



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Ninety-third session

### Summary record of the 2558th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 8 August 2017, at 3 p.m.

*Chair:* Ms. Crickley

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Combined twenty-third and twenty-fourth reports of Ecuador*

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention** *(continued)*

*Combined twenty-third and twenty-fourth reports of Ecuador (CERD/C/ECU/23-24; CERD/C/ECU/Q/23-24)*

1. *At the invitation of the Chair, the delegation of Ecuador took places at the Committee table.*
2. **Ms. Alvarado** (Ecuador), introducing the combined twenty-third and twenty-fourth periodic reports of Ecuador (CERD/C/ECU/23-24), said that, in 2008, the Ecuadorian people had voted in favour of a new Constitution, the outcome of a wide-ranging process of consultation with all sectors of society, including members of the indigenous, Afro-Ecuadorian and Montubio communities. The new Constitution recognized indigenous justice systems and provided for the participation of women in the decision-making process. The Constitution defined Ecuador as a plurinational State and guaranteed the right of peoples and communities to maintain and develop their identities and ancestral traditions. It enshrined the right to a life free from racism and discrimination on the basis of origin or ethnic or cultural identity. Provision was made for prior informed consultation with indigenous communities over plans to exploit natural non-renewable resources located in their territories, a share of any corresponding profits and compensation for any negative impact to the environment or to traditional society and culture. Spanish, Quechua and Shuar had been granted status as official languages for intercultural relations.
3. A number of high-ranking government posts were occupied by members of minority groups. The National Plan for Good Living 2013-2017 and a number of related programmes and projects had been launched to bolster the rights of minority groups. As a result of affirmative action measures taken pursuant to Executive Decree No. 60 on the Plurinational Plan to Eliminate Racial Discrimination and Ethnic and Cultural Exclusion, the number of persons of Afro-Ecuadorian, indigenous and Montubio origin taking up public sector jobs had increased.
4. Discrimination based on ethnic or cultural origin had been made an offence under the Comprehensive Organic Criminal Code, as underlined in paragraph 87 of the State party report, and was punishable by up to 5 years' imprisonment in certain cases. Individuals guilty of hate crimes involving physical or psychological violence faced jail and could be sentenced to up to 26 years in prison in cases where a killing had been perpetrated.
5. In order to better meet the specific health needs of the country's various communities, the Ministry of Public Health had launched a database on consultations and outpatient treatment that incorporated information on ethnic self-identification. From 2013 to 2016, there had been well over 3 million recorded instances in which the public health service had provided medical assistance to members of ethnic and cultural minorities. A number of protocols, standards and manuals had been introduced on the provision of health care in an ethnically diverse society.
6. The Government had launched a campaign offering lifelong support to members of communities that had historically faced discrimination. With regard to Afro-Ecuadorians specifically, since 2006, the rate of poverty had been slashed dramatically, school attendance rates had improved and the number of students graduating from secondary and higher education had increased significantly.
7. Community media outlets had been granted equal airtime with their public and private counterparts and had benefited from a number of measures, including tax breaks relating to imported equipment and access to the advertising market. A total of 5 per cent of daily programming must be intercultural in nature. Media output was constantly monitored for discriminatory content.
8. Ecuador hosted more refugees than any other country in the region and was home to over 200,000 asylum seekers. No refugee camps had been set up. Both refugees and migrants had a right to education and related grants under legislation introduced in 2017. The Government was working to tackle xenophobia through awareness-raising strategies.

There were plans to recognize qualifications obtained abroad. Foreign nationals resident in Ecuador for five years had the right to vote.

9. The Government had taken measures to ensure that the Tagaeri and Taromenane indigenous groups could continue to live in voluntary isolation; details could be found in paragraphs 167-170 of the State party report.

