



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

Distr.
GENERAL

CERD/C/COG/CO/9
23 March 2009

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-fourth session
16 February-6 March 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

CONGO

1. The Committee considered the initial report and the second to ninth periodic reports of the Congo, submitted in a single document (CERD/C/COG/9), at its 1908th and 1909th meetings (CERD/C/SR.1908 and 1909), held on 18 and 19 February 2009. At its 1923rd meeting (CERD/C/SR.1923), held on 2 March 2009, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by the Congo of its initial report and the establishment of a dialogue with the State party. It commends the honesty it has demonstrated in recognizing certain situations that have had an effect on the Congo.

3. The Committee expresses its satisfaction at the additional information provided orally and in writing, and welcomes the constructive and frank dialogue it enjoyed with the State party delegation.

4. Noting that the report was submitted nearly 20 years late, the Committee urges the State party to respect the deadline set for the submission of its next periodic report.

B. Factors and difficulties impeding the implementation of the Convention

5. The Committee notes that the State party is now in a phase of reconstruction following a difficult period of armed conflict, and is concerned that the fragility of the peace both inside the country and at its borders has been preventing full implementation of the Convention.

C. Positive aspects

6. The Committee notes with satisfaction that, according to the preamble to the 2002 Constitution, international human rights instruments that have been ratified by the State party, including the International Convention on the Elimination of All Forms of Racial Discrimination, are an integral part of the State party's national legislation.

7. The Committee notes with interest that a National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009-2013) has been prepared and adopted with the participation of civil society and United Nations agencies.

8. The Committee takes note with interest of the bill on the promotion and protection of the human rights of indigenous peoples, which was inspired by the United Nations Declaration on the Rights of Indigenous Peoples.

9. The Committee notes with satisfaction the activities carried out by the State party in observance of the International Day of the World's Indigenous Peoples and the holding of the International Forum for Indigenous People of Central Africa (FIPAC) on the initiative of the State party.

D. Issues of concern and recommendations

10. The Committee notes that the information transmitted by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and asylum-seekers, is incomplete. The Committee recalls that information on demographic composition enables both the Committee and the State party to better assess the implementation of the Convention at the national level.

The Committee:

(a) Recommends that the State party conduct a census and transmit in its next report the disaggregated statistical data obtained therefrom. It also recommends that the State party ensure that the census questionnaire contains relevant questions that will make it possible to obtain a clearer picture of the ethnic and linguistic make-up of the population, including indigenous peoples;

(b) Invites the State party to submit data on asylum-seekers, refugees and displaced persons in order to enable it to assess the extent, distribution and impact of their movements.

11. While taking note of article 8 of the Constitution, which establishes the principles of equality and non-discrimination, the Committee is concerned by the fact that although the State party acknowledges the presence of inter-ethnic tensions in the country, there is currently no definition of racial discrimination in domestic law that corresponds to the definition contained in article 1 of the Convention.

The Committee encourages the State party to rapidly undertake a reform of its legislation, particularly the Criminal Code, with a view to introducing specific legislation on racial discrimination that implements the provisions of the Convention, including a legal definition of racial discrimination that is fully consistent with article 1 of the Convention (art. 1).

12. The Committee regrets that it has not received sufficient information on the mandate and current operations of the National Human Rights Commission, and is particularly disturbed by the question of that institution's resources, independence, mandate, areas of jurisdiction and effectiveness.

The Committee recommends that the State party provide detailed information on the resources, independence, mandate, areas of jurisdiction and outcome of the activities of the National Human Rights Commission and ensure that it is fully consistent with the Principles relating to the status of national institutions (the Paris Principles, General Assembly resolution 48/134, annex). The Committee invites the State party to take steps to ensure that the National Human Rights Commission is accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (arts. 2 and 6).

13. The Committee notes with concern the reports of violence, abuse of power and cruel, inhuman and degrading treatment by the "eco-guards" of the project for the management of the ecosystems adjacent to the Ndoki National Park (PROGEPP) directed at the indigenous peoples of the Congo's northern region. It regrets that these allegations did not give rise to judicial proceedings.

The Committee urges the State party to conduct thorough official investigations into any allegation of violence, abuse of power and cruel, inhuman or degrading treatment directed at indigenous peoples in particular, and to bring any perpetrators to justice and ensure that they are punished. The Committee would like to have information on this subject in the State party's next periodic report (arts. 4 and 5 (b)).

14. The Committee notes with concern that the rights of indigenous peoples, and of the Pygmies in particular, to own, develop, control and exploit their lands, their resources and their communal territories are not guaranteed and that concessions are granted in respect of indigenous peoples' lands and territories without prior consultation.

The Committee recommends that the State party take urgent and adequate measures to protect the rights of indigenous peoples, and especially of the Pygmies to land, and, in particular, to:

- (a) Establish the forest rights of indigenous peoples in domestic legislation;**

(b) Record Pygmy ancestral lands in the property register, in consultation with the indigenous peoples concerned;

(c) Ensure that the interests of the Pygmies as well as environmental protection needs are taken into account in land use and ensure that the Pygmies are consulted before any concessions are granted;

(d) Provide for domestic remedies in the event of violations of indigenous peoples' rights; and

(e) Redouble their efforts to consult with indigenous peoples in the administration of their lands, waters and forests. To this end, the Committee invites the State party to take into account its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5).

