



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
18 August 2022

Original: English

Committee on the Elimination of Racial Discrimination 107th session

Summary record (partial)* of the 2897th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 10 August 2022, at 3 p.m.

Chair: Ms. Shepherd

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Combined fifteenth to twenty-first periodic reports of Nicaragua considered in the absence of a delegation

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The meeting was called to order at 3 p.m.

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

Combined fifteenth to twenty-first periodic reports of Nicaragua considered in the absence of a delegation (CERD/C/NIC/15-21; CERD/C/NIC/Q/15-21)

1. **The Chair** said that, following the receipt of the combined fifteenth to twenty-first periodic reports of Nicaragua in May 2019, the Committee had invited the State party to attend the review of its report, had shared with the State party the list of themes prepared by the Country Rapporteur and had invited representatives of the Permanent Mission of Nicaragua to the United Nations Office and other international organizations in Geneva to a technical briefing ahead of the review. In June 2022, members of the Committee secretariat had met informally with a representative of the Permanent Mission to reiterate the invitation to attend the review, including remotely if necessary. A further reminder had been sent to the Permanent Representative of Nicaragua to the United Nations Office and other international organizations in Geneva in July 2022. Since the Committee had received no response to any of its communications and the State party had not sent a delegation, the Committee had decided to consider the State party's report in the absence of a delegation and had informed the State party of its decision by letter.
2. The Committee wished to remind the State party that the ratification of the Convention entailed a number of international obligations and that, in accordance with rule 64 of its rules of procedure, States parties were expected to be present at meetings of the Committee when their reports were being examined. The General Assembly had, in its resolution 68/268, recalled the importance of the full engagement of all States parties in interactive dialogues with the human rights treaty bodies, which were a key component of the periodic review process. The Committee deeply regretted the situation that had arisen from the State party's lack of response to its communications. It wished to stress that Nicaragua was considered a friend and an important State party and that the Committee remained open to cooperation in the future.
3. **Mr. Vega Luna** (Country Rapporteur) said that, although the State party's report – which had been submitted eight years late – contained useful information about legislative, institutional and other developments, he nevertheless found it regrettable that the State party had not sent a delegation to provide the Committee with updated information on the situation in the country.
4. The human rights situation in Nicaragua had worsened following the social and political crisis that had arisen in April 2018. A series of protests against a social security reform had been violently repressed by the police, and there had been an increase in the imprisonment of political opponents and human rights defenders. Moreover, in recent years, the State party had shown a lack of cooperation with international and regional human rights bodies. Since 2018, over 200 civil society organizations in Nicaragua, including the main human rights organizations, had shut down. Although the rights of indigenous peoples and persons of African descent were protected by laws and regulations, the State party had reportedly taken measures that went against its own legislation in that area.
5. The Committee was concerned by the lack of recent statistical data, including on the socioeconomic situation of indigenous peoples and persons of African descent. The State party had not conducted a population census since 2005, and, as the Committee had noted in its previous concluding observations, the 2005 census had had various shortcomings. The Committee would welcome information on any steps taken with a view to including the Convention in the list of treaties with constitutional status, as well as specific examples of cases where the Convention had been invoked or applied in judicial decisions.
6. The Committee would appreciate information on any progress made towards the prohibition by law of racial discrimination as defined in article 1 of the Convention and of the acts described in article 4 of the Convention, as well as information on the application of the article of the Criminal Code that established racist motivation as an aggravating circumstance. It wondered whether the State party had developed a comprehensive national policy to combat racism and racial discrimination and what progress had been made towards

adopting national legislation to protect the Chorotega, Nahua and Sutiaba peoples. It would like to know more about the activities of the National Commission for the Elimination of Racial Discrimination and the resources allocated to that body. It was concerned that the Office of the Human Rights Advocate had been downgraded to B status by the Global Alliance of National Human Rights Institutions.

7. According to data published by the Economic Commission for Latin America and the Caribbean, indigenous peoples in Nicaragua continued to face high levels of poverty and unemployment. In that regard, it would be useful to know more about the implementation of the strategy and plan for the development of the Caribbean Coast and Alto Wangki and Bocay and the involvement of indigenous and Afrodescendent communities in the formulation of that strategy. The Committee welcomed the progress made in the demarcation and titling of indigenous lands but wondered what steps were being taken to further the regularization process and to prevent settlers from taking over indigenous land for which titles had already been issued. It would like the State party to comment on the reported delays in the titling of the Creole territory of Bluefields.

