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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee

Addendum

Evaluation of the information on follow-up to the concluding observations on Costa Rica*

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| <i>Concluding observations: (117th session)</i> | CCPR/C/CRI/CO/6, 21 April 2016 |
| <i>Follow-up paragraphs:</i> | 10, 18 and 42 |
| <i>Follow-up reply:</i> | CCPR/C/CRI/CO/6/Add.1, 7 January 2019 |
| <i>Committee's evaluation:</i> | Additional information required on paragraphs 10[B], 18[C] and 42[B][C] |
| <i>Additional information:</i> | Arraigo, State Distance Learning University Centre for Research in Culture and Development and the non-governmental organization Costa Rica Indígena |

Paragraph 10: Non-discrimination

The State party should step up its efforts to dispel stereotypes of and eliminate discrimination against indigenous peoples, persons of African descent, migrants, asylum seekers and refugees, and persons with disabilities by carrying out awareness-raising campaigns to promote tolerance and respect for diversity, among other actions. It should expedite the adoption of an act on the prevention and punishment of all forms of discrimination and should ensure that it contains a general prohibition of discrimination on all the grounds enumerated in the Covenant and includes provisions allowing for reparation through effective and appropriate legal remedies in cases of discrimination, racism or xenophobia.

Summary of the State party's reply

Following the amendment of article 1 of the Constitution in 2015, a number of other laws and provisions were updated. Pursuant to Act No. 9456 of 2017 amending the National Planning Act and the Education Act, the National Planning Act now provides that the Ministry of Planning and Economic Policy is responsible for “ensuring that public investment

* The adoption of this document was originally scheduled to take place at the Committee's 128th session. Its adoption was postponed to the 129th session (29 June–24 July 2020) as a result of the COVID-19 pandemic.



programmes, including those of decentralized institutions and other bodies governed by public law ..., respect the differences and specific needs of a multi-ethnic and multicultural society” (art. 9).

With the adoption of Act No. 9358 of August 2016, Costa Rica became the first country in the Americas to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

The Government is currently reviewing the first action plan and designing the second action plan for the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia 2014–2025. File No. 19288, entitled “Prevention, elimination and punishment of racism and all forms of discrimination”, and File No. 19299, entitled “Investigation of the human rights situation of persons of African descent”, are now before the legislature.

Costa Rica is currently the only country in Central America that is accepting applications for asylum based on all of the various types of situations that are giving rise to large numbers of refugees in the region. Since 2018, the Government has been implementing the National Integration Plan, one of whose main focuses is on recognizing diversity.

The State party provided details regarding the activities and results of the National Plan for Persons of African Descent 2015–2018: Recognition, Justice and Development.

In 2018, a campaign was conducted to raise awareness in Costa Rican society of the rights and obligations of migrants and refugees.

The State party provided information regarding a mass media campaign on the rights of persons with disabilities.

Committee’s evaluation

[B]: The Committee notes the information provided by the State party, in particular the information regarding the awareness-raising campaigns conducted in respect of persons of African descent, migrants and refugees, and persons with disabilities and the adoption of Act No. 9358 (August 2016), by which Costa Rica became the first country in the Americas to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. The Committee requests information on (a) File No. 19288, “Prevention, elimination and punishment of racism and all forms of discrimination”, and File No. 19299, “Investigation of the human rights situation of persons of African descent”, which are currently before the legislature; (b) on the measures taken by the State party to expedite the adoption of a law on the prevention and punishment of all forms of discrimination that contains a general prohibition of discrimination on all the grounds enumerated in the Covenant and includes provisions allowing for reparation through effective and appropriate legal remedies in cases of discrimination, racism or xenophobia; and (c) on the measures taken to implement the National Integration Plan and the impact and results of those measures.

Paragraph 18: Abortion

The State party should:

(a) **Amend its legislation to introduce additional grounds for voluntary termination of pregnancy, such as when the pregnancy is the result of rape or incest or in cases of fatal fetal impairment, in order to ensure that legal obstacles do not lead women to resort to clandestine abortion, which endangers their lives and health;**

(b) **Adopt without delay a protocol that ensures access to abortion when there is a risk to the mother’s life or health;**

(c) **Ensure that sexual and reproductive health services are accessible to all women and adolescent girls;**

(d) **Continue its efforts in favour of educational programmes at the formal level (in schools) and at the informal level (through the press and other communication media) on the importance of using contraceptives and on sexual and reproductive health rights and ensure their implementation;**

(e) **Ensure that cases of violence against women in health facilities are thoroughly investigated and that perpetrators are brought to justice and punished appropriately.**

Summary of the State party's reply

(a) Amendments to expand the grounds for voluntary termination of pregnancy must be made by the legislature in accordance with the appropriate amendment procedure.

(b) The Government has been developing a technical standard to regulate the scope of article 121 of the Criminal Code and to establish objective medical parameters for therapeutic terminations of pregnancy.

(c) No information provided.

(d) No information provided.

(e) No information provided.

Committee's evaluation

[C] (a), (b), (c), (d) and (e): The Committee notes the information provided by the State party and regrets the absence of any legislative initiatives to amend the State party's laws on abortion with a view to including additional grounds for the voluntary termination of pregnancy. The Committee requests additional information on the technical standard being developed to regulate the scope of article 121 of the Criminal Code. The Committee also requests information on the measures taken to ensure that cases of violence against women in health facilities are thoroughly investigated and that perpetrators are brought to justice and punished, and on reparation granted to victims. The Committee reiterates its recommendations and requests additional information in this regard.

