

Distr.: General
8 April 2011
English
Original: Spanish

Committee on the Elimination of Racial Discrimination**Seventy-eighth session**

14 February–11 March 2011

**Consideration of reports submitted by States parties under
article 9 of the Convention****Concluding observations of the Committee on the Elimination of Racial
Discrimination****Bolivia (Plurinational State of)**

1. The Committee on the Elimination of Racial Discrimination considered the seventeenth to twentieth periodic reports of the Plurinational State of Bolivia, submitted in a single document (CERD/C/BOL/17-20), at its 2053rd and 2054th meetings (CERD/C/SR.2053 and 2054), held on 15 and 16 February 2011. At its 2078th meeting (CERD/C/SR.2078), held on 4 March 2011, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic reports submitted by the State party and welcomes its high-level delegation. It appreciates the updated information that the delegation provided verbally, as well as its replies to Committee members' questions and comments.

3. The Committee notes with interest the legal, political and institutional reforms that the State party is undertaking, and it views this process as an opportunity to bolster the collective effort to build a pluralistic and inclusive society in the face of considerable challenges to the elimination of discrimination against and exclusion of indigenous peoples and other vulnerable groups. The Committee wishes to encourage the State party to pursue this process of change.

4. The Committee welcomes the active participation of representatives of civil society and their dedication to eliminating racial discrimination.

B. Positive aspects

5. The Committee welcomes the State party's recent ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2009) and the International Convention for the Protection of All Persons from Enforced Disappearance.

6. The Committee notes with satisfaction that the State party has introduced the United Nations Declaration on the Rights of Indigenous Peoples into its domestic legal order through Act No. 3760.

7. The Committee welcomes the new Constitution of 2009, which is the result of a process that embraced historically excluded sectors of the population. It notes that the Constitution upholds a wide range of human rights that reinforce the application of the Convention, such as:

- (a) The prohibition and punishment of discrimination;
- (b) The recognition of indigenous original campesino peoples and nations and their rights;
- (c) The recognition of Afro-Bolivian communities and their rights;
- (d) The recognition of the indigenous original campesino justice system;
- (e) The promotion of agrarian reform and the granting of land to indigenous original campesino people, intercultural communities of original peoples, Bolivians of African descent and campesino communities whose members have no land or insufficient land;
- (f) Profit-sharing when natural resources are extracted from the territories of indigenous original campesino peoples and nations;
- (g) The right to request and receive asylum or refuge on grounds of political or ideological persecution, and the principle of non-refoulement to a country where the life, integrity, security or freedom of the person concerned is at risk.

8. The Committee notes with interest the establishment of the new Office of the Deputy Minister for Decolonization and the Directorate-General for the Struggle against Racism and All Forms of Discrimination in 2009.

9. The Committee welcomes the adoption of the legislative instruments needed to combat racial discrimination, such as the Act on the Elimination of Racism and All Forms of Discrimination (Act No. 045) of 2010, as a substantive foundation for the design of policies to prevent racism and discriminatory behaviour. The Committee also notes that the aforementioned Act contains a definition of racial discrimination that is compatible with the definition set forth in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

10. The Committee welcomes the national human rights action plan, entitled "Bolivia: Dignity for a Good Life", approved in 2008, which establishes priorities for human rights action and includes a section on designing policies on racism and discrimination.

C. Concerns and recommendations

11. While noting the progress that the State party has achieved in combating racial discrimination and the efforts it has made to formulate a national action plan against racism and discrimination, the Committee is concerned about the failure to apply the principle of non-discrimination in practice, the prejudices and stereotypes existing in society, and

persistent tensions in the State party, all of which pose an obstacle to intercultural acceptance and the creation of an inclusive and pluralistic society (arts. 2 and 7).

The Committee encourages the State party to intensify its awareness campaigns aimed at combating racial discrimination, stereotypes and all existing forms of discrimination. It also recommends that the State party actively pursue programmes to promote intercultural dialogue, tolerance and mutual understanding of the diversity of the different peoples and nations of the State party. The Committee encourages the State party to effectively implement the Convention through a national action plan against racism and discrimination and notes that such a plan is currently being discussed and drafted. It considers that particular emphasis should be placed on combating discrimination, prejudice and racism throughout the country and that this should be accomplished by, inter alia, allocating adequate human and financial resources for the plan's implementation.

