



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Eighty-eighth session

Summary record of the 2394th meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 24 November 2015, at 3 p.m.

Chair: Mr. Calí Tzay

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Combined sixteenth to twenty-third periodic reports of the Holy See

* No summary record was issued for the 2393rd meeting.

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Combined sixteenth to twenty-third periodic reports of the Holy See (CERD/C/VAT/16-23 and CERD/C/VAT/Q/16-23)

1. *At the invitation of the Chair, the delegation of the Holy See took places at the Committee table.*

2. **Archbishop Tomasi** (Holy See) drew attention to the fact that the Holy See had been one of the first signatories to the Convention. Although all members of the human race were equal in inherent dignity, everyone was different, and it was vital to respect the dignity of each person. As Pope Francis had recently stated, all must work to put an end to the age-old prejudices, preconceptions and mutual mistrust that often gave rise to discrimination, racism and xenophobia.

3. The Holy See was an active member of the international community. It was related to but separate and distinct from the territory of the Vatican City State, over which it exercised sovereignty, and it promoted those basic principles and human rights recognized in the Convention while implementing the instrument within the territory of the Vatican City State. The Vatican City State had been established to ensure the independence of the Holy See and to enable it to carry out its worldwide religious mission and international diplomatic work. The Catholic Church was a spiritual society composed of persons who freely adhered to its doctrines. Although the Holy See had religious authority over the members of the Catholic Church across the world, it recognized the jurisdiction of the national authorities of the countries where they were located or resided. Persons living in a particular country came under the jurisdiction of the legitimate national authorities and were subject to the domestic law and the penalties contained therein. It was the national authorities that were competent and had the obligation to prosecute persons under their jurisdiction when they were suspected of committing an offence. The Holy See exercised that same authority over the inhabitants of the Vatican City State. It did not have civil jurisdiction over each and every member of the Catholic Church.

4. Under the Supplementary Norms on Criminal Law Matters of 2013 (Law No. VIII), in the Vatican City State, persons found guilty of committing offences of racial discrimination were liable to between 5 and 10 years of imprisonment. Articles 13 to 15 of the Norms referred to a large number of crimes against humanity, including apartheid, persecution and genocide, and set out corresponding terms of imprisonment ranging from 30 to 35 years. While implementing such laws within the territory of the Vatican City State, the Holy See also conveyed the principles that underlay them to the wider world through a number of officially recognized media outlets, such as Vatican Radio and the newspaper *L'Osservatore Romano*. The Catholic clergy and lay persons worked to promote the message that all men and women were created equal, with certain inalienable rights. The President of the United States Conference of Catholic Bishops had recently spoken publicly about the need to tackle racial injustice in the United States of America.

5. Across the world, Catholic churches and institutions, operating in line with the laws of their host countries, ran 215,784 educational establishments, providing services to over 64 million young persons, regardless of race, colour, national or ethnic origin or religion. The Catholic Church ran a total of 116,185 welfare institutions in various parts of the world, including 5,034 hospitals, over 16,000 dispensaries and 611 facilities for persons with leprosy.

6. The Holy See had taken effective legislative, administrative, judicial and other measures in line with the Convention to tackle racial discrimination in the Vatican City State and carried out various activities within the international community to prevent and eliminate that phenomenon.

7. The Holy See had the right and the obligation to interpret the Convention in accordance with the rules of interpretation contained in the Vienna Convention on the Law of Treaties, to which it was party. The dialogue with the Committee should remain focused on those issues covered by the Convention.

8. **Mr. Vázquez** (Country Rapporteur) said that, while the Holy See was party to only a few United Nations human rights instruments, it should be commended on its work to promote the aims of the Convention, including through the activities of a number of its bodies and statements made by high-ranking clergymen. When Pope Francis had addressed a joint meeting of the United States Congress in September 2015, he had highlighted the need to respond to the needs of refugees in a humane, just and fraternal way. The Pope had made the fight against poverty a central theme of his papacy. Such an approach should be praised by the Committee, especially given the intersectionality of poverty and racial discrimination.

