

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 72<sup>ND</sup> SESSION, 18 FEBRUARY – 7 MARCH 2008 OVERVIEW OF THE SESSION

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### Introduction

The Committee on the Elimination of Racial Discrimination (the Committee) held its 72<sup>nd</sup> session in Geneva from 18 February to 7 March 2008. At this session, it considered the periodic reports of Belgium, the Dominican Republic, the Republic of the Fiji Islands (Fiji), Italy, Moldova, Nicaragua, and the United States of America (the US) under the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention).

### Main themes and issues of the session

The main themes and issues of the session were: reservations to the Convention, discrimination against minority populations, policies on migrants and asylum-seekers, and other issues including the rise of racist political parties and language discrimination.

### Reservations to the Convention

The Committee asked Nicaragua for clarification on what the term ‘ordinary law’ means, given that the Convention is said to have this status in national law. It also inquired whether the Convention has been applied by the courts in practice. The Committee advised Nicaragua to consider the possibility of including the Convention in the list of international treaties under Article 46 of the Constitution. The country rapporteur asked the delegation whether Nicaragua intends to recognise the competence of the Committee to receive individual communications under Article 14 of the Convention. While not responding directly to this question, the Ambassador of Nicaragua responded that in each autonomous region there is a Special Procurator’s office

authorised to receive complaints regarding human rights violations by the State, and reported on the numbers of complaints received.

The US declined to say whether it will withdraw any of its reservations made when it ratified the Convention in 1994, opting instead to explain why it must maintain them. For example, the delegation claimed that the US needs to keep its reservation to Article 7 on combating the promotion of or incitement to racial discrimination because US society is 'shaped' by the principle of non-interference. Regarding special measures such as affirmative action, the delegation stated that racial classifications are welcome so long as they satisfy the 'strict scrutiny test'. It went on to argue that the US reservation to Article 4 will remain because the Supreme Court already distinguishes between constitutionally protected free speech and speech that poses a 'true threat'. Moreover, the US does not criminalise racial superiority 'ideas'; rather, the State relies on civil society to assure that such notions do not gain traction. Committee member Mr Peter did not hide his dissatisfaction with the US, saying he was 'shocked' by the State's poor ratification of the Convention.

The country rapporteur for the Dominican Republic, Mr Avtomonov, noted the Committee's appreciation for the ratification of the Convention without reservations. However, he reminded the State that it has not yet ratified the amendment to Article 8 nor made a declaration recognising the competence of the Committee to consider individual communications.

Questions were first raised about the fact that Fiji has maintained reservations that were in place when it succeeded to the Convention after gaining independence from the United Kingdom. The delegation stated that Fiji intends to maintain its reservations until the proper reviews are conducted regarding those issue areas, especially that concerning with the definition of indigenous peoples employed by the Government, which is different from the international legal concept of the term. The Committee recommended in that Fiji 'reflect on the appropriateness of its reservation and declarations in light of the developments in international law in relation to indigenous peoples' rights'.

The Belgian delegation explained that its general anti-discrimination law incorporates the provisions of the Convention into domestic law. The law includes all obligations enshrined in the Convention, and therefore jurisprudence does not mention the Convention directly. Responding to whether the State considers withdrawing its reservation to Article 4, the delegation stated that it is not a reservation but rather an interpretative declaration following from a Council of Europe directive.

### **Discrimination against minorities**

The Committee expressed its concern about discrimination against Roma populations in Belgium, Italy, and Moldova. The Committee recommended that these States strengthen measures to improve access to education of Roma children and to employment opportunities. The Committee also recommended that Italy take measures to prevent the use of illegal force by the police against Roma and develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing.

When Fiji was reviewed, the Committee focused on discrimination against the Indo-Fijian population by race-based affirmative action, lack of access to land of non-Indigenous Fijians, and racism in education. These points were raised in the report by the NGO Citizen's Constitutional Forum. The head of delegation Mr Ligairi addressed this issue of land by citing the movement within Fiji to draft a *People's Charter for Change and Progress*. Committee members Mr de Gouttes and Mr Murillo Martinez asked for details on specific legislation in place or pending to deal with the issue, while requesting more information on the developments in the dialogue on peace and dispute resolution. Regarding education, the Committee recommended that Fiji take steps to ensure that school enrolment policies are not discriminatory and that school curricula convey the importance of respect for different ethnic communities.

As regards the Dominican Republic, the NGO Human Rights Advocates addressed discrimination against the Haitian minority, which manifests itself through unlawful arbitrary repatriations, isolation, denial of birth

certificates, lack of basic needs, and poor living conditions. The delegation stated that being a developing country, the Dominican Republic is not able to cope with the disordered illegal flow of migrants. In its concluding observations, the Committee recommended that the State ensure that laws on deportation do not discriminate on the basis of race, colour, or ethnic or national origin; to ensure that non-citizens are not subject to collective expulsions; to avoid expulsions that would result in disproportionate interference with the right to family life; and to ensure that non-citizens have equal access to effective remedies.