12. The Committee is concerned about the lack of reliable statistical data in the State party's report regarding indigenous original campesino peoples, Bolivians of African descent and all groups that make up Bolivian society. While noting with interest the information provided about the next census to be held in the State party, the Committee expresses its concern about the lack of clarity concerning the methodological tools to be used in the census to guarantee the right to self-identification (art. 2, paras. 1 (a) – 1 (d)).

The Committee reminds the State party that disaggregated data are needed in order to develop suitable public policies and programmes for the population and to evaluate the implementation of the Convention as it relates to the groups that make up society. The Committee also reminds the State party of paragraph 11 of its guidelines on the presentation of reports (CERD/C/2007/1) and recommends that, in its next periodic report, the State party include updated, disaggregated statistics on indigenous original campesino peoples and Bolivians of African descent. It also recommends that the State party develop reliable, appropriate statistical tools to ensure self-identification in the 2012 census and to ensure the full and effective participation of indigenous original campesino peoples and Bolivians of African descent in all stages of the census process and the inclusion of peoples in geographically remote locations.

13. While the Committee notes with appreciation that the Constitution recognizes the equal civil and political rights of indigenous communities and the advances made in the representation of indigenous peoples in the Government at the highest level, it is concerned that, in practice, members of these communities continue to be subjected to discrimination and are underrepresented in all Government and decision-making bodies. It is concerned that the Electoral System Act, by providing for only 7 seats from special electoral districts out of a total of 130 seats, contravenes both the Constitution and the Convention. The Committee is particularly concerned about the situation of women, who suffer from multiple and intersectional discrimination on the basis of their ethnic origin as well as their gender, occupation and poverty (art. 2 and art. 5 (b) and (c)).

The Committee recommends that the State party take the necessary measures under, inter alia, the Electoral System Act, to guarantee political representation for indigenous original campesino peoples and nations. The Committee recommends that the State party take into consideration the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and general recommendation No. 32 (2009) on special measures or affirmative action. It further recommends that the State party consider taking special measures to guarantee the proper representation of indigenous communities, and of women in particular, at all levels of government service and in all social participation mechanisms.

14. While it notes with interest that the State party recognizes the existence of Bolivians of African descent and their rights in its Constitution, the Committee reiterates its concern about the lack of visibility and the social exclusion of Afro-Bolivian Communities (CERD/C/63/CO/2, para. 15) and about the lack of social and educational indicators regarding this group. The Committee is concerned that these communities continue to suffer discrimination in the exercise of their economic, social and cultural rights and are significantly underrepresented in public office and government positions (art. 2 and art. 5 (c) and (e)).

The Committee reiterates its previous recommendation and urges the State party to adopt the necessary measures, including legislative measures and general national budget measures, to guarantee the equality of rights, including equal civil and political rights such as the right to education, housing and employment. The Committee urges the State party to adopt mechanisms to ensure the participation of Afro-Bolivian communities in the design and approval of public policies and norms and in the implementation of projects affecting them.

15. The Committee regrets the fact that some organizations, media and journalists in the State party use racial hate speech and act in a discriminatory manner, that they spread racial stereotypes and expressions of hatred against persons belonging to indigenous original campesino peoples and nations and Bolivians of African descent, and that they incite racial discrimination. While taking due note of the new articles 281 septies and octies of the Criminal Code, which refer to private individuals, the Committee regrets the lack of a specific provision in the Criminal Code of the State party that prohibits organizations and propaganda activities from inciting racial hatred, in keeping with article 4 (b) of the Convention (arts. 2, 4 (b) and 7).

The Committee recommends that the State party amend its Criminal Code in order to fully implement the provisions of article 4. The Committee also recommends that the State party devote particular attention to the social role of the media in improving human rights education and that it establish a code of ethics to ensure responsible journalistic practice. It recommends that the State party strengthen measures to combat racial prejudice that leads to racial discrimination in the media and in the press through education and training for journalists and for persons working with the media in order to increase awareness about racial discrimination in the population at large.

