



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 2395th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 25 November 2015, at 10 a.m.

Chair: Mr. Calí Tzay

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The meeting was called to order at 10.05 a.m.

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

Combined sixteenth to twenty-third periodic reports of the Holy See (continued) (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. **The Chair**, recalling that 25 November had been designated as the International Day for the Elimination of Violence against Women, said that the twenty-fifth of every month had also been designated as Orange Day, a day of action to work towards eliminating violence against women. He noted that the secretariat, in a show of solidarity with the Committee on the Elimination of Discrimination against Women and other bodies that worked to combat discrimination against women and girls, had decorated the meeting room accordingly.
3. As the Executive Director of UN-Women had noted, violence against women and girls remained one of the most serious — and the most tolerated — human rights violations, both a cause and a consequence of gender inequality and discrimination. Its continued presence was one of the clearest markers of societies being out of balance, and it was a complex problem to which there was no single solution. He therefore commended the United Nations agencies that were taking part in a recently launched campaign to end violence against women and called on all treaty bodies to continue urging States parties to promote and protect women's rights and abide by the principles of equality and non-discrimination.
4. **Archbishop Tomasi** (Holy See) said that he wished to assure the Chair that ending violence against women and girls was a matter of concern to the Holy See and that ensuring that girls were educated was one of its highest priorities.
5. Turning to the concerns expressed by the Committee in connection with the objections put forward in paragraph 5 of the State party's report, he said that the Holy See was not opposed to the Committee's attempts to address new forms of racial discrimination. It was, however, concerned that enlarging the scope of the Convention could interfere with the work under other international human rights instruments or entail the addition of substantive obligations under the treaty that had not been accepted by the States parties. By the same token, the Holy See was less concerned about the idea of intersectionality per se than it was about the possibility that an admission of that concept could pave the way for the introduction of other concepts that it would find unacceptable. Furthermore, it was likely that the Holy See, given its unique nature, would be unable to accept or implement some of the Committee's general recommendations. It was in that context only that the objections should be understood.
6. The Holy See had subscribed to the Durban Declaration and Programme of Action, and in 2001, in its closing statement at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, its delegation had stated that racism was a sin. Racism was fundamentally a lie, a concept deliberately invented to create division in humanity, whereas one of the goals of the conference had been to construct a vision of humankind that, as in God's design for the human family, truly lived in unity.
7. The Holy See acknowledged that poverty and racism often intersected, as did race and religion. He referred to the apostolic exhortation *Evangelii gaudium*, which was germane to the concept of intersectionality. In it, Pope Francis had stated that

each individual Christian and every community was called upon to be an instrument of God to liberate and promote the poor and to enable them to fully be a part of society. Pope Francis had added that the history of humanity's redemption had been marked by the presence of the poor. Salvation had come from the "yes" uttered by a lowly maiden from a small town on the fringes of a great empire. It was essential to draw near to new forms of poverty and vulnerability, in which the suffering of Christ should be recognized. In his exhortation, the Pope had gone on to stress that, as the pastor of a church without borders, he was particularly concerned by the plight of migrants, and he had called on all countries to display a generous openness that, rather than leading to the loss of local identity, would prove capable of creating new forms of cultural synthesis.

8. A summary of the relationship between poverty and racism could be found in a compendium of guidelines for the social teachings of the Catholic Church. It emphasized that any theory or form whatsoever of racism and racial discrimination was morally unacceptable.

9. The Holy See was of the view that its obligations under the Convention were not strictly limited to the territory of the Vatican City State. As it was a moral entity with a wider impact, it considered itself obliged to promote the Convention worldwide. It was for that reason that the periodic report referred so often to the speeches given by the Pope and the activities carried out by local churches.

10. The Holy See was a sovereign subject of international law with a legal personality independent of any authority or jurisdiction. It maintained diplomatic relations with more than 180 States and participated in the work of a number of international organizations as a member State, a non-member State or a permanent observer. According to the Code of Canon Law, the term "Holy See" referred not only to the Roman pontiff but also to the Secretariat of State, the Council for Public Affairs and other institutions of the Roman Curia. In accordance with the Lateran Treaty, the Holy See exercised sovereignty over the territory of the Vatican City State. Its international personality had never been confused with that of the territories over which it had exercised sovereignty. Indeed, between 1870, when the Papal States had ceased to exist, and 1929, when the Vatican City State had been established, the papacy had had no physical territory, but the Holy See had continued to conclude concordats, sign international treaties and maintain diplomatic relations.