10. **Mr. Collaguazo** (Ecuador) said that the National Council for Equality of Peoples and Nationalities had been set up to formulate, monitor and assess the implementation of cross-cutting public policies on equality. The work of the Council was overseen by a number of State officials and elected representatives of the Afro-Ecuadorian, indigenous and Montubio communities. A network of national equality councils and other bodies responsible for enforcing the provisions of the various international human rights instruments had been established.

11. There was a specific agenda for equality covering the period 2013-2017 for each of the various nationalities and peoples, focusing on land and territories, collective rights, the administration of justice and access to it, the right to good living, economic rights, the right to participation, communication and information, and plurinationality and interculturalism. A new series of agendas would be prepared for 2017-2021. To that end, high-level meetings were being held with officials working in the fields of legislation, electoral affairs, transparency and social monitoring, as well as with local government representatives.

12. The National Council for Equality of Peoples and Nationalities had signed cooperation agreements with the National Electoral Council, the Public Defender Service and academia. The Council also directly consulted the peoples and nationalities concerned with regard to specific proposals. Its work to promote the International Decade for People of African Descent had included the provision of support for the formulation of related proposals. The Council had followed up the implementation of cross-cutting public policies and participated in round-table discussions on plurinationality and interculturalism.

13. The Council faced the challenge of preparing a national agenda for equality of peoples and nationalities for 2017-2021 and securing the support of various State bodies for it. In addition, the Council would continue efforts to build a plurinational Ecuador, eliminate racial discrimination and promote interculturalism within the framework of public policy. Lastly, it was vital to strengthen the identity of the Afro-Ecuadorian community and improve access to justice and development for its members.

14. **Mr. Murillo Martínez** (Country Rapporteur) said that the State party report and the documents submitted by a number of civil society organizations contained a wealth of useful information, notably on the ethnic make-up of Ecuador and the areas of the country where the Afro-Ecuadorian population and the Montubios tended to concentrate. He would appreciate a clear definition of what constituted an “indigenous nationality”. Information on the exact number of such groups present in the State party and the criteria and strategies used to identify them would be welcome.

15. Noting that article 81 of the Constitution provided for the establishment of expedited procedures for the prosecution and punishment of perpetrators of hate crimes, he said that it would be useful to receive information on the number of cases of hate crime brought before the Ecuadorian courts, the number of cases decided and the outcome of those cases. He asked whether victims of hate crime were entitled to compensation under Ecuadorian law, what proportion of the national budget was allocated to the investigation of those crimes and whether there was an independent body responsible for producing statistical information on acts of discrimination in Ecuador.

16. The Committee had learned from alternative sources that, although article 57 of the Constitution enshrined the right of indigenous peoples to prior, free and informed consultation on matters concerning them, the State party had effectively failed in its obligation to guarantee and protect that right in the face of the expansion of extractive activities into the ancestral lands of various indigenous nationalities where oil reserves were located. Furthermore, Executive Decree No. 1247, which laid down the regulations on prior, free and informed consultation in bidding and award processes for hydrocarbon-bearing tracts and blocks, reportedly failed to comply with international standards on indigenous

people's rights. He asked how many prior consultation processes had been conducted in Ecuador, in what connection they had been held, and how many of them had resulted in a consensus being reached between the parties. It would be helpful to know whether the right of indigenous peoples to prior, free and informed consultation was recognized in other pieces of domestic legislation or in Ecuadorian case law. The delegation should also describe the measures being taken by the State party to ameliorate the situation in the ancestral lands of indigenous nationalities where extractive activities were taking place, to guarantee the right to freedom of association and to protect human rights defenders opposing the expansion of those activities from violence. He asked whether the State party considered the Citizens' Revolution to have undermined the plurinationalism enshrined in the Constitution. Did the Government believe there was a dichotomy between development and diversity in the country and, if so, how did it plan to address that situation?