15. The Committee is concerned by the marginalization and discrimination to which the Pygmies are subjected in terms of access to justice and the enjoyment of their economic, social and cultural rights, in particular access to education, health and the labour market. The Committee is especially concerned by reports of domination, discrimination and exploitation to which the Pygmies are subjected, at times including modern forms of slavery.

The Committee:

(a) Encourages the State party to redouble its efforts to ensure the full enjoyment by indigenous peoples of their economic, social and cultural rights and, in particular, invites it to take steps to guarantee their rights to education, health, employment and equitable working conditions, inter alia through the establishment of a labour inspection mechanism;

(b) Urges the State party to intensify its efforts to make indigenous peoples aware of their rights under the Convention;

(c) Strongly recommends that the State party accelerate the adoption of the bill on the promotion and protection of the rights of indigenous peoples; and

(d) Invites the State party to provide it with information on the implementation of the National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009-2013) in its next periodic report (art. 5).

16. The Committee takes note with concern of the low representation of indigenous peoples in political life owing to their low educational level. The Committee regrets that, to date, no indigenous person has ever been elected to political office.

The Committee recommends that the State party endeavour to ensure the full participation of indigenous peoples in public affairs at all levels. It invites it to review its electoral legislation with a view to encouraging political parties to involve indigenous peoples more fully in political activities (art. 5 (c)).

17. The Committee notes with concern that the level of registration of births among indigenous people is low and that some indigenous people lack identity documents.

The Committee recommends that the State party redouble its efforts to ensure that all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents. The Committee encourages the State party to bring civil status registration centres closer to the communities where indigenous people live (art. 5 (d)).

18. The Committee notes with concern the unequal enjoyment of economic, social and cultural rights by citizens and non-citizens, in particular refugees and asylum-seekers from Angola, the Democratic Republic of the Congo and Rwanda, and the difficulties they encounter in acquiring refugee status.

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee invites the State party to redouble its efforts to improve the situation of refugees and asylum-seekers, in particular by strengthening its asylum system and the national institutions working in this area, including the National Refugee Assistance Committee (CNAR), the Refugee Status Eligibility Commission and the Refugee Appeals Commission. The State party is invited to:

(a) Establish an effective procedure for determining refugee status;

(b) Contemplate the adoption of a law on asylum; and

(c) Take all necessary and effective steps to ensure the successful integration of refugees in the Congo (art. 5 (e)).

19. While noting the State party's claims that the Convention enjoys supremacy over domestic legislation and that its provisions can be invoked directly before the national courts, the Committee regrets that, as the State party has noted, the Congolese courts have never heard any cases relating to acts of racial discrimination.

The Committee requests the State party to include in its next periodic report statistical data on proceedings initiated and judgements rendered in respect of offences related to racial discrimination. It reminds the State party that the absence of any complaints or legal proceedings brought by victims of racial discrimination may indicate the absence of any specific legislation in the matter, an ignorance of the remedies available, fear of social disapproval or a lack of will on the part of the authorities responsible for initiating proceedings. It requests the State party to endeavour to ensure that national legislation contains appropriate provisions and to inform the public of all available legal remedies in the area of racial discrimination (art. 6).

20. The Committee is concerned at the lack of information on measures taken to disseminate information on the Convention, and particularly on training courses for members of the judiciary and law enforcement officers, “eco-guards”, teachers, social workers and other officials on the provisions of the Convention and their implementation.

The Committee recommends that the State party provide information on human rights education in school curricula and on specific training courses on the provisions of the Convention intended for members of the judiciary, law enforcement officers, “eco-guards”, teachers, social workers and other officials (art. 7).

21. While taking note of the efforts undertaken jointly by the State party and the Office of the United Nations High Commissioner for Refugees (UNHCR) to promote peaceful coexistence between Rwandan refugees and the local population, the Committee remains concerned at the inter-ethnic tensions that persist in the north of the country.

The Committee invites the State party to step up its efforts to promote harmonious relations between refugees and the various ethnic and cultural groups living in the north of the Congo, specifically through campaigns to foster awareness of tolerance and inter-ethnic understanding (art. 7).

22. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

23. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I) when it incorporates the Convention into its internal legal order, in particular the provisions of articles 2 and 7 of the Convention. In addition, it urges the State party to include in its next periodic report specific information on plans of action adopted and other measures taken to implement these two texts at the national level. The Committee also encourages the State party to participate actively in the Durban Review Conference in 2009.

24. The Committee notes that the State party is considering making the optional declaration provided for in article 14 of the Convention and invites it to do so promptly.

25. 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 and approved by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148 of 19 December 2006 and 62/243 of 24 December 2008, 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.

26. The Committee recommends that the State party should make its periodic reports available to the public as soon as they are submitted and to disseminate in similar fashion the concluding observations of the Committee in all official and national languages and, where possible, in the principal minority languages.

27. The Committee recommends that the State party carry out a wide-ranging consultation of civil society organizations when preparing the next periodic report.

28. 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, namely those relating to the common core document as adopted at the fifth Inter-Committee Meeting of Treaty Bodies, held in June 2006 (HRI/GEN/2/Rev.4).

29. Pursuant to article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to inform it of the action it has taken to follow up the recommendations contained in paragraphs 12, 13, 14 and 15 (c) during the year following the adoption of the present concluding observations.

30. The Committee recommends that the State party should submit its tenth and eleventh periodic reports in a single document no later than 30 March 2012, taking into account the guidelines for the preparation of reports to the Committee on the Elimination of Racial Discrimination adopted at the Committee's seventy-first session (CERD/C/2007/1), and to discuss in that document all the issues raised in the present concluding observations.