11. Penal canon law, which covered canonical crimes, differed from the criminal laws of the Vatican City State. The Church had the inherent right to urge delinquent faithful to lead authentic Christian lives by ceasing their misbehaviour. Nonetheless, penal canon law was not intended to interfere with State civil or criminal proceedings. It did not provide for the use of physical force or coercive punishment. Sanctions involved the privation of goods or rights. Offences committed in the Vatican City State, which had no penitentiary system, could be tried and punished by the Italian State. As a matter of principle and practice, the Holy See did not interfere with the conduct of cases that it had delegated to the Italian State, such as the trial and punishment of Mehmet Ali Ağca, who had shot and wounded Pope John Paul II. Not all the public officials working for the Holy See, a category that included a wide range of personnel, were citizens of the Vatican City State, but the State's criminal laws applied to them regardless. Racial discrimination was an offence under criminal law, but was not addressed by penal canon law.

12. The Supplementary Norms on Criminal Law Matters, which had been promulgated in 2013, had not been referred to in enough cases to enable the development of any related jurisprudence. The Committee's previous concluding observations (CERD/C/304/Add.89) from 2001, had facilitated the drafting of that

legislation. The observations made in the present meeting would help improve it, and the Committee would be duly apprised of the adoption of any amendments.

13. Persons in positions of leadership in the Holy See, including cardinals and bishops, were of diverse geographical backgrounds. In 2013, Europeans had accounted for 57 per cent of the roughly 120 members of the College of Cardinals. Representatives of the world's other major regions had accounted for smaller percentages of the College's membership. Within that membership, Italian cardinals were the most numerous. While it was the case that most Church leaders currently came from European countries, that situation was likely to change over time as a result of a demographic shift in the membership of the Church and increased efforts to internationalize its management framework.

14. The Sovereign Military Order of Malta was an independent subject of international law, as was evidenced by its diplomatic relations with some 115 States. The members of the Order were divided into several categories, religious and non-religious. Religious members were consecrated according to canon law and were thus subject to the religious discipline of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, which was one of the departments of the Roman Curia.

15. He was unable, for lack of information, to comment on the allegations of discrimination by Catholic clergy in the United Kingdom that had been raised at the previous meeting. His delegation would, however, provide information on that matter in writing at a later date.

16. **Father Koonampampil** (Holy See), replying to a question asked at the previous meeting about segregation in a Catholic cemetery of the graves of Dalit converts from those of other Catholics, said that a wall had been built in the town of Trichy in Tamil Nadu State, India, more than 60 years previously, in a cemetery that was administered by the Catholic Church but owned by private individuals. Although attempts had been made to demolish the wall, it had been rebuilt following objections from the owners. There was, however, another Catholic cemetery in the town that was open to all, without any discrimination.

17. The Church was of the view that one of the most effective and constructive ways to eradicate persistent de facto caste-based discrimination was to ensure that children from disadvantaged groups were provided with quality education and opportunities for social advancement. It therefore pursued an explicit policy of preferential treatment for children from Dalit families in admission to Catholic schools. However, considerations of that kind were not taken into account in the recruitment of teaching staff, as priority was given to appointing candidates of the highest professional and leadership qualities.

18. **Archbishop Tomasi** (Holy See) said that the Congregation for the Doctrine of the Faith was responsible for dealing with violations of penal canon law. Other authorities were responsible for handling violations of criminal law matters in the Vatican City State. Outside the territory of the Vatican City State, it was the responsibility of local bishops to apply the penal canon law within the territory of their jurisdiction, while it was for the competent national authorities to prosecute violations of domestic laws committed by their citizens. In penal proceedings, the Promoter of Justice of the Vatican City State acted as a public prosecutor.

19. According to recent press reports, the case against Father Wenceslas Munyeshyaka, a priest who had been under investigation in France for his role in the 1994 Rwandan genocide, had been dropped at the request of the French prosecutors, for lack of evidence.

20. Regarding the political situation in Burundi, on 16 September 2015 the Conference of Catholic Bishops of Burundi had issued a statement in which it had expressed concern about the risk of war breaking out and had called for mutual understanding among the different ethnic groups in the interests of peace and stability.

