



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-second session
18 February to 7 March 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

NICARAGUA

1. The Committee considered at its 1859th and 1860th meetings (CERD/C/SR.1859 and CERD/C/SR.1860), held on 26 and 27 February 2008, the tenth to fourteenth periodic reports of Nicaragua, submitted as a single document (CERD/C/NIC/14). At its 1872nd meeting (CERD/C/SR.1872), held on 6 March 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by Nicaragua and the efforts made by the State party to comply with the guidelines for the preparation of reports. The Committee, noting that the report was submitted over 10 years late, urges the State party to comply with the deadlines set for the submission of its future reports. The Committee commends the State party for the submission of the basic core document in line with the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3 and Corr.1).

3. The Committee welcomes the opportunity to resume the dialogue with the State party after a lengthy interruption. It also expresses its appreciation for the open dialogue held with the delegation and for the delegation's extensive, detailed oral and written replies, both to the list of issues and to the questions raised by members.

B. Factors impeding implementation of the Convention

4. The Committee is aware of the socio-economic difficulties the State party has been experiencing for over 20 years as a result of internal conflict and natural disasters, and which are impeding the effective implementation of the Convention's provisions.

C. Positive aspects

5. The Committee welcomes the institutionalization of the procedure for preparing reports, through the establishment of the Unit for the Monitoring of International Conventions within the Ministry of Foreign Affairs and the Inter-Agency Committee on Human Rights composed of representatives of government institutions and civil society.

6. The Committee welcomes the adoption of general laws containing special provisions for protecting the rights of the indigenous peoples, including the General Act on the Environment and Natural Resources, the Act on Official Use of the Languages of the Communities of the Atlantic Coast of Nicaragua, the Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz Rivers, the Decree instituting National Garífuna Day, and the Code of Children and Adolescents.

7. The Committee notes with satisfaction the adoption of the new Criminal Code, which was approved by the National Assembly in November 2007 and incorporates a definition of racial discrimination and the characterization of the offence of racial discrimination (art. 36).

8. The Committee notes with satisfaction the entry into force in 2006 of the General Education Act establishing the Regional Autonomous Education System, and hopes that this Act will secure acknowledgement of the right of the indigenous peoples and ethnic communities of the Caribbean Coast to intercultural education in their mother tongue.

9. The Committee welcomes the information provided by the delegation concerning the establishment of the Office of the Special Procurator for Defence of the Rights of the Indigenous Peoples and Ethnic Communities. Branches of this office exist in each autonomous region on the Atlantic Coast and have competence to receive complaints from persons who consider their rights to have been violated by State officials.

10. The Committee welcomes the institutionalization of the International Day for the Elimination of Racial Discrimination.

11. The Committee is pleased to note the ratification by the State party in 2005 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by the General Assembly in its resolution 45/158 of 18 December 1990).

D. Concerns and recommendations

12. Bearing in mind that the Constitution and the Autonomy Statute of the Atlantic Coast Region acknowledge the country's multi-ethnic and multicultural nature and guarantee the

specific rights of the indigenous peoples and communities of African descent, the Committee is concerned that representatives of the indigenous peoples and communities of African descent continue to suffer de facto racism and racial discrimination in the State party.

The Committee recommends that the State party undertake to combat racial discrimination by developing a global and national policy to combat racism and racial discrimination, and ensuring effective implementation of the Autonomy Statute.

13. While the Committee welcomes the statistical data on indigenous peoples contained in the periodic report, it notes the shortcomings of the 2005 national census, which did not specify precisely the characteristics of the various ethnic groups and indigenous peoples making up the Nicaraguan population, including those resulting from a mixture of cultures.

The Committee recommends that the State party continue to improve the methodology used in the census so that it reflects the ethnic complexity of Nicaraguan society, bearing in mind the principle of self-identification, in accordance with the Committee's general recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and with paragraphs 10 and 11 of the guidelines for the submission of CERD-specific reports, approved at its seventy-first session (CERD/C/2007/1). In this connection, the Committee requests the State party to include in its next periodic report disaggregated statistical data on the composition of the population.

14. The Committee notes that the Convention has the status of ordinary law in the State party and that it is not included among the international treaties listed in article 46 of the Constitution, which have constitutional status (art. 2).

