



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined nineteenth to twenty-second periodic reports of Costa Rica¹

1. The Committee on the Elimination of Racial Discrimination considered the nineteenth to twenty-second periodic reports of Costa Rica, submitted in a single document (CERD/C/CRI/19-22), at its 2357th and 2358th meetings (CERD/C/SR.2357 and 2358), held on 5 and 6 August 2015. At its 2379th and 2380th meetings held on 20 and 21 August 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the report of Costa Rica. While it finds the delay in the submission of the report to be regrettable, it appreciates the presentation given by the high-level delegation and the frank and constructive dialogue it held with the Committee and the delegation's responses to the many questions that were put to it.

B. Positive aspects

3. The Committee notes with satisfaction the adoption of the bill (legislative file No. 17150) concerning the amendment of article 1 of the Constitution to recognize the multi-ethnic and pluricultural nature of Costa Rica.

4. The Committee welcomes the establishment of the Inter-Agency Commission for Monitoring and Implementing International Human Rights Obligations as an advisory body for the executive branch.

5. The Committee notes with satisfaction the establishment of the Office of the Presidential Commissioner for Matters Relating to Persons of African Descent, as well as the appointment of the first Commissioner.

6. The Committee also takes note of the establishment by the Legislative Assembly of the Subcommittee on the Human Rights of Persons of African Descent.

7. The Committee welcomes the introduction of measures aimed at promoting social inclusion and combating racial discrimination as means of promoting equality in Costa Rica and, in particular, welcomes:

¹ Adopted by the Committee at its eighty-seventh session (3-28 August 2015).



(a) The adoption of the 2014-2025 National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia and its accompanying 2015-2018 Action Plan;

(b) The adoption by the judiciary of the Institutional Policy on Access to Justice for Persons of African Descent and its accompanying action plan.

8. The Committee commends the Office of the Ombudsman of Costa Rica on its work, on its active involvement and on the contributions it has made.

C. Concerns and recommendations

Statistical data

9. The Committee welcomes the completion of the tenth national population census and sixth housing census of 2011, which include an ethnic self-identification variable. However, the Committee is concerned by the fact that the ethnic self-identification variable is not included systematically in the collection and compilation of disaggregated statistical data. The Committee is also concerned by the fact that the report does not contain information on the impact and results of the social inclusion measures that have been adopted (arts. 1 and 2).

10. The Committee encourages the State party to systematically include an ethnic self-identification variable in surveys and data-collection initiatives, along with indicators on the enjoyment of economic, social and cultural rights, so that the necessary disaggregated data can be made available as a basis for the adoption of special measures or affirmative action measures.

Structural discrimination

11. The Committee notes that the State party expressly acknowledges the existence of structural discrimination. The Committee encourages the State party to continue its efforts to eradicate structural discrimination, particularly in the light of the comparative data provided by the State party on the situation of the Afro-descendent population and national averages which reveal that, despite similar levels of access to education, significant gaps remain in terms of access to employment and social security and to representation in both the executive and judicial branches of government (art. 2).

12. The Committee recommends that the 2014-2025 National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia and its accompanying 2015-2018 Action Plan be implemented in order to eliminate deeply rooted structural discrimination in the State party. The Committee recommends that special or affirmative action measures be adopted, bearing in mind its general recommendations No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination and No. 34 (2011) on racial discrimination against people of African descent, in relation, inter alia, to the Afro-descendent population's access to health, housing, employment and social security and to representation in decision-making bodies of the State that is commensurate with the percentage of the population of the State party that is made up of persons of African descent. The Committee reiterates its recommendation (A/62/18, para. 306) to reduce the unemployment rate of the Afro-descendent population.

Legal framework

13. The Committee is concerned at the lack of progress made by the Legislative Assembly in considering and passing several bills, such as those on the autonomous development of the indigenous peoples (file No. 14352), the amendment of article 380 of the Criminal Code (file No. 19062), the prevention, elimination and punishment of racism and all forms of discrimination (file No. 19288) and affirmative action for persons of African descent (file No. 19628). The Committee is concerned by the fact that several of these bills have been pending before the Legislative Assembly for more than 10 years.

14. The Committee recommends that bills intended to combat racial discrimination and promote the rights of persons of African descent and indigenous peoples be moved higher up on the parliamentary agenda for debate and adoption as a matter of urgency, in consultation with those peoples, so as to create a proper legal framework for combating racial discrimination.