8. The Committee had received reports that the State party had promoted the internal migration of non-indigenous persons to territories that had traditionally been occupied by indigenous peoples, causing the forced displacement of those communities. It would be helpful if the State party could comment on those reports and provide information on any measures taken to prevent the invasion of indigenous territories by third parties and to avoid conflicts over the use of indigenous land. The Committee had also received alarming reports of attacks committed against indigenous persons in their territories. Many of those incidents had occurred in the context of land disputes. For example, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), 10 indigenous persons had been killed and 7 had been injured in incidents linked to land disputes in the Autonomous Region of the North Caribbean Coast in 2020. In August 2021, a group of indigenous people had been killed in an attack on a gold mine in the Mayangna Sauni As indigenous territory.

9. Given that Nicaragua had ratified the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) in 2010, the Committee would appreciate information on any laws or policies adopted to ensure respect for the right of indigenous peoples to be consulted, with a view to obtaining their free, prior and informed consent, on all legislative and administrative measures that might affect them. The Committee was concerned about reports that licences for the exploitation of natural resources had been granted without prior consultation of the indigenous communities who would be affected. In other cases, consultations had reportedly been held not with the authorities elected by the indigenous community concerned but with parallel authorities that had been imposed on the community by the regional government. According to the report entitled *The Indigenous World 2022*, the State party was promoting an extractivist natural resource policy that was degrading the livelihoods and territories of indigenous peoples. It would be helpful if the State party could describe the impact of that policy on the way of life of indigenous peoples and indicate whether environmental and human rights impact assessments were carried out before licences for logging, mining and other projects were granted.

10. The Committee would appreciate updated information on the health situation in the country, in the light of reports that the health budget was insufficient and that indigenous, Afrodescendent and campesino populations had limited access to health services. With regard to the coronavirus disease (COVID-19) pandemic, OHCHR had raised concerns about the lack of disaggregated data on COVID-19 infections among indigenous persons and persons of African descent and the lack of information on specific measures taken to protect them. The Committee had received reports that the illiteracy rate was particularly high among indigenous persons, that the school dropout rate among indigenous children could be as high as 35 per cent and that indigenous communities had limited access to secondary education and quality bilingual intercultural education. It was concerned about reports that indigenous women and women of African descent continued to be subjected to discrimination, violence and racism. It would appreciate information on the progress and outcomes of any investigations into cases of excessive use of force against indigenous and Afrodescendent persons in detention.

11. The Committee had been informed that Act No. 28, the Statute of Autonomy of the Communities of the Caribbean Coast of Nicaragua, was not being properly implemented, that legitimately elected indigenous authorities were not always recognized by the State authorities and that, in some cases, the State authorities went so far as to establish a parallel local government that imposed its decisions on those authorities. The Committee would welcome information on the political participation of indigenous and Afrodescendent persons and on the efforts made to comply with the judgment of the Inter-American Court of Human Rights of 23 June 2005 in the case *Yatama v. Nicaragua*, regarding the participation of indigenous organizations in electoral processes.

12. The Committee had received reports that indigenous persons and persons of African descent lacked access to justice, that violations of their rights often went unpunished and that their right to due process was not respected during criminal trials on account of persistent racism in the judicial system. During investigations into drug trafficking, persons of African descent were reportedly stigmatized and subjected to rights violations, including false accusations and searches performed without a warrant. The Committee would welcome information on the impact of any measures taken to prevent the dissemination of messages that promoted racial stereotypes and prejudices against indigenous peoples and persons of African descent and any steps taken to promote the dissemination and preservation of the cultural and linguistic identities of those communities. Lastly, it would appreciate information on any measures taken to protect human rights defenders and to prevent them from being prosecuted for their activities.

13. **Mr. Kut** (Follow-up Coordinator) said that, in its previous concluding observations, the Committee had requested the State party to inform it of the implementation of certain of its recommendations within one year of the adoption of the observations, but it had received no information in that regard. Specifically, no response had been provided to the Committee's request to ensure that the National Commission for the Elimination of Racial Discrimination was officially recognized as the body responsible for developing and implementing a State policy to combat racism. The Committee had also urged the State party to proceed immediately with the demarcation and land titling of the lands of the Awas Tingni community; it would welcome an update on that issue. In connection with the recommendation that the State party step up its efforts to guarantee, inter alia, the right to public health to the indigenous peoples and communities of African descent, it was noted in the State party's report that the Ancestral Traditional Medicine Act, Act No. 759, had been adopted in 2012; the Committee should examine whether the recommendations had thus been implemented.

14. **Ms. Ali Al-Misnad** said that the Committee should ask questions relating to the reports received of the existence of a government handbook that outlined the authority of the autonomous regions, which had not been subject to prior consent of the people living in those regions. The issue had been raised during a meeting with Nicaraguan non-governmental organizations.

