

**Mandates of the Working Group of experts on people of African descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

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15 April 2015

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group of experts on people of African descent and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolutions 27/25 and 25/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the following situation.

According to information received,

On 13 July 2013 Senator Roberto Calderoli addressed the Northern League political rally in Treviglio and stated, from the podium, that Italy's first black Minister Ms. Cécile Kyenge, who was born in the Democratic Republic of the Congo and has Italian citizenship, would be better off working as a minister "in her country." He also said: "I love animals – bears and wolves, as is known – but when I see the pictures of Kyenge I cannot but think of the features of an orangutan, even if I'm not saying she is one." .

Following these statements which were recorded by a journalist reporting on the political rally, the Public Prosecutor of Bergamo agreed to initiate proceedings against MP Calderoli for defamation aggravated by racial, ethnic or religious discriminatory purpose/content (as per Article 595 of Criminal Code as amended by Decree N. 122 of 26 April 1993 converted into Law N. 205 of 25 June 1993).

As a result of this, the Immunity Board of the Senate was seized to assess whether the views expressed by MP Calderoli fall within Article 68 of the Constitution which stipulates that MPs cannot be held accountable for the views expressed and the votes casted in the exercise of their functions.

On 28 January 2015 the Immunity Board of the Senate completed its examination of the issue of accountability for the opinions expressed by the MP Calderoli. It decided that Mr. Calderoli's words did not have any racist connotation but were

pronounced in the exercise of political power and somehow inevitably part of the broader political context and speech. All political parties' representatives expressed opinions in favour of the applicability of article 68 in this case and the final vote confirmed this.

The outcome of the vote and discussion will be transmitted to the Plenary of the Senate who will have to take the final decision.

The opinion of the Senate will then be forwarded to the Court of Bergamo which will decide whether to raise the conflict of jurisdiction and the case would pass at that point to the Constitutional Court. In October 2014, the process was halted pending the opinion of the Immunity board of the Senate.

Concern is expressed that Mr. Calderoli's public statement about Ms. Kyenge have racist connotations and are in contravention with the absolute prohibition of racial and ethnic discrimination stipulated in international human rights law. Accountability for Mr. Calderoli's statements is necessary as any form of impunity for actions motivated by racist and xenophobic attitudes may encourage the recurrence of such acts. Concern is also expressed that these remarks are not in line with the role that politicians and decision makers should have in encouraging the dissemination of clear positions against racist and xenophobic political discourse and positive approaches directed to the promotion of intercultural understanding.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. To what extent MPs can be immune from any pursuit and sanctions before courts, including criminal courts, in the exercise of their functions for public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance;
3. Kindly describe the existing avenues for internal disciplinary measures within the Parliament that sanction MPs for public statements or actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance;
4. Kindly provide an update on the final decision and vote of the Plenary of the Senate on the case and whether the Opinion of the Senate may prevent the criminal court of taking any decision on the case.

5. What are the measures taken by the Government and political parties to prevent such statement and to promote multiculturalism, respect for diversity and tolerance?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Mireille Fanon Mendes-France  
Chair-Rapporteur of the Working Group of experts on people of African descent

Mutuma Ruteere  
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia  
and related intolerance

**Annex**  
**Reference to international human rights law**

While we do not wish to prejudge the accuracy of the facts received we would like to recall to Your Excellency's government to its obligations under article 4 of the **International Convention on the Elimination of All Forms of Racial Discrimination**, ratified by Italy in 1976, in particular article 4 (c) under which "States Parties shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination". As stated by the Committee on the Elimination of Racial Discrimination (CERD) "the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced" (**CERD General Recommendation VII relating to the implementation of article 4, 1985**).

We would like also to draw the attention of Your Excellency's Government to the recommendations it accepted during its **Universal Periodic Review** on 27 October 2014 to "continue to fight effectively against racist statements that persist in political discourse" (A/HRC/28/4, para. 145.79) and to "intensify efforts to combat discrimination and intolerance, especially towards [...] people of African descent and encourage senior State officials and politicians to take clear positions against racist and xenophobic political discourse" (A/HRC/28/4, para. 145.80). We also recall **CERD General recommendation No. 35 on combating racist hate speech (2013)**, which draws attention to the role of politicians and other public opinion-formers and encourages such persons to adopt positive approaches directed to the promotion of intercultural understanding and harmony.

Furthermore while recalling the special importance of freedom of speech in political matters we recall to Your Excellency's Government that the exercise of freedom of expression and opinion carries with it special duties and responsibilities. In this regard we would like to refer to the opinion expressed by the CERD in its **General recommendation XV on article 4 of the Convention (1993)** that "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. [...] The citizen's exercise of this right carries special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular importance".

We also wish to emphasise the provisions of the **Durban Declaration and Programme of Action (DDPA)** which recall that "the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations is not only an act of racial discrimination but can also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle which reinforces racist attitudes and prejudices, and which must be condemned" (**para. 94**). The Durban Declaration and Programme of Action also "underline the key role that political leaders and political parties can and ought to play in combating racism [...]" (**para. 83**) and "encourage political parties to take concrete steps to promote equality, solidarity and non-discrimination in society [...] so their members

refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance” (**para. 115**). The DDPA further “urge States to implement legal sanctions, in accordance with relevant international human rights law, in respect of incitement to racial hatred [...]” (**para. 145**). In this regard we reiterate that “any form of impunity for crimes motivated by racist and xenophobic attitudes weaken the rule of law and democracy and tends to encourage the recurrence of such acts” (**DDPA, para. 81**).

Finally we would like to refer to the recommendations provided by the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance in his reports to the Human Rights in which he recommends that respect for human rights, democracy and the rule of law be the cornerstone of any programme or activity developed by political parties; recalls that political leaders and political parties have an important responsibility to explicitly and strongly condemn all political messages that disseminate ideas based on racial superiority or hatred and that incite racial discrimination or xenophobia; and urges political leaders and political parties to promote multiculturalism within their societies, as well as tolerance and mutual understanding and respect (**A/HRC/ 20/38 and A/HRC/18/44**).