21. In response to the current refugee crisis, the Pope had made it very clear that there was a moral duty of solidarity for all parishes to welcome people who were fleeing situations of violence and poverty, regardless of their background. However, the Holy See could only invoke its moral authority to urge local communities to open their doors. It was for bishops to ensure that the clergy under their charge acted in accordance with that spirit of solidarity.

22. With regard to the recognition of injustices perpetrated against indigenous peoples, the Catholic Church had acknowledged on many occasions — most recently in a statement by Pope Francis in July 2015 — the historical fact that grave sins had been committed in the name of God against the native peoples of the Americas. Furthermore, the Pope had on that occasion asked forgiveness not only for the offences of the Church itself, but also for the crimes committed against native peoples during the so-called conquest of the Americas. At the same time, the Pope had also recalled the thousands of bishops and priests who had strongly opposed the logic of the sword in order to defend the rights of indigenous peoples.

23. In his most recent encyclical, *Laudato si'*, the Pope had stated that it was essential to show special care for indigenous communities and their cultural traditions and to involve them as principal partners in dialogue when large projects affecting their land were proposed. Every year, the Holy See contributed to the United Nations Voluntary Fund for Indigenous Peoples.

24. He had taken note of the request for an encyclical on racism that had been made at the previous meeting and would forward it to the Secretariat of State.

25. **Mr. Avtonomov** said that he wished to thank the delegation for its answers and clarifications. It would be useful to have a core document that would provide the Committee with background information on the State party, including its administrative and legal systems. While he understood the State party's position on intersectionality, he expressed the hope that it might be possible to find common ground on that topic during the dialogue.

26. **Mr. Murillo Martínez** said that he too wished to express his appreciation to the delegation for its detailed replies and comments. In particular, he welcomed its receptiveness to the idea of an encyclical on the topic of racial discrimination and looked forward to hearing the response of the Secretariat of State in due course.

27. **Mr. Vázquez** (Country Rapporteur) said that he was pleased to learn that the Holy See had no objection to the concept of intersectionality as such, and that its objections related instead to the way in which the concept was sometimes applied. It was his understanding that while the State party recognized the possible links between racism and poverty and between racism and religion, it took issue with the application of intersectionality to notions of gender, as that might give rise to obligations under an international human rights instrument to which it was not a party.

28. Turning to extraterritorial jurisdiction, he said that it was his understanding that offences committed abroad were covered under the penal laws of the Vatican City State, in particular the law amending the Criminal Code and the Code of Criminal Procedure and the Supplementary Norms on Criminal Law Matters of 2013. The State party thus recognized that its jurisdiction extended beyond its territory in certain cases. He commended the State party for promulgating the Supplementary Norms, which contained an article dealing with racial discrimination that had been crafted in

part in response to the Committee's recommendations. However, there was still a need to close some gaps in the law, particularly with respect to remedies for damage suffered.

29. The delegation should clarify in detail the Church's responsibility for the wall that had been built in a Catholic cemetery in India to separate Dalits who had converted to Christianity from others buried there. Could the delegation respond to claims that Catholic funerals continued to be performed in the segregated part of the cemetery?

30. He urged the State party to increase the number of Dalit teachers at Catholic schools in India. Recognizing its concerns about the quality of teaching, he said that steps should be taken to train more Dalit teachers. There were only four Dalit bishops in Tamil Nadu, even though Dalits made up a large share of the population of that state. He also encouraged the State party to step up its dialogue with indigenous peoples on questions relating to their land rights.

31. **Archbishop Tomasi** (Holy See) said that his delegation would need more specific information on the claims concerning the cemetery wall. He expressed the hope that the Holy See would further pursue the idea of an encyclical on racial discrimination. The explanation of "intersectionality" provided by Mr. Vázquez seemed reasonable. The question of indigenous rights had given rise to animated debates, especially after the Pope's visit to the United States of America and the canonization of Junípero Serra. Meetings between the Pope and representatives of indigenous peoples had been scheduled for the near future. They might lead to some clarification of the issue and point to the direction to be taken.