9. It had been 14 years since the Holy See had submitted its previous report. He expressed the hope that future submissions would be carried out in a more timely manner.

10. Paragraph 3 of the State party's report (CERD/C/VAT/16-23) focused on an interpretation of the Convention in accordance with the Vienna Convention on the Law of Treaties. In the report, the Holy See stated that, faced with recommendations from the Committee that created new obligations and constituted a fundamental change in circumstances, it would be justified in terminating or withdrawing from the Convention or suspending its operation. In the same paragraph, the Holy See noted that an essential basis of its consent to be bound by the treaty was founded on article 9 (2) of the Convention, which limited the competence of the Committee to the rendering of mere proposals of a non-binding nature, in the form of suggestions and general recommendations. The conclusion reached by the Holy See that it would be justified in withdrawing from the Convention was thus unwarranted. If the Committee's recommendations were non-binding suggestions, then they could not create new obligations and could not constitute a fundamental change in circumstances. The mandate of the Committee was clearly set out in article 9 (2) of the Convention. The Committee did not function as a tribunal, but sought rather to provide guidance through its suggestions and recommendations on ways of strengthening protection against and eliminating racial discrimination. For example, the Committee often recommended that States parties should make the declaration referred to in article 14 (1) of the Convention relating to individual communications, or that they should become parties to other, related human rights instruments. The Committee's recommendations were frequently prepared with the aim of setting out best practices under the Convention. Paragraph 5 of the report of the State party contained a series of objections to a number of the Committee's recommendations, such as those recognizing the intersection between the elimination of racial discrimination and the protection of other human rights, and to its request for information on action plans or other measures to implement the Durban Declaration and Programme of Action. Such general recommendations were well within the Committee's mandate.

11. According to the report, the Holy See did not consider the territorial scope of the Convention to be limited to the Vatican City State. No interpretative declaration had been attached to the State party's ratification of the Convention. It was the Holy See, rather than the Vatican City State, that had become party to the instrument. Indeed, the report made it clear that the territorial sovereignty of the Holy See over the Vatican

City State was simply a means to ensure its independence and sovereignty for the accomplishment of its worldwide moral, spiritual and religious mission and thereby encourage other States to accomplish the treaty's aims.

12. Apart from some limited references in articles 3 and 6, the Convention did not contain express territorial limitations. Thus, it would be wrong to maintain that States parties had the right to engage in acts of racial discrimination beyond their borders. There was no territorial limitation to the obligation to combat prejudice, set out in article 7.

13. In line with that understanding of the scope of the Convention, the State party report provided information about statements by the most recent Popes concerning the Rwandan genocide. More generally, it provided information about activities to promote the aims of the Convention undertaken by the Pope and various Church bodies outside the territory of the Vatican City State with a view to eliminating racial discrimination throughout the world. The fact that such information was provided appeared to be an acknowledgement that the Convention involved the activities of the Holy See beyond its limited territorial jurisdiction.

14. Law No. VIII of 2013 was intended to implement the State party's obligations under the Convention. Article 1 of that law concerned racial discrimination and closely followed the provisions of the Convention. However, although creation of, or participation in, a racist organization was penalized, such organizations themselves were not. He wondered whether there were other provisions penalizing the existence of such organizations. In view of the fact that a person found guilty of racist acts could be punished with 5 to 10 years' imprisonment, he also wondered whether there was prosecutorial discretion in respect of the penalties applied. In that connection, he recalled that general recommendation No. 35 (2013) called for the application of criminal sanctions to be governed by principles of legality, proportionality and necessity.

15. It was the Committee's understanding that the law was applicable when an offence was committed either within the territory of the Vatican City State or by "public officials of the State" acting abroad. He asked whether public officials of the Vatican City State included officials of the Holy See. The law also applied to citizens of the Holy See acting abroad, but only if the applicable penalty was more than 2 years' imprisonment. If all officials of the Holy See were "citizens" of the Vatican City State, the possible gap in coverage would be reduced, but only in respect of crimes punishable by deprivation of liberty for more than 2 years.