The Committee recommends that the State party consider the possibility of including the Convention in the list of international treaties contained in article 46 of the Constitution.

15. While noting the new legislation adopted to protect the rights of the indigenous peoples, the Committee is concerned that the indigenous peoples of the Pacific, central and northern regions of Nicaragua do not enjoy any specific legislation that recognizes and protects their rights (art. 2).

The Committee urges the State party to accelerate the process of adoption of the Act relating to the Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua, and the appointment of a Special Procurator for the Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua.

16. The Committee welcomes the establishment in 2001 of the National Commission for the Elimination of Racial Discrimination, composed of members of State institutions, civil-society organizations, and associations of indigenous peoples and communities of African descent. Nevertheless, the Committee is concerned at reports it has received that this body does not function effectively in practice (art. 2).

The Committee recommends that the State party take the necessary steps to ensure that the National Commission for the Elimination of Racial Discrimination is officially recognized as the body responsible for developing and implementing a State policy to combat racism, assigning to it the financial and technical resources required for it to function properly.

17. While the Committee is pleased at the characterization of the offence of racial discrimination in the new Criminal Code, it is unclear whether articles 45 and 113 of this Code provide for sanctions against organizations that promote racial discrimination (art. 4).

The Committee urges the State party to characterize every criminal act specified in the relevant paragraphs of article 4 of the Convention, including subparagraph (b), which prohibits organizations that promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law.

18. While the Committee welcomes the fact that the Nicaraguan Constitution, the Organic Act on the Judiciary and the legal framework for autonomy recognize the right of the indigenous peoples and communities of African descent to administer justice in accordance with their cultures and traditions, it is concerned that this legal recognition has not been granted in practice through a system of administration of justice for the autonomous regions that incorporates and implements indigenous systems of law (art. 5 (a)).

The Committee draws the State party's attention to its general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), and urges the State party to ensure respect for, and recognition of, the traditional systems of justice of the indigenous peoples, in conformity with international human rights law. To this end, the Committee encourages the State party to continue implementation of the programme concerning Assistance, Mediation, Information and Guidance Centres (CAMINOS), and use of rural judicial facilitators with the aim of improving access to justice for the indigenous peoples and communities of African descent, and court-appointed defence lawyers.

19. The Committee is concerned at reports it has received that justice in the autonomous regions is administered solely in Spanish, in direct violation of the Act on Official Use of the Languages of the Communities of the Caribbean Coast region, which states that the languages of the indigenous peoples and communities of African descent shall be in official use in the autonomous regions and may be used at all stages of the administration of justice (art. 5 (a)).

The Committee, bearing in mind its general recommendation XXXI, recommends that the State party guarantee the right of the indigenous peoples to use their languages in judicial proceedings, as provided for in the Act on Official Use of the Languages of the Communities of the Caribbean Coast, and - where necessary - interpreters.

20. While noting with satisfaction the efforts made by the State party to implement reform of the Electoral Act, the Committee is concerned at the low participation of the indigenous peoples and communities of African descent in the political life of the State party and, in particular, in the autonomous regional councils (art. 5 (c)).

The Committee draws the State party's attention to its general recommendation XXIII on the rights of indigenous peoples (para. 4 (d)), and recommends that the State party redouble its efforts to ensure the full participation of the indigenous peoples and communities of African descent in the public affairs of the State at all levels.

21. The Committee acknowledges the measures recently adopted by the State party to implement the 2001 judgement of the Inter-American Court of Human Rights in the Awas Tingni case, but remains concerned at the constant delays in the demarcation and land titling of the traditional territory of the Awas Tingni community. In this respect, the Committee expresses its concern at the further delay in the land titling of the community's territory, reportedly as a result of land disputes with neighbouring communities when, in accordance with the procedure in force, these disputes should already have been settled. The Committee is also concerned because the lengthy delay in the implementation process has led to illegal incursions into the territory of the Awas Tingni by non-indigenous settlers and woodcutters, causing serious damage to the lands and resources of the Awas Tingni (art. 5 (b)).