17. Noting that article 171 and title IV of the Constitution recognized indigenous justice and established the judicial and indigenous justice branch of central government, respectively, he asked which laws provided the framework for the administration of indigenous justice, how indigenous justice was administered in practice, whether indigenous customary law was recognized and, if so, what position it occupied in the State party's legal hierarchy and case law. Turning to the issue of land ownership, he asked how many hectares of land had been allocated to indigenous peoples and persons of African descent collectively by the State party and whether those communities possessed collective land titles. The delegation might also comment on the situation of environmentalists and their role, if any, in prior consultation processes, and describe the accountability mechanisms of the extractive companies operating in collective territories. He would also like to know whether any advances had been made in the field of biocultural rights or towards recognizing indigenous peoples and persons of African descent as authorities on environmental matters.

18. While the Committee welcomed the adoption of the National Plan for Good Living 2013-2017, which had led to a marked improvement in the country's socioeconomic indicators, it would be useful to know how the State party intended to achieve the unmet objectives of the Plan, including the eradication of extreme poverty; whether it had adopted a specific approach to achieving the Sustainable Development Goals; and what role indigenous peoples and persons of African descent played in deliberations on climate change at the national and international levels.

19. The key challenges facing the State party included the alienation between the former Government and the indigenous movement caused by disagreements over the management of natural resources, such as water, and the administrative measures taken as a result; the current domestic financial crisis; the aftermath of the April 2016 earthquake; the Government's strained relationship with the press; and tensions within the incumbent Government. The Committee continued to harbour doubts over whether the Citizens' Revolution, which had succeeded in reducing social exclusion, was sustainable in the face of those challenges. Indeed, despite the improvement recorded in the country's socioeconomic indicators, the social divisions between indigenous peoples and persons of African descent and the majority population had only widened. Statistical data collected on multidimensional poverty, income and housing revealed that although their situation had improved, persons of African descent and indigenous peoples were still worse off than their white or mixed-race counterparts. He asked how the State party planned to break the link between racism and poverty; to eradicate racism and the structural and systemic racial discrimination suffered by indigenous peoples and persons of African descent; and to guarantee the participation of civil society and representatives of those groups in the drafting of the next National Plan for Good Living. He would also appreciate additional information on the mandate and budget of the national equality councils and on how their independence was guaranteed.

20. Contrary to the current global trend towards managing migration flows, strengthening security and border controls and adopting anti-immigration policies, in Ecuador, the Citizens' Revolution promoted the concept of South American and universal citizenship, both of which were provided for in the Constitution. However, a survey had revealed that, despite foreign nationals accounting for only 2.3 per cent of the population, a

large proportion of Ecuadorians believed that there were too many of them in the country, that they did not contribute to the economy, that they deprived Ecuadorians of work and that they created insecurity and undermined Ecuadorian customs and traditions. He would like to hear more about the State party's approach to implementing the Human Mobility Act and the regulatory, institutional, legislative and budgetary framework within which it did so. Lastly, he asked whether the Human Mobility Act laid down a procedure for the regularization of migrants' status.

*The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.*

21. **The Chair** said that the Committee welcomed the submission by the State party of its updated common core document (HRI/CORE/ECU/2015) and the fact that it had ratified the amendments to article 8 of the Convention, on the Committee's financing. She encouraged the State party to consider making the declaration under article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.

22. **Mr. Calí Tzay** said that, although its indigenous population was relatively small, Ecuador had played a significant role in the emergence of the global indigenous movement in the 1970s and 1980s. The alienation between the previous Government and the indigenous movement had indeed been a serious cause of concern to the Committee, particularly as the associated political strife had resulted in the closure of the offices of the Confederation of Indigenous Nationalities of Ecuador. However, the Committee had been informed that the new Government had recently reopened the Confederation's offices and extended the lease for 100 years, which pointed to a rapprochement between the two parties.

