommends that the State party submit, in a single document, its twenty-second to twenty-fifth periodic reports by 4 January 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In accordance with General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words established for periodic reports and the limit of 42,400 words set for the common core document.
