

Memo

To: Dr. John Bruce; Counselor Boakai Kanneh
From: Caleb Stevens, Esq.
CC: Dr. Jeanette Carter
Date: 2/15/2011
Re: Liberian Citizenship Law and the Convention on the Elimination of All Forms of Racial Discrimination

I. Questions

- A. Does Article 27 of the Liberian Constitution, which prohibits non-“Negros” from becoming Liberian citizens, violate the Convention on the Elimination of All Forms of Racial Discrimination (“CERD” or the “Convention”)?
- B. If yes, can Liberia bring itself back into compliance with CERD by submitting a treaty reservation?

II. Short Answers

- A. Yes, the Committee on the Elimination of Racial Discrimination (the “Committee”) has made it clear that a State Party which prohibits all but one race from becoming citizens violates Articles 1(3) and 5(d)(iii) of the Convention.
- B. No, treaty reservations may only be submitted as a condition to ratifying or acceding to a treaty. There are only three ways in which Liberia can cease to be in non-compliance with CERD: (1) withdraw from the Convention, (2) amend the Convention, or (3) amend the Constitution.

III. Analysis

As discussed in the draft World Bank report on reforming Liberia’s land laws, Liberia is not in compliance with its obligations under CERD. The syllogism is fairly straight forward. The Liberian Constitution Article 27 states, “only persons who are Negroes or of Negro descent

shall qualify by birth or by naturalization to be citizens of Liberia.”¹ On November 5, 1976 Liberia acceded to CERD, which in Article 1(3) provides:

Nothing in this Convention may be interpreted as affecting in any way the legal provisions of Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.²

Thus, State Parties may do as they please with respect to citizenship so long as they do not “discriminate against any particular nationality.” Article 5(d)(iii) prohibits distinctions based on “race, colour, or national or ethnic origin” as to the “enjoyment of” “[t]he right to nationality.”

In 1974, the Committee interpreted these provisions as prohibiting Sierra Leone from limiting citizenship to only persons of “Negro African descent.”³ The Committee reasoned that, in interpreting CERD holistically,⁴ its purpose is to eliminate racial discrimination defined as any distinction based on race, color, descent, or national or ethnic origin.⁵ In General Comment No. 30 the Committee reiterated emphatically its position taken in 1974, “the deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.”⁶ The Sierra Leonean Citizenship Act of 1973, declared by the Committee to be incompatible with Sierra Leone’s obligations under CERD, is very similar to Article 27 of the Liberian Constitution. Citizenship by birth is permitted, “[p]rovided that his father, mother or any of his grandparents was born in Sierra Leone and is or was a person of Negro African descent.”⁷ However, persons whose parents are not of ‘negro African descent’ may become citizens by naturalization if certain requirements are met.⁸ If Sierra Leone’s less restrictive citizenship law, which permits naturalization of non-blacks, was found to be in violation of CERD, then certainly Liberia’s more restrictive citizenship law is in violation.

It seems rather clear that Liberia is not in compliance with its obligations under CERD,⁹ and one of three actions must be taken to bring it back into compliance: (1) withdraw from the Convention, (2) amend the Convention, or (3) amend the Constitution. A reservation is not a viable option for two reasons. First, a reservation to a treaty may only be submitted “when

¹ Constitution of Liberia, art. 27 (1986).

² Convention on the Elimination of All Forms of Racial Discrimination [hereinafter CERD], art. 1(3) (1966).

³ Drew Mahalic & Joan Gambia Mahalic, *The Limitation Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination*, 9 Hum. Rts. Q. 74, 80 (1987) (citing Committee on the Elimination of Racial Discrimination, 10th Sess. (204th mtg.) at 43-48, UN Doc. CERD/C/SR.204 (1974)).

⁴ *Id.*

⁵ *Id.*

⁶ General Comment No. 30: Discrimination Against Non Citizens, para. 14 (Oct. 1, 2004).

⁷ Sierra Leone Citizenship Act, Section 2 (2006).

⁸ *Id.* at Section 8(1).

⁹ Not only is Liberia in non-compliance with respect to its citizenship law, it has also failed to submit a single report to the Committee pursuant to Article 9 of the Convention, which requires an initial report within one year of the treaty’s entry into force for the State Party and every two years thereafter. Report of the Committee on the Elimination of Racial Discrimination, A/65/18 (2010), p. 126.

signing, ratifying, accepting, approving or acceding to a treaty”¹⁰ Second, even if a reservation covering Liberia’s citizenship law were possible at the present time, such a reservation would probably run afoul of Article 20(1) of the Convention, which prohibits reservations “incompatible with the object and purpose of” CERD.¹¹ Given that the Committee has stated that the purpose of CERD is to eliminate racial discrimination and a citizenship law like Sierra Leone’s, and by extension Liberia’s, is incompatible with that purpose, such a reservation would probably be objected to by two thirds of the State Parties. If two thirds of the State Parties object to a reservation then it is deemed incompatible with the Convention’s object and purpose.¹² It is not surprising therefore that no State Party has submitted a reservation covering a citizenship law similar to Liberia’s and Sierra Leone’s.

Liberia may withdraw from CERD using the denunciation mechanism laid down in Article 21. A denunciation must be sent in writing to the UN Secretary-General and takes effect one year after receipt.¹³ Amending CERD to allow for a citizenship law similar to Liberia’s is very unlikely, not only for the reason of incompatibility with the Convention’s object and purpose as argued above, but also because it would almost certainly require agreement of the State Parties.¹⁴ The remainder is that either Liberia must withdraw from CERD or amend its citizenship law—the foregoing discussion reveals the incompatibility of the two.

IV. Conclusion

Because the Committee has made it clear that a State Party which prohibits all but one race from becoming citizens violates Articles 1(3) and 5(d)(iii) of the Convention, the Liberian government must take action to bring itself back into compliance with CERD. A reservation is not possible at this time and an amendment is very likely to fail. What remains is for Liberia to either withdraw from CERD or amend the Constitution.

¹⁰ Vienna Convention on the Law of Treaties, art. 2, Section 1(d) (1969).

¹¹ CERD, art. 20(1).

¹² *Id.*

¹³ CERD, art. 21.

¹⁴ CERD, art. 23 (“The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request [for revision of the Convention]”). Article 39 of the Vienna Convention on the Law of Treaties states the general rule regarding amending treaties, “A treaty may be amended by agreement between the parties.”