Paragraph 42: Rights of members of indigenous peoples

The State party should:

(a) **Expedite the adoption of the draft legislation on the autonomous development of indigenous peoples;**

(b) **Ensure that indigenous peoples are effectively consulted in order to secure prior, informed and free consent before any measure is adopted or implemented that could have a substantial impact on their way of life and culture, in particular in relation to projects that could have an impact on their lands, territories or other resources, such as projects to explore for or exploit natural resources;**

(c) **Guarantee in practice the right of indigenous peoples to the lands and territories that they have traditionally possessed or occupied, including through such legal recognition and protection as may be necessary;**

(d) **Make the necessary legal means available so that indigenous peoples may recover inalienable lands previously granted to them under national law and provide appropriate protection, including effective remedies, to indigenous peoples who have been the victim of attacks.**

Summary of the State party's reply

(a) The development of the General Mechanism for Consultation with Indigenous Peoples, initiated in 2015, concluded with the issuance of Decree No. 40932 of 2018. The Mechanism is the outcome of a participatory and democratic process;

With regard to the adoption of the bill on the autonomous development of indigenous peoples, it should be noted that the bill in question has not been updated since 2011. Motions for four-year extensions of the deadline for the bill's passage deferred the bill's expiration until 2019. Some indigenous peoples have indicated that the text needs to be reviewed again owing to the amount of time that has elapsed since it was last formally examined (2011);

(b) The Mechanism empowers the Ministry of Justice and Peace to carry out consultations as the State institution responsible for engaging in dialogue with a view to ensuring civic harmony. The entity responsible for processing requests for consultation will be the Technical Unit for Indigenous Consultation;

(c) The National Plan for the Recovery of Indigenous Territories was designed to be carried out in three stages, each lasting two years. Work is currently under way on the first stage, which involves actions in nine territories. The State provided information regarding the activities carried out in these territories;

(d) No information provided.

Information from Arraigo, State Distance Learning University Centre for Research in Culture and Development and the non-governmental organization Costa Rica Indígena

(a) Although the General Mechanism for Consultation with Indigenous Peoples was established in 2018, in reality it is only binding on the central State authorities, that is, the ministries of the executive branch. It is not legally binding on autonomous institutions, the legislature, the judiciary or other institutions of the State party, let alone private entities such as corporations and businesses. A law that is binding on the entire government apparatus and on private enterprises is therefore needed.

There are currently no bills that would provide for the proper regulation of the security of land tenure and self-governance of the various indigenous territories. The bill on the autonomous development of indigenous peoples (File No. 14352) was withdrawn by the Legislative Assembly on 30 October 2018 after that bill had spent 24 years awaiting consideration by the legislature and despite extensive consultation with indigenous representatives.

(b) The State party should continue to work to make the Mechanism for Consultation operational; progress in this regard is yet to be seen.

(c) Illegal occupations by non-indigenous persons continue to occur. The State party has been implementing a land recovery plan since 2015. So far, however, the only action taken under this initiative has been the collection of information on landholders in the various indigenous territories, but this information has not yet been shared with the indigenous communities or the public and no evictions or judicial proceedings for the recovery of land have been carried out. This situation is aggravated by the fact that the size of the budget for compensating the few bona fide non-indigenous landholders is not yet known.

(d) There is currently no legal mechanism in place to ensure that portions of the recovered land are not illegitimately reoccupied by non-indigenous settlers. Attacks against indigenous persons who are in the process of recovering their land continue to occur and are becoming increasingly severe.

Committee's evaluation

[B] (a) and (b): The Committee notes the adoption of Decree No. 40932 of 2018 on the establishment of the General Mechanism for Consultation with Indigenous Peoples. However, it requests the State party to clarify whether this mechanism is binding on all State institutions and on private enterprises. It also requests information on the withdrawal of the bill on the autonomous development of indigenous peoples (File No. 14352) and on the existence of similar bills.

The Committee notes that the Ministry of Justice and Peace has been authorized to carry out consultations. The Committee requests additional information on the measures taken with regard to requests for consultation submitted and/or consultations carried out pursuant to Decree No. 40932 of 2018.

[C] (c) and (d): The Committee notes the information provided by the State party regarding the National Plan for the Recovery of Indigenous Territories. However, it requests information on the time frame for the implementation of the Plan and on the measures taken

to guarantee in practice the right of indigenous peoples to the lands and territories that they have traditionally possessed or occupied, including through such legal recognition and protection as may be necessary. The Committee also requests the State party's comments on reports that illegal occupations by non-indigenous persons continue to occur. The Committee reiterates its recommendation regarding the need to make the necessary legal means available so that indigenous peoples may recover inalienable lands previously granted to them under national law and to provide appropriate protection, including effective remedies, to indigenous peoples who have been the victim of attacks. In addition, the Committee requests comments from the State party on reports of attacks on indigenous persons during the land recovery process.

Recommended action: A letter should be sent to inform the State party of the discontinuation of the follow-up procedure. The requested information should be provided in the State party's next periodic report.