Racial stereotypes in school textbooks

15. The Committee is concerned at the use of school textbooks that contain, or could be considered to contain, elements that could be interpreted as presenting a stereotyped image of minorities, and especially of indigenous peoples and Afro-descendants. In particular, the Committee is concerned by the fact that the book *Cocorí*, regardless of what its literary value may or may not be, is required reading in the primary school curriculum. The Committee is also concerned by the fact that racist insults and threats have been levelled at Afro-descendent members of the legislature for having filed an application for *amparo* to contest the mandatory teaching of this book (art. 5).

16. The Committee recommends that the State party step up its efforts to ensure that the national education system fosters an awareness and fuller knowledge of the distinctive cultural practices of the Afro-descendent and indigenous populations and their contributions to Costa Rican history and culture with the aim of providing objective and educational information about all societies and cultures in the State party. The Committee also recommends that the State party guarantee academic freedom of expression by, inter alia, taking the necessary steps to ensure that textbooks that have content with racist overtones are removed from the mandatory curriculum in primary schools.

Educational system

17. The Committee notes with concern that a number of schools have rules that prevent persons of African descent from giving expression to their cultural identity by such means as wearing dreadlocks. While the Committee welcomes the decision of the Minister of Education to authorize the use of that hairstyle, it also notes that this was an isolated decision in a specific case. The Committee notes the educational efforts carried out in indigenous territories but notes with concern that significant challenges remain. The Committee takes note of the efforts made to revitalize and strengthen the Boruca and Teribe languages by having language teachers in primary schools to teach in those languages. However, it observes that this initiative is still limited to specific territories and languages and is not available to all indigenous peoples or to Afro-descendants (art. 5).

18. Taking into account its general recommendations No. 23 (1997) on indigenous peoples and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends the issuance of a school policy designed to do away with any school rules or regulations that discriminate

against Afro-descendent or indigenous cultures. The Committee recommends that bilingual education initiatives be extended so as to make them accessible to all indigenous peoples and persons of African descent in their own languages. The Committee reiterates its recommendation that all necessary measures be taken to preserve the cultural heritage of indigenous peoples and Afro-descendants (A/62/18, para. 308).

Definition of racial discrimination as a criminal offence

19. The Committee notes with concern that, despite its previous recommendations, the legislation on offences of racial discrimination has not been amended and such discrimination continues to be viewed in Costa Rica as constituting a minor infraction that is punishable by a fine (art. 4).

20. The Committee reiterates its recommendation (A/62/18, para. 299) that the State party amend its criminal laws to bring them into line with the Convention, bearing in mind its general recommendation No. 35 (2013) on combating racist hate speech, and increase the penalty for such acts so that it is commensurate with their gravity. The Committee also recommends that the State party make provision in its criminal legislation for racial discrimination to be regarded as an aggravating circumstance.

Access to justice

21. The Committee takes note of the progress made by Costa Rica towards the adoption of an institutional policy for the judiciary on access to justice for persons of African descent and the establishment of a subcommittee to facilitate access to justice for indigenous peoples; it also notes, however, that challenges in those respects remain. The Committee is concerned that, of the 17 decisions regarding complaints of racial discrimination handed down by the Constitutional Court between 1993 and 2015, only 1 found in favour of the complainant, although not on grounds of racial discrimination. The Committee also notes that these decisions have been taken despite the fact that international human rights treaties take precedence over the Constitution (art. 6).

22. The Committee recommends that the State party take into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, it recommends that training in human rights and intercultural understanding be promoted within the judicial system. It also reminds the State party of its obligation to guarantee all persons an effective remedy against any act of racial discrimination and to continue to facilitate access to justice. The Committee recommends that the State party step up its efforts to ensure that indigenous peoples have equal access to justice. While taking note of the progress made, the Committee recommends that, in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), the methods traditionally used by indigenous peoples to punish offences committed by their members should be respected, insofar as they are consistent with internationally recognized human rights.

The right to consultation

23. The Committee is concerned that the right to free, prior and informed consultation is not always respected when legislative or administrative measures are adopted that are likely to have an effect on indigenous peoples. The Committee notes with concern that, despite the fact that the State party has stated that it has taken up the recommendations made by the Special Rapporteur on the rights of indigenous

peoples regarding the situation of indigenous peoples affected by the El Diquís hydroelectric project (see A/HRC/18/35/Add.8), there has not yet been any free, prior and informed consultation process or any “consultations on consultations”. Though work on the main part of the project has stopped and Costa Rican Electrical Institute installations have been removed from Terraba lands, an exploratory tunnel was built there without any prior consultation. The Special Rapporteur also stressed the need to