32. **Ms. Crickley** drew attention to the direct impact that the Pope's remarks on the current refugee situation had on Catholic parishes, particularly in Europe, but also around the world. She welcomed the forthcoming dialogue with indigenous peoples and would appreciate more information on how that dialogue would proceed. She also wished to know what concrete steps had been taken to promote the Convention and raise awareness about it among Church personnel. Although the delegation was composed of various people who might have had direct experience with racial discrimination, there was a notable lack of women, and she would greatly appreciate it if the delegation included women in future. Lastly, she encouraged the State party to consider establishing a national human rights institution, which would help to promote the Convention and other international human rights instruments.

33. **Mr. Diaconu** said that he commended the position taken by the Pope during his visit to the Plurinational State of Bolivia concerning the rights of indigenous peoples, which was in keeping with the Committee's general recommendation No. 23 (1997). The relationship of indigenous peoples to the land was of crucial importance to their spirituality, culture and very existence. The invocation by the Committee of an intersectional approach did not at all mean that the Committee wished to extend the scope of the Convention to other areas or encroach on the mandate of other international human rights treaty bodies. The Committee dealt with discrimination on grounds that were clearly set out in the Convention, including race, colour and ethnicity. If such grounds existed, the Committee looked into whether there was also intersectionality or double discrimination. It left the matter of discrimination against women or discrimination on the grounds of religion, for example, to the appropriate bodies.

34. **Mr. Kemal** said that it was important to bear in mind that there were many reasons for discrimination. People were discriminated against on economic grounds, such as a fear of losing employment. Others suffered discrimination because they looked different, had different customs, spoke a different language or professed a

different faith. Moreover, women who belonged to a different race, culture, ethnic group or religion were particular targets of hate speech and discrimination. In the Middle East, Christians were ill-treated because of their religion and also on the basis of their ethnic background.

35. He would be interested to hear more about how bishops were appointed. It was not clear whether the local authorities had any say in their selection.

36. **Archbishop Tomasi** (Holy See) said that the United States Conference of Catholic Bishops had an office for Native American affairs whose work addressed issues of importance to indigenous groups in that country.

37. He would draw the attention of the appropriate decision makers to the observation made concerning the lack of women in the delegation. There was no reason based on religion or principle according to which women could not be included in delegations of the Holy See.

38. While he did not at present have specific examples of the ways in which human rights principles were taught in educational institutions, his experience was that the language and the substance of human rights were increasingly a part of the educational system in the Catholic tradition. In particular, there was a body of the Church called the Pontifical Council for Justice and Peace whose main purpose was to promote human rights and facilitate the implementation of human rights in the various institutions run by the Church. The work of that body was part and parcel of the developments that had taken place, in particular since the Second Vatican Council. The Holy See would continue such action, including offering courses in human rights. Human rights education and training were provided, for example, to the gendarmes of the Vatican City State and candidates to the priesthood at Catholic universities.

39. The Holy See directly appointed bishops after consulting the local clergy, the local community and local bishops. The final word in the appointment of bishops belonged to the Pope. That said, local institutions were under the diocesan bishops' responsibility. The Holy See did not intervene directly in management and appointments at local institutions such as schools, hospitals and seminaries.

40. Turning to the issue of the intersectionality of religion, race and ethnicity, he said the topic should probably be addressed on a case-by-case basis, so as to ensure that religion would become a force for the equality needed by minority groups. As Pope Francis had stressed repeatedly, society must not exclude anyone. Rather, there was a need to include and reach out, in particular to people on the margins of society, and to bring them into the mainstream.

41. **Ms. Crickley** said that services provided by the Catholic Church were often provided not only for Catholics, but also for a large variety of people from different faiths and backgrounds. Would the Holy See consider divesting itself of the power over some of the institutions that provided such services, such as schools, in the spirit of promoting the Convention and fostering plurality in societies, including those in which the Catholic faith was predominant? That issue had been raised in Ireland and elsewhere.

42. **Mr. Vázquez** said that he would later provide the delegation with further written information that the Committee had received about the situation of the Dalits in India. Had he understood correctly that the Congregation of the Doctrine of the Faith did not handle complaints of racial discrimination by bishops? He wondered whether a hypothetical incident in which a restaurant inside the Vatican refused entry on the basis of race would be considered a penal violation under the Supplementary Norms on Criminal Law Matters and whether the victims would have access to civil remedies.

The delegation should provide further information about the burden of proof as it pertained to civil remedies.