15. **Ms. McDougall** said that alarming reports had been published by the Office of the United Nations High Commissioner for Refugees and the Inter-American Commission on Human Rights concerning treatment of people of African descent and indigenous peoples in Nicaragua. In areas inhabited by people of African descent, there appeared to be a State policy of pillage of the land. Such areas were rich in biodiversity, and enterprises in the extractive industries were laying claim to the land. The State also seemed to have policy of monoculture involving particularly destructive crops, such as palm oil plantations. There had been reports of killings, kidnappings, threats and arson attacks on homes among the communities of the Caribbean Coast, which had in the past had autonomous local government authorities, and populations from other regions were being moved in to outvote the local communities. There was therefore cause for serious concern and the Committee should sound the alarm and call on the Government to cease and desist from such action, and then to respond to those charges.

16. **Mr. Balcerzak** said that the absence of a State party delegation was regrettable. State parties' attendance at the examination of their reports was a customary requirement and, in his view, a legal requirement.

17. Reports had been received about a petition brought before the Inter-American Commission on Human Rights concerning the Rama-Kriol people and the Creole Community of Bluefields, whose land and cultural identity were under threat owing to the proposed construction of the Nicaragua Trans-Oceanic Canal. The Committee should request further information on that project from the Government.

18. **Mr. Diaby** said that he would welcome more information on any cooperation between the Government and non-governmental organizations during the drafting of the report, especially given the significant reduction in civic space for civil society organizations following the cancellation of the legal status of some 400 civil society organizations since the beginning of 2022. He expressed concern at the adoption of legislation providing for the classification of persons or groups receiving funds from abroad as “foreign agents”, which restricted the civil and political rights of such persons. Under the Constitution, citizens who voluntarily became naturalized in any country outside of central America would be stripped of their Nicaraguan nationality. He would like more information on that provision, given that it exposed citizens to the risk of statelessness. Recalling that the State had acceded to the 1954 Convention relating to the Status of Stateless Persons, he asked what measures were being taken to align national legislation with that Convention. Further details would be appreciated on the numbers of indigenous persons and persons of African descent in all levels of education and in public institutions, such as the police force, and how the International Decade for People of African Descent was being celebrated. He would also like to learn what was being done to bring the national human rights institution into conformity with the Paris Principles, as persons protected under the Convention could not have their voices heard if judicial institutions were not independent.

19. **Ms. Stavrinaki** said that, while the State party report described a health-care model that was in line with the traditions and practices of the communities of the autonomous regions, information indicating the contrary had been received; clarification on that issue would therefore be appreciated.

20. **Ms. McDougall** said that it was a matter of concern that, in 2021, the Pan American Health Organization had reported that, because of a lack of information, it was unable to assess the situation related to the COVID-19 pandemic in Nicaragua. Furthermore, the World Health Organization had reported that the State party had failed to follow its guidelines on protecting health-care workers during the COVID-19 vaccination programme.

21. Given that information from other sources indicated that the overall situation in the country was alarming, she wondered whether, in addition to the concluding observation that it would draft, the Committee could take any other measure to address the Government’s absence from the review of its periodic report and its failure to provide information, for instance, by raising the issue at a higher level within the United Nations.

22. **The Chair** said that she suggested that the Committee might focus for the moment on its concluding observations. They should include questions on arbitrary detentions of human rights defenders, particularly the case of Mr. Amaru Ruiz Aleman, on which she would welcome any further information. The situation regarding the Bluefields community and the reported “colonization” of the land in that area was of great concern. She asked whether the State party had made progress in implementing phases one and two of the National Human Development Plan, which, according to the report, sought to pursue the objective of the elimination of all forms of racial discrimination as a national priority.

23. **Mr. Vega Luna** said that he would take account of all the comments made. He proposed a three-pronged approach: first, the Committee should take urgent action to protect persons who were in immediate danger. Second, it should request further information to allow it to properly assess to what extent the State party had met its obligations under the Convention, including through implementation of the National Human Development Plan. Although the State party had no national standard on obtaining prior consent, guidelines had been approved by some autonomous communities; the Committee should request further information on them. Third, the Committee could, with the involvement of appropriate parts of the United Nations system, present a proposal underscoring its concern about the situation in the State party and putting forward possible solutions to encourage the State party to send

its representatives to meetings with the treaty bodies. He wondered if there were any precedents for the current situation.

24. **The Chair** said that the Committee might also envisage a fourth possibility, namely a regional solution, which could be discussed with the Group of Latin American and Caribbean States.

The public part of the meeting rose at 4.15 p.m.