16. The Committee would appreciate further information on how a victim of racial discrimination could obtain compensation under criminal law. The burden of proof in criminal proceedings was much greater than that required in civil proceedings. The Committee generally recommended that States should shift the burden of proof to the defendant once a complainant had made a prima facie case. He asked whether complainants seeking compensation were subject to a lower burden of proof even if the proceedings in question were part of a criminal case. Canons 1729-1731 did not provide an answer to that question. Moreover, the availability of a remedy apparently depended on the decision of a government official to initiate criminal proceedings. Under Canon 1731, it was only in such circumstances that a judge could proceed with a request for compensation, even if the defendant was acquitted. That placed a victim's right to compensation at the discretion of the prosecutor, who would presumably only initiate criminal action if the evidence demonstrated the defendant's guilt beyond a reasonable doubt. Such a limitation might be an obstacle to the provision of remedies in all the circumstances contemplated by article 6 of the Convention, which required a State to provide effective remedies for racial discrimination. If the only remedies available were those that could be claimed in

conjunction with a criminal proceeding, and if racial discrimination was not criminalized, the criminal legislation would not comply with article 6.

17. Turning to some broader concerns, he asked whether the racial or ethnic make-up of the leadership of the Holy See reflected the racial and ethnic diversity of the followers of the Catholic faith. According to the record of the discussion of the State party's combined thirteenth, fourteenth and fifteenth periodic reports, the Holy See had indicated that data on the relevant categories of ethnicity would be provided with regard to the Vatican's governing structure. However, the data had not been provided in the latest report. According to information provided by an NGO, more than half of the Church's 219 cardinals were from Europe, where only about a quarter of Roman Catholics lived. Only 12 per cent of cardinals were from South America, even though about 28 per cent of Catholics came from that continent. Pope Francis had made additional appointments, but Europeans continued to be overrepresented in the College of Cardinals. The Committee would therefore like to know, for example, how many cardinals came from races or ethnicities that were minorities in their respective regions but accounted for the majority of the Roman Catholics in those regions. It would also welcome data on the leadership of the Holy See and on bishops and archbishops, who were appointed by the State party.

18. The State party report described many commendable activities undertaken by the Holy See throughout the world, including valuable work performed by Catholic schools in educating underserved minorities in various countries. Catholic schools were indeed often more protective of the rights of non-Catholic minorities than State schools were. The Committee had, however, heard reports of racial discrimination within some Catholic schools. It would therefore appreciate further information about the training given to teachers in such institutions and about specific efforts by the Holy See to prevent such discrimination. He did not advocate top-down regulation of Catholic educational institutions; as a professor at a Catholic university, he valued its independence and academic freedom. However, in some countries, government efforts to tackle problems in religious institutions had been opposed by people invoking freedom of religion. In such circumstances, lacunae might exist in protection against discrimination.

19. He would welcome further information from the delegation on the failure by the Holy See to disavow the papal bull entitled *Inter caetera* of 1493 — a clearly racist document that had caused untold harm to the indigenous peoples of the Americas, which continued to be felt. Indigenous groups in the Americas also strongly objected to the recent canonization of the Spanish missionary Junípero Serra because of his role in abuses against indigenous peoples and because the Holy See had not consulted the indigenous peoples concerned in the process leading up to that canonization. The Committee welcomed Pope Francis's apology to indigenous peoples in a recent speech in the Plurinational State of Bolivia. More needed to be done, however. The Holy See should engage in a more complete dialogue with indigenous peoples in respect of their legitimate concerns.

20. In the list of themes, the Committee had requested further information on several apparent violations of the Convention by the Church. The first related to racism among Catholic clergy in the United Kingdom. One priest had refused to baptize the child of an unmarried Afro-descendent couple, while another had refused to perform a requiem mass because the family had wished to sing a Caribbean song. Another priest had refused to take in refugees out of fear that everything of value would be stolen. Of the 5,600 priests in England and Wales, only 30 were black.