The Committee urges the State party to proceed immediately with the demarcation and land titling of the lands of the Awas Tingni community, without prejudice to the rights other communities may have in accordance with the criteria established in the judgement of the Inter-American Court of Human Rights and in general recommendation XXIII (para. 5). The Committee further requests the State party to include in its next periodic report information on the stage reached in the process of demarcation and land titling of the Awas Tingni territory.

22. While it welcomes the adoption of the General Health Act, which enables the autonomous regions to define their own health-care model in line with their traditions, cultures, practices and customs, the Committee notes with concern the difficult access, in practice, of the indigenous peoples and communities of African descent in the Atlantic Coast autonomous region to health services and infrastructure (art. 5 (e) (iv)).

The Committee urges the State party to step up its efforts to guarantee the right to public health, medical care, social security and social services to the indigenous peoples and communities of African descent, particularly in the Atlantic autonomous region, and provide them with financial and institutional support in the practice of, and access to, traditional indigenous medicine.

23. The Committee expresses its concern that the maternal mortality rate for the Atlantic autonomous region continues to be much higher than the national average (art. 5 (e) (iv)).

The Committee urges the State party to take effective measures to combat maternal mortality in the Atlantic autonomous region.

24. While the Committee notes with satisfaction the 2003-13 Plan for the Regional Autonomous Education System within the framework of the new General Education Act, it is concerned at the high rate of illiteracy of the indigenous peoples and communities of African descent, especially in the north of the Atlantic autonomous region (art. 5 (e) (v)).

The Committee encourages the State party to take action in the short and medium terms for the implementation of measures to reduce illiteracy, especially in the north of the Atlantic autonomous region.

25. While the Committee welcomes the competence of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities in the north and south of the Atlantic region to receive individual and collective complaints, it notes that it has received no information on the nature and outcomes of the 521 complaints received in 2007 (art. 6).

The Committee recommends that the State party provide information in its next report on the outcomes of those complaints relating to racial discrimination against the indigenous peoples and communities of African descent and on whether the victims received appropriate compensation.

26. The Committee is concerned at reports received that women belonging to the indigenous peoples and communities of African descent are victims of double discrimination.

The Committee draws the State party's attention to its general recommendation XXV on gender-related dimensions of racial discrimination, and recommends that it pay special attention to the rights of women belonging to the indigenous peoples and communities of African descent.

27. The Committee is concerned at the racial discrimination against the indigenous peoples and communities of African descent in the media, including stereotypical, degrading representations of indigenous peoples in television programmes and press articles (art. 7).

The Committee recommends that the State party adopt appropriate measures to combat racial prejudice that leads to racial discrimination in the media - both public and private channels - and in the press. In addition, the Committee recommends that the State party promote, in the information sector, understanding, tolerance and friendship between the various racial groups that exist in the State party, including the adoption of a code of ethics for the media, which requires the media to respect the identity and culture of the indigenous peoples and communities of African descent.

28. The Committee recommends that the State party accelerate the process of adopting the legislation authorizing the Government to recognize the Committee's competence as provided for under article 14 of the Convention.

29. The Committee recommends that the State party facilitate the process of acceding to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, of 1989.

30. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 61/148 of 19 December 2006, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

31. The Committee recommends that the State party take into account the relevant elements of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12 and Corr.1, sect. I) in incorporating the Convention, particularly articles 2 to 7, into its domestic legal order. It also recommends that, in its next periodic report, the State party provide information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level. It encourages the State party to participate actively in the Preparatory Committee for the Durban Review Conference, in the regional conference in Brazil in June 2008, and in the Durban Review Conference in 2009.

32. The Committee recommends that the State party's reports be disseminated as soon as they are submitted and that the Committee's observations on them be published in the State party's official and national languages.

33. The Committee recommends that, for the purposes of the preparation of its next periodic report, the State party undertake broad consultations with civil-society organizations involved in human rights protection, particularly in the area of combating racial discrimination.

34. In accordance with article 9, paragraph 1, of the Convention and article 65 of the Committee's rules of procedure as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 16, 21 and 22 above within one year of the adoption of the present observations.

35. The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports as a single document by 17 March 2011, taking into consideration the guidelines for the CERD-specific report adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain updated information and respond to all the points raised in the concluding observations.