16. While taking note of the human rights curriculum for all schools in the State party, the Committee regrets the fact that young people are participating in organizations that promote discrimination and racial hatred (arts. 4 and 7).

The Committee reminds the State party of the essential role of education in promoting human rights and combating racism, and recommends that the State party strengthen human rights education in its national curricula by making it more explicit and interdisciplinary.

17. The Committee regrets the occurrence of conflicts and acts of racist violence against members of indigenous original campesino peoples and nations, some of which have resulted in deaths, and notes that these incidents have become worse since 2006 and have included clashes in Cochabamba, Chuquisaca, Santa Cruz and Pando. The Committee is concerned at the impunity that continues to prevail in respect of the majority of the human rights violations perpetrated during these incidents and at the delays in their investigation (arts. 4–6).

The Committee reaffirms the duty of the State party to put an end to impunity for these acts and urges it to expedite the administration of justice, the investigation of the complaints, and the identification and prosecution of the perpetrators and to

guarantee victims and their family members an effective remedy. It also recommends that the State party demonstrate the political will to carry out the necessary measures, including educational and public policies, in order to create and promote forums for dialogue and understanding among the members of society.

18. While taking due note of the restitution of land and clarification of land title as part of the State party's efforts to abolish servitude and slavery in Guaraní territory, the Committee expresses its concern at the continued captivity of indigenous peoples and at the systematic violation of the human rights of members of these communities. In addition, the Committee regrets that the Transitional Inter-ministerial Plan for the Guaraní People came to an end in 2009 without all of its objectives having been met and without provision having been made for its continuation by means of comprehensive measures. The Committee notes, in particular, the difficulties that have been and continue to be encountered by persons belonging to the Guaraní people in exercising their rights (arts. 4 and 5).

The Committee recommends that the State party adopt urgent measures to guarantee the full exercise of the rights of the Guaraní people, including an acceleration of the recovery of their ancestral lands. It recommends that the State party intensify its efforts to prevent, investigate and duly prosecute contemporary forms of slavery and to guarantee access to justice for the Guaraní people. The Committee also encourages the State party to establish, as a matter of urgency and in consultation with the Guaraní communities, a comprehensive and adequately funded development plan that specifically addresses the needs of the Guaraní people. This plan should focus on capacity-building and creating conditions of equality in order to ensure the Guaraní people's enjoyment of their rights. It further recommends that the State party undertake initiatives to raise the general public's awareness of the need to eradicate forced labour and servitude and that it continue its cooperation with the relevant specialized agencies of the United Nations in this regard.

19. The Committee regrets the persistence of threats and physical attacks against human rights defenders, especially those defending the interests of indigenous peoples (see the previous concluding observations of the Committee in the document bearing the symbol CERD/C/63/CO/2, paragraph 14) (art. 5).

The Committee reiterates its previous recommendation in its entirety and urges the State party to take all necessary measures for the protection of human rights defenders against any act of intimidation or reprisal or any arbitrary action as a consequence of their activities, including interference with their efforts to secure external funding. The Committee also reiterates that the State party should take into account its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights and encourages the State party to improve the training of law enforcement officials, especially police officers, so that the standards of the Convention are fully met.

20. While recognizing the existence of the constitutional right to consultation of the indigenous original campesino and Afro-Bolivian peoples and nations, the Committee is concerned at the difficulties surrounding the exercise of this right in practice. It is concerned at the lack of regulations governing consultations with the above-mentioned peoples and nations in all sectors other than the hydrocarbons industry. It is also concerned at the fact that, even where mechanisms have been set up for consultations for the purpose of obtaining the free, prior and informed consent of the communities, such consultations are not carried out systematically with regard to natural resource development projects or regional infrastructure projects. In this connection, the Committee expresses its concern at the violation of the constitutional right of consultation in respect of the Coro Coro mining project (arts. 5 and 6).