21. The Committee had also requested information about discrimination against Catholic Dalits in India and about segregated cemeteries in Catholic churches. It would welcome further information about mechanisms to address such issues.

Specifically, he asked what role the Congregation for the Doctrine of the Faith played in receiving and addressing complaints of acts of racial discrimination by members of the clergy. What was the current situation of Father Wenceslas Munyeshyaka, who had been convicted in absentia and indicted by the International Criminal Tribunal for Rwanda for his role in the genocide in Rwanda and was reportedly living in France under the protection of the Church?

22. The Committee recognized that the Holy See was not responsible for racist acts by Catholic priests acting in other countries. At the same time, a State party's responsibility could be engaged if it failed to take appropriate measures to prevent and redress the conduct of its citizens or others under its authority or control. As previously mentioned, the State party had ratified the Convention in part to "manifest its moral authority". Many valuable statements by the Pope and other officials of the Holy See on the importance of fighting racism and welcoming immigrants were undermined by racist conduct on the part of Catholic officials in various parts of the world.

23. **Mr. Avtonomov**, after commending the ratification by the State party of an amendment to article 8 of the Convention, which not many other States parties had ratified, said that he had a specific question relating to the relationship between the Holy See and the Sovereign Military Order of Malta. The Order was a sovereign subject of international law, but its Grand Master was also a cardinal in the Catholic Church. All the constitutions of the Order, including that of 1961, had been approved by the sitting Pope. He therefore wondered whether canon law applied to the Order and whether it came under the jurisdiction of the Holy See.

24. In view of the fact that the Catholic Church had apologized for certain historic injustices — with regard to the Crusades, for example — it was clearly possible to address the historic injustices suffered by indigenous peoples, and he encouraged the Holy See to do so. In Nigeria, the Igbo people were considered untouchable, even within the Catholic communities where they worshipped. He wondered whether the State party had any programmes aimed at overcoming such unchristian attitudes.

25. **Ms. Crickley**, after commending the efforts of Pope Francis and Archbishop Tomasi on behalf of migrants, said that she had been extremely disappointed with the State party's interpretation of its responsibilities under the Convention. She was also disappointed that the State party's delegation included no women. She urged the State party not to ignore the intersectionality between the violation of the rights of indigenous women and racial discrimination. Clearly, there was a gender dimension. The situation of a Yazidi woman sex slave would be radically different from that of a Yazidi male prisoner.

26. The admission policies of Catholic schools were sometimes not sufficiently inclusive of minorities. That was a problem regardless of whether such inclusion was a government requirement. Did the State party have any particular policy for the education of the clergy on matters of racial discrimination or for taking into account how members of the clergy addressed discrimination issues when they were considered for promotion?

27. The feelings of indigenous peoples should be addressed. She also suggested that the State party should consider establishing a national human rights institution. Lastly, she expressed concern at the statements in the report objecting to the Committee's focus on the Durban Declaration and Programme of Action. She and others had found the support of the delegation of the Holy See extremely valuable at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and she urged the State party to reconsider its current position.

28. **Mr. Murillo Martínez** said that it was distressing that 200,000 Haitians had found themselves stateless in the Dominican Republic and that the Church hierarchy had resisted recognizing their rights. He wondered to what extent the State party could help to improve the stance taken by the local authorities. He commended the leadership shown by Pope Francis, who had been a force for peace in Colombia, Cuba and elsewhere. He wondered, however, whether the State party could take further action to address the injustices of the past. In view of the fact that the International Decade for People of African Descent had just started, he suggested that the Pope or the State party should consider the possibility of making a statement addressing the plight of those people, possibly in the form of an encyclical. He requested the delegation to pass his request on to the Pope. He had made a video recording containing a similar request, which he had sent to the Pope, but he was not sure whether it had been received.