23. The Committee had received reports that the State party had effectively criminalized demonstrations organized by indigenous peoples in defence of their land and natural resources and that some 700 indigenous leaders had come into conflict with the law. He asked whether any indigenous leaders had been imprisoned as a result of their participation in demonstrations and, if so, how long they tended to remain in pretrial detention before being convicted or acquitted by a court. He also wished to know whether the State party had taken measures to expedite trials involving indigenous leaders and to limit the amount of time they spent in pretrial detention. In that connection, he drew the State party's attention to the Committee's general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

24. The Committee had also received information to the effect that the National Plan for Good Living 2013-2017, despite providing for the promotion and dissemination of ancestral knowledge, had effectively abolished bilingual schools on the pretext that they provided poor quality education, thus depriving students in rural areas of bilingual schooling. He asked whether that information was accurate and, if so, whether the State party envisaged introducing a new form of education for indigenous peoples that would guarantee them the possibility of being schooled in their native language. It was regrettable that the National Plan overlooked the importance of preserving indigenous languages, which were an integral part of their cultural identity. The Committee had also been given to understand that the State party attached greater importance to English as a second language than to indigenous languages. He asked how the State party planned to guarantee students who did not speak Spanish access to education and whether it intended to make indigenous languages part of the national curriculum. The State party should make every effort to preserve the cultural identity of indigenous peoples and to obviate the need for them to assimilate.

25. Although article 57 (7) of the Constitution enshrined the right of indigenous peoples to prior consultation on plans and programmes to exploit non-renewable resources found on their lands, in 2011, the State party had granted licences for the exploitation of oil reserves covering some 3.6 million hectares of land, the majority of which belonged to indigenous peoples. There was also evidence to suggest that illegal logging, illegal hunting and other extractive activities were taking place on protected indigenous lands. It was his understanding that, to date, the Ecuadorian authorities had made little or no effort to put an end to or, at the very least, to curb those unlawful activities. He asked how the State party planned to remedy that situation and to protect indigenous lands.

26. The State party's failure to consult indigenous peoples on the content of Executive Decree No. 1247 prior to its entry into force constituted a violation of article 57 of the Constitution. The Committee had received reports that, despite the adoption of the National Policy Plan for Free Peoples Living in Voluntary Isolation, there had been around 10 confrontations between members of the Tagaeri and Taromenane peoples and extractive companies, resulting in the death of 40 indigenous persons. He would like the delegation to comment on the veracity of those reports. In 2013, the National Assembly had reportedly declared the lands located in Yasuní National Park to be of public interest, stating that the Tagaeri and Taromenane peoples who lived there had moved their settlements southwards, which allowed the State party to circumvent the constitutional provisions protecting them from the negative impact of extractive activities. Furthermore, the indigenous inhabitants of Yasuní National Park had allegedly been prevented from holding a consultation on the impact of the extractive activities being conducted on their land. He asked how the State party intended to enforce the constitutional rights of indigenous peoples and to provide them with sufficient opportunity to voice their opinion on matters concerning them. The delegation should also describe the measures taken by the State party to combat the use of racist hate speech by politicians.

27. **Mr. Marugán** said that the State party was to be highly commended for the adoption of the Human Mobility Act. Nevertheless, the Committee had been informed that the Act was not yet being implemented and that, in practice, migrants continued to face various administrative barriers. In that context, it would be helpful to learn what efforts were being made to improve the situation and what was being done to protect stateless persons in particular; general information on stateless persons in Ecuador would also be instructive.

28. He wished to know what measures had been taken to combat bullying, which was reportedly a leading cause of the high dropout rate among teenage migrants, to what extent Afro-Colombian children were affected by bullying, and what efforts were being made to enhance the accessibility of schools with a view to increasing the school attendance rate among migrant children. He would welcome information on the working conditions, wages and working hours of migrants, as well as information on labour inspections conducted as part of efforts to eliminate racial discrimination and on any offences identified and penalties imposed in that connection.