The Committee urges the State party to establish practical mechanisms for implementing the right to consultation in a manner that respects the prior, free and informed consent of the affected peoples and communities and to ensure that such consultations are carried out systematically and in good faith. It also recommends that impact studies be carried out by an independent body before authorization is given for natural resource exploration and production in areas traditionally inhabited by indigenous original campesino and Afro-Bolivian peoples and nations. It also recommends that the State party request technical assistance from the Office of the United Nations High Commissioner for Human Rights and from the International Labour Organization to that end. The Committee further recommends that the indigenous original campesino and Afro-Bolivian peoples and nations be guaranteed access to the courts or to any special independent body established for this purpose so that they may defend their traditional rights, their right to be consulted before concessions are awarded and their right to receive fair compensation for any harm or damage suffered.

21. The Committee is concerned at reports of discrimination and hostility against migrants in the State party and the particular vulnerability of asylum-seekers, unaccompanied foreign children and trafficked women. The Committee is also concerned about asylum-seekers' lack of identity documents, cases of arbitrary refoulement of refugees and the lack of national legislation consistent with international standards of protection of refugees (art. 5).

The Committee encourages the State party to develop legislation establishing the rights of refugees and providing that identity documents are to be issued free of charge and to furnish appropriate ongoing training for public officials, including border agents, to ensure that they do not make use of procedures that violate human rights. The Committee recommends that the State party continue to cooperate with the Office of the United Nations High Commissioner for Refugees and urges it to ensure that no refugees are forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations. The Committee calls on the State party to step up its efforts to develop and implement educational campaigns to change the public's perceptions and attitudes so as to combat racial discrimination in all sectors of society.

22. While it notes with interest the coexistence of different legally recognized justice systems, the Committee regrets that, inasmuch as certain personal, material and territorial matters are not included within the scope of the indigenous justice system, that system is not in line with the Constitution or the Convention and does not correspond to the actual situation of coexistence between indigenous and non-indigenous persons. The Committee is concerned that, in practice, there are sectors of the population that continue to face difficulties in accessing justice, in particular indigenous people and women, and it reiterates its concern about difficulties in gaining access to legal remedies in cases of offences which relate to racial discrimination (CERD/C/63/CO/2, para. 17). It is also concerned about the lack of clarity in the Jurisdiction Demarcation Act with regard to levels and mechanisms of coordination and cooperation between the indigenous original campesino justice system and other judicial systems in the State party (arts. 4, 5 (a) and 6).

The Committee recommends that the State party provide for the amendment of the Jurisdiction Demarcation Act. It also urges the State party to continue its efforts to establish a domestic legal system that gives full effect to the provisions of the Convention and to ensure compliance with international human rights standards and effective and equal access for all citizens to remedies through the competent national courts and other State institutions against any act of racial discrimination or related intolerance.

23. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when the State party incorporates the Convention into its domestic legal system, it take account of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Declaration and Programme of Action at the national level.
24. The Committee recommends that the State party prepare, carry out and publicize in the media a suitable programme of activities to commemorate the year 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session (General Assembly resolution 64/169 of 18 December 2009).
25. The Committee takes note of the State party's position and recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolution 61/148 of 19 December 2006 and resolution 63/243 of 24 December 2008, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
26. The Committee notes with appreciation that the State party makes its reports readily available to the public as soon as they are submitted and recommends that it ensure that the Committee's concluding observations are also publicized and disseminated in the official languages and other commonly used languages, as appropriate.
27. The Committee notes that the State party submitted its core document in 2004 and encourages it to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006.
28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 17 and 21 above.
29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 11, 13, 20 and 22 and requests that it include detailed information in its next periodic report on the specific measures that it has taken to implement these recommendations.
30. The Committee recommends that the State party submit its twenty-first through twenty-fourth periodic reports in a single document by 1 October 2013 and notes that, in preparing those reports, it should follow the specific guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and should address all points raised in these concluding observations. The Committee urges the State party to observe the 40-page limit for treaty-specific reports and the 60–80 page limit for the common core document (see the harmonized guidelines on reporting contained in document HRI/GEN.2/Rev.6, paragraph 19).