29. **Mr. Yeung Sik Yuen** asked what types of civil cases the Vatican judicial organs had dealt with in 2013 and what was meant by the term “penal decree of condemnation”. Did the 13 judicial procedures referred to in the report constitute all the cases dealt with in 2013 by the Vatican judicial system, or just acts committed on the territory of the Vatican City State? He also asked whether canon law applied to ecclesiastics and whether an act committed outside the Vatican City State could fall under the jurisdiction of the Vatican judicial system.

30. Were the members of the three tribunals mentioned in the report, which operated “on behalf of the Pope”, appointed by the Pope? What was the meaning of the term “ordinary vicarious judicial power” as it applied to the tribunals, and what were the functions of the Office of the Promoter of Justice, which was one of the tribunals?

31. He said the report stated that the authorities of the Vatican City State could, under the Lateran Treaty, ask the Italian State to try and punish offences committed in the Vatican City State. Had that ever happened?

32. The report stated that canonical crimes could trigger sanctions by a State if the public order of civil society was disturbed. What would happen if, for example, the Holy See was informed that a priest working in Rwanda had used hate speech to incite people to commit crimes? Would such a case be tried in the Vatican City State? If so, what sanctions might be applied? How did the Vatican City State, which had no penitentiary system, punish those convicted of serious crimes?

33. **Mr. Bossuyt** said that as the Vatican City State was so small, encompassing 44 hectares and fewer than 250 resident citizens (with a similar number living abroad), it was important to distinguish it from the Holy See. The latter was, after all, the moral and religious authority overseeing the activities of the Roman Catholic Church worldwide. It was also important to stress that the Holy See was subject to international law.

34. He agreed with Mr. Vázquez that recommendations by the Committee could not constitute a “fundamental change of circumstances” and thus be a ground for withdrawing from the Convention. The recommendations were not binding and could not in fact impose any new obligations on States parties.

35. The Church was to be commended for its long-standing efforts to promote education and public health worldwide. The fact that a majority of students enrolled in Catholic schools, from kindergarten to the university level, were not Catholic demonstrated the Church’s laudable openness in the field of education. It was unfortunate that some Church members had been involved in crimes associated with the genocide in Rwanda. He would welcome more information on the position of the Holy See, and specifically of the Conference of Catholic Bishops of Burundi, on the delicate political situation in that country.

36. **Mr. Khalaf** said that he wished to know more about the legal relationship between the Holy See and the Vatican City State and how that relationship affected the implementation of the Convention. Territorial jurisdiction would limit the Convention's purview to residents of the Vatican City State. Personal jurisdiction might make more sense, as it was the Holy See that could, if it chose to do so, uphold the values enshrined in the Convention, for the world's greater well-being. It was in that context that the Committee's dialogue with the Holy See should take place. How did the delegation interpret such personal jurisdiction? How did personal jurisdiction fit in with canon law? If the Holy See discovered a case of discrimination, how would it go about applying penalties? Was it possible to bring adversarial proceedings under canon law before Vatican courts?

37. **Mr. Kemal** said that he agreed with Mr. Vázquez that the purpose of the Committee's general recommendations was to clarify various aspects of the Convention without distorting its principles. The Convention had been drafted more than half a century earlier and the general recommendations were a way of maintaining its relevance in a changing world. While the recommendations in the Durban Declaration and Programme of Action were not binding, it would be desirable to implement them. Noting that the concept of intersectionality was becoming increasingly relevant for the Committee's work, he asked what the State party's position was on the intersectionality of race and religion.

38. **Mr. Lindgren Alves** said that he had sometimes had trouble determining whether the views expressed in the report were those of the Holy See or of the Catholic Church, and whether the distinction mattered. Given the obvious linkages between the two institutions, he thought it was important to note that the Church was the only religious institution that agreed to come before the Committee. In his view, that constituted an act of humility and somehow enhanced the Convention's moral authority.