43. **Archbishop Tomasi** (Holy See) said that there had been very few cases of the kind cited by Mr. Vázquez and thus no relevant jurisprudence had developed. His delegation would provide further information in writing on the relationship between the Supplementary Norms and civil remedies.

44. Decisions about divesting power and about the hiring of non-Catholic staff members were governed by local dioceses and national episcopal conferences, and the Holy See did not intervene in such matters. Given the increasing diversity of modern society, Catholic schools and other institutions were increasingly serving non-Catholics.

45. **Mr. Avtonomov** asked the delegation to clarify the relationship between the Holy See and the Sovereign Military Order of Malta. If he understood correctly, the Order fell under the jurisdiction of the Holy See, since the Grand Master of the Order was a cardinal.

46. **Archbishop Tomasi** (Holy See) said that, in point of fact, the Grand Master was a layperson and not a cleric. The Grand Master did take vows of chastity, poverty and obedience and was thus considered to be a person bound by monastic vows in the technical sense of canon law, but the Holy See had no direct jurisdiction over the Order. The Order was an independent, sovereign entity and maintained separate diplomatic relations with more than 100 States.

47. **Mr. Khalaf** asked what sanctions the Holy See might impose on moral grounds against a priest or bishop who was viewed as a public figure in the country where he served and who committed an act of racial discrimination.

48. **Mr. Vázquez** asked the delegation to confirm the position of the Holy See on the papal bull *Inter caetera* and the doctrine of discovery reflected therein. Would the possibility of repealing the papal bull be discussed at the high-level meeting scheduled to take place in Rome between the Pope and representatives of indigenous peoples?

49. **Ms. Dah** said that, in her view, the Holy See was the most powerful of all the world powers, given its extraordinary moral authority. She was surprised to hear that the Holy See had not established any bodies to monitor the activities of Church authorities at the local level, and she believed that such a body would be valuable. The legal system that applied in the State party was exceedingly complex, and the Holy See should therefore submit to the treaty bodies a common core document explaining the system.

50. **Archbishop Tomasi** (Holy See) said that the papal bull *Inter caetera* had effectively been made inoperative by the Treaty of Tordesillas, signed between Spain and Portugal. Changing the historical consequences of the ideology reflected in those instruments would thus require changing the Treaty rather than the papal bull. Nevertheless, the Holy See could consider repealing the papal bull.

51. Any sanctions imposed on priests or bishops on moral grounds would be based on canon law, which applied only internally within the Holy See. If the acts committed violated national laws in the country where the cleric served, then the latter could be prosecuted by that country's civil authorities.

52. The Code of Canon Law and other legal instruments were available for public consultation. To help clarify the legal system, the Holy See would take into consideration the Committee's recommendation to prepare a vade mecum on its legal system.

53. **The Chair** thanked the delegation for its oral clarifications and invited it to submit in writing any further replies to questions that remained pending.

54. **Mr. Vázquez** said that the dialogue with the State party had been very fruitful and that he welcomed the efforts made by the Holy See to combat racial discrimination throughout the world. He also welcomed the delegation's acknowledgement of the legitimacy of the concept of intersectionality in relation to poverty, religion and gender.

55. From a technical standpoint there might be some discrepancy between the Committee's position and that of the State party on the extraterritorial application of the Convention. However, given the State party's acknowledgement of its extraterritorial moral — if not legal — obligations, that discrepancy had not stood in the way of a discussion of those obligations during the dialogue, nor would it prevent the Committee from making recommendations on the same subject.

56. Since the Holy See had ratified the Convention in part as an instrument through which to exercise its moral authority, it should share the Committee's interest in ensuring that local officials of the Church did not undermine that authority by engaging in racist acts. In its concluding observations, the Committee would likely include recommendations on how the Holy See might respond to such acts without interfering with the domestic jurisdiction of other States.

57. The Committee might also make a recommendation on indigenous peoples' concerns about the papal bull *Inter caetera*. He hoped that there would be further dialogue on that issue between the Holy See and the representatives of indigenous peoples.

58. **Archbishop Tomasi** (Holy See) thanked the Committee for the important work it carried out. The time spent in dialogue with the Committee had been very productive, and the Committee had raised many questions that merited further consideration. He appreciated the many positive comments made about the report and about the role of the Holy See in promoting human rights. His Government would give serious consideration to the Committee's concluding observations.

The meeting rose at 12.40 p.m.