In its dialogue with Nicaragua, the Committee echoed concerns raised in two NGO reports,<sup>1</sup> namely discrimination against indigenous groups. According to the NGOs, autonomous indigenous regions are denied appropriate resources to provide for their societies, particularly in areas of education and health care. The delegation acknowledged that there is a gap between the Pacific region and the Atlantic autonomous regions, and explained that there are historical and political reasons for this. It stressed that the new Government is making attempts to address the imbalance. The Committee recommended that the State intensify its efforts to guarantee the rights to health, medical assistance, social security, and social services of indigenous people and people of African descent, particularly in the autonomous regions.

### **Policies on migrants and asylum-seekers**

Committee member Mr Kjaerum commended Belgium for its Civic Integration Policy, which includes language training, an introduction to Belgian society, and support from the Flemish Employment Office. He asked what criteria are used to consider an application admissible and if asylum-seekers are allowed to work. Delegation member Mr de Vulder explained that in June 2007 there was an amendment to the process of refugees seeking asylum, which eliminated the question of admissibility. Therefore, currently all requests of asylum are evaluated by the Commissioner General, with the exception of requests that were not within the country's responsibility as defined by the *Dublin Convention*. He explained that recognised refugees are integrated into society, but stressed that asylum-seekers do not have access to the labour market during the examination of their request, although they are provided with accommodation and material support. In its concluding observations, the Committee recalled *General Recommendation 30* of 2004, which calls State to adopt 'all necessary measures to use non-custodial measures for asylum seekers'.

Italy was questioned regarding the expulsion of migrants from North Africa and those who allegedly pose a threat to security, the procedure to obtain a work permit, and mechanisms for family reunification. Italy provided no specific response to the first issue, but explained that the decree allowing the expulsion of individuals who threaten public safety is a legislative tool that gives effect to a European Union decree. The State explained that access to the labour market is regulated by quotas that fix the number of regular entrance every year in accordance with the labour market's needs and the country's hosting capacity. The delegation added that the procedure for family reunification requires that the member living in Italy has a valid permit of at least one year for study, work or religious reasons. The Committee urged Italy to take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements.

A representative of the Department of Homeland Security (DHS) spoke on behalf of the US regarding immigration policy. The representative insisted that employers cannot discriminate against employees based on immigration status, all non-citizen children have a right to free primary and secondary education, federal emergency assistance is provided without regard to racial status, and moreover, foreigners can apply for asylum and appeal their cases to the Board of Immigration Appeals. The Committee remained unconvinced, expressing particular concern about the raids on immigrants conducted by the DHS Immigration Control and Enforcement Department. Specific concerns were raised regarding Muslim immigrants post-September 11, and the building of the wall along the US-Mexican border. The Committee requested more information on these issues. In response, the State reported that overall, immigration from predominantly Muslim countries has increased between 2003 and 2006, and DHS is trying to expedite foreign student applications. When pressed to explain its policy on renditions, the US delegation quickly dismissed the issue as outside of the

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<sup>1</sup> Minority Rights Group International, Regional Council of Indigenous People.

Committee's competence. The delegation acknowledged that there is legislation pending on the issue of Mexican immigrants, but insisted that it is not 'animated' by discriminatory intent.

### Other issues

The Committee questioned Belgium on how the Government is dealing with the racist party Vlaams Belang. The delegation cited an appeal made against this party in 1989 and explained that the Government is monitoring, and taking legal action against, racist publications prepared by the party. The Committee recommended that Belgium adopt legislation that prohibits organisations that promote and incite racial discrimination. With regard to Italy, Committee member Mr de Gouttes addressed the issue of hate speeches given by members of the Northern League party and by the former Prime Minister Silvio Berlusconi, who called for a 'zero tolerance' policy against Roma and illegal immigrants. Mr de Gouttes was particularly concerned that not a single case of hate speech has come before the courts. The Committee recommended that the State increase its efforts to prevent racially motivated offences and hate speech.

The Committee queried why the 1992 *European Charter for Regional and Minority Languages* has not yet been ratified in Moldova. The delegation responded that Moldova is committed to ratifying the Charter in 2008 and that a special commission is working on resolving the outstanding issues of concern, namely the monitoring and funding of language projects. Later in the session, Committee member Mr Diacuno recommended that Moldova *not* ratify the Charter, as it is a 'complex' convention. The delegation concurred with his statement and said that Moldova is 'not hurrying'. The Committee echoed the concern raised by the International Federation of Human Rights Leagues (FIDH), namely the fact that the Flemish region adopted a decree in 2006 to limit access to housing to those who can speak Dutch or have stated their intent to learn the language. The Committee recommended that Belgium ensure that linguistic requirements do not lead to discrimination that impairs the housing rights of those who do not speak Dutch.

Other issues raised by the Committee at this session included: the absence of independent national human rights institutions in accordance with the *Paris Principles* in the US, Italy, Moldova, Fiji and Belgium; racial profiling in the US and Dominican Republic; the disproportionate representation of blacks in the criminal justice system in the US; Nicaragua's failure to ratify *ILO Convention No. 169*; and discrimination at the hands of police officers in Belgium, the US, and Moldova.

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## ABOUT THE PUBLICATION

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