39. **Mr. Diaconu** said that efforts of the Holy See to promote mutual understanding and respect among peoples, especially through education, had made a significant contribution to safeguarding and promoting human rights around the world. That said, he would like to know the extent to which the Holy See encouraged the application of legal penalties to priests who violated the laws of the countries in which they served. In view of its close relationship with Italy, he would be interested to know whether and how the Holy See worked to ensure consistency between Italian legislation and the Convention's provisions.

40. The report cited the limits of the Committee's competence with regard to the Holy See. The Committee's general recommendations tended to focus on issues faced by particularly vulnerable groups of society that were in need of special protection, thus helping to keep the Convention relevant in changing times. However, the recommendations were not legally binding. References in the State party's report to the possibility of such recommendations giving rise to a "fundamental" change in the State party's obligations were thus inaccurate. Making recommendations in line with changing circumstances was a key element of the Committee's interaction with States parties.

41. The Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference were all rooted in the Convention. Many States parties had already adopted their own action plans based on the content of those texts.

42. **Mr. Amir** said that he would have liked the report of the Holy See to provide more information, analysis and comment about the moral and spiritual role of the Catholic Church and its contributions to world affairs instead of focusing on measures of a structural and judicial nature. The Pope was uniquely placed to bring people

together. No other Head of State was in a position to guide and influence tens of millions of people throughout the world; indeed, numerous Heads of State themselves turned to the Pope for advice and guidance. The moral and spiritual identity of the Holy See was as important as its legal identity, if not more so, especially since laws had so far failed to ensure justice and maintain peace between States and peoples. He therefore perceived a need to move beyond legal concerns, to consider how the Pope and those around him might influence and guide social development, inspiring humility, forgiveness, security and peace.

43. **Ms. January-Bardill** said that, although she acknowledged the State party's objections to the concept of intersectionality, it was important to bear in mind that the Holy See had three identities — a territorial identity, a legal identity and a moral and spiritual identity — and that how those three identities intersected with each other had implications which extended well beyond the territory of the Vatican City State.

44. She had witnessed first-hand the State party's capacity for bringing positive change when, in 2001, she had turned to Pope John Paul II for assistance and guidance in addressing the HIV/AIDS crisis in South Africa. That contact had led to improvements in health care, education and other areas. Like Mr. Amir, therefore, she would like to see more analysis of the positive contributions that the Pope could and did bring to social development throughout the world. The State party might take the opportunity when drafting future reports to examine its policies and practices more critically and consider how they might be improved.

45. She had been surprised by the State party's objection to the Committee's recommendation regarding the Durban Declaration and Programme of Action and urged it to review the texts and reconsider its response. Her experiences in South Africa had taught her that, because of their power to convene, faith-based organizations were of great importance in addressing racial discrimination and other forms of oppression. The Church had a central role in promoting racial justice. She encouraged the Holy See to use its convening power to advocate for the rights of indigenous peoples and ethnic minorities.

46. Turning lastly to the respective roles and responsibilities of the Holy See, the Roman Catholic Church and the Vatican City State, she asked whether any of the three had established a dedicated oversight body to monitor the implementation of policies and programmes and ensure compliance with national and international law. If such a body existed, it would be interesting to have information about its structure, organization and operation.

47. **Mr. Vázquez** said that detailed information was required in response to a number of questions in the list of themes (CERD/C/VAT/Q/16-23). Specifically, the Committee would like to receive information on the direct applicability of the Convention, cases of racial discrimination by laypersons or members of the clergy, asylum applications and extraditions, the integration of non-citizens, training for members of the clergy and public officials and training for teachers in Catholic schools and clerics in seminaries. He wondered whether the new criminal legislation adopted in 2013 had already been applied in cases of racial discrimination.

48. **Mr. Murillo Martínez** said that he would appreciate more information about the purpose and use of encyclicals.

49. **Archbishop Tomasi** (Holy See) said that the delegation would endeavour to provide the Committee with the information requested at the next meeting, including details of the efforts of the Church, via Caritas Dominican Republic, to address the problems faced by many persons of Haitian descent born and residing in the Dominican Republic who had been denied citizenship.

The meeting rose at 5.40 p.m.