29. In the light of reports that migrants faced a heightened risk of trafficking, he wished to know what measures had been taken to combat forced labour and sex trafficking, whether any cases of trafficking in persons had been brought to trial and whether it was true that traffickers were sometimes convicted of offences other than trafficking in persons. He would appreciate information on the Government's cooperation with NGOs on issues relating to refugees and asylum seekers. In addition, he wondered whether the principle of universal citizenship, which the State party had enshrined in its Constitution, had proved useful or had presented any particular challenges. The delegation should also respond to reports that Cubans and Haitians had been detained and deported.

30. It would be helpful if the delegation could confirm that Hotel Carrión, a temporary reception centre for migrants in an irregular situation, was operational and indicate whether migrants were able to enter and leave the centre freely, whether NGOs had access to the centre and whether the maximum length of stay at the centre was three months.

31. **Mr. Kut** said that the Committee had not received the follow-up information requested on the recommendations contained in paragraphs 18 and 19 of its previous concluding observations (CERD/C/ECU/CO/20-22), which dealt, respectively, with training for court officials who handled cases involving racial discrimination against indigenous persons, Afro-Ecuadorians and Montubios and with the recognition of the traditional justice systems of indigenous peoples. While the State party report included a good deal of information relevant to the first of those recommendations, further information was needed on follow-up to the second.

32. **Ms. McDougall** said that she would be grateful if the delegation could explain how it had been possible to reduce the poverty rate among people of African descent so substantially. In addition, it would be useful to learn to what extent the efforts made to

guarantee inclusivity in the public sector had been mirrored in the private sector. In particular, she would welcome statistics on the hiring, retention and promotion of Afro-Ecuadorians in the public sector and on their representation in senior decision-making positions, including in the State party's five branches of government.

33. She would appreciate clarification on the powers and functions of the National Council for Equality of Peoples and Nationalities and an explanation of the certification required to prove a particular racial affiliation for the purposes of Executive Decree No. 60. She also would like to know to what extent the traditional culture of people of African descent enjoyed the same status as that of indigenous peoples at the institutional level and whether all children in Ecuador were taught about the contributions made by indigenous peoples and persons of African descent to Ecuadorian society. Lastly, she noted with concern that it was often private enterprises who were the main beneficiaries of extractive activities carried out on the ancestral lands of indigenous peoples.

34. **Mr. Yeung Sik Yuen** said that it was unclear how the indigenous justice system was implemented, how it differed from the ordinary justice system, which persons were responsible for its implementation, how such persons were selected and whether they were offered training. It would be helpful to learn whether a mechanism had been established to prevent arbitrary decisions from being taken in the indigenous justice system and whether such decisions could be appealed. In addition, he wished to know what sentences had been handed down since 2014 in cases involving discrimination offences or hate crimes.

35. **Mr. Avtonomov** said that he would welcome further information on the mechanisms to be established under article 346 of the Code of the Judiciary to coordinate the indigenous and ordinary justice systems and on the efforts made to harmonize the two systems. With regard to the situation of domestic workers, many of whom were foreign nationals, he wished to know what measures had been taken to ensure that persons who performed domestic work only occasionally or sporadically but nevertheless on an occupational basis enjoyed the guarantees to which they were entitled under the International Labour Organization Domestic Workers Convention, 2011 (No. 189), which Ecuador had ratified in 2013, and whether such persons experienced racial discrimination. In that connection, he wished to know the impact of the various campaigns launched to raise awareness of labour rights and of the home inspections conducted. Moreover, he would appreciate further information on any cases of discrimination against the Roma communities living in Ecuador.

36. **Mr. Lindgren Alves** said that it was unclear why indigenous marriages were not recognized in Ecuador. On a more general point, he wished to commend the State party for its pioneering efforts to guarantee the collective rights of minority groups.

37. **Mr. Bossuyt** said that he would welcome an explanation of how affirmative action was understood and implemented in the State party. He wished to know on what criteria the application of affirmative action measures was based and whether self-identification as a member of a minority group was taken into account when determining eligibility for such measures. Was preference given to members of certain groups even where others were better qualified?

38. Noting that the right to material equality did not refer to equality of opportunity but rather to equality of outcome, he would like to know how the Government expected to achieve that outcome. He also wished to know how the right to material equality for all citizens was legally guaranteed.

39. In a breakdown of the ethnic composition of ministerial staff, the periodic report identified the categories of Afro-Ecuadorian, indigenous, Montubio and mixed race, but not "white". Did persons who might otherwise be classified as "white" self-identify as mixed race? In addition, the distinction between the terms "mulatto" and "mixed race" needed clarification. He would also appreciate further details on what the report referred to as the "beliefs systems" of the Roma community.

40. Lastly, he would welcome an explanation of the relationship between culturally relevant obstetric care and conventional medicine. He wondered why certain individuals opted for one form of medical care over the other.

41. **The Chair** asked what measures were taken to ensure that culturally relevant obstetric care met the same standards as those considered appropriate for general medical care.

42. **Mr. Khalaf** said that he would like to know whether the Convention could be invoked in the courts of the indigenous justice system as well as in those of the ordinary justice system. On the subject of mining activities and the right to land, he wished to know on what legal grounds communities were evicted from the areas in which they lived and whether they were relocated or compensated.

43. **Ms. Shepherd** said that she was pleased to learn that significant progress had been achieved through education measures aimed at people of African descent. However, she wished to know how that progress was reflected in the labour market and other sectors. She would appreciate statistical information on the impact of measures taken to improve the education level of both people of African descent and indigenous people.

44. **Mr. Calí Tzay** asked for more information about the National Council for Equality of Peoples and Nationalities and the role of indigenous representatives on it, and also about the indigenous leaders who had been persecuted for participating in demonstrations.

45. **Mr. Marugán** said that he would appreciate additional information on the implementation of the National Agenda for Equality in Human Mobility 2013-2017, including details of any redress given to victims of discrimination. He also wished to know about the procedures established to address cases in which the media had incited discrimination or racism. Had legal proceedings been brought against any media and, if so, had any punishments been handed down? In its concluding observations of 2012, the Committee had expressed concern about the unjustified links drawn by certain media outlets between migrants or people of African descent and criminal activity; he would like to know what measures had been taken to counter such false representations. He would also like to know whether any legal proceedings had been brought for multiple forms of discrimination.

46. **Ms. Shepherd** said that she would appreciate clarification on the criminalization of protest activities, given that the right of resistance was enshrined in the Constitution.

47. **Mr. Avtonomov** asked whether the Government distinguished between different groups of persons of African descent to ensure that their specific needs were met.

48. **Mr. Amir** said that although indigenous cultures were central to the heritage of Latin America, indigenous communities were among the most disadvantaged in the region. He would appreciate more information on the ways of life and living conditions of the various indigenous peoples living in Ecuador.

49. **Mr. Murillo Martínez** said that he welcomed the measure to promote interculturalism by establishing an intercultural content requirement of 5 per cent on media such as television. He wished to know how such content was produced and how indigenous people and people of African descent were involved in its production. He would also like to hear about the measures taken to remove from the airwaves programmes which perpetuated negative cultural and ethnic stereotypes.

50. **Ms. Alvarado** (Ecuador) said that she wished to address some of the issues raised by the Committee by highlighting some important points. Poverty levels in the country had declined significantly over the past decade or so; according to various indicators, over 1 million people had been lifted out of poverty in that period. In the context of the Government's efforts to strengthen its dialogue with all sectors of society, Humberto Cholango, one of the most respected leaders of the indigenous movement in Ecuador, had been recently named Minister of Water, and the head of the Council for Citizen Participation and Social Control was an Afro-Ecuadorian woman. With regard to the criminalization of protest activities, 19 judicial pardons had been formally requested; in eight cases, such pardons had been granted. However, since the remaining 11 cases involved offences such as murder and abduction, the granting of pardons would probably not serve justice well.

*The meeting rose at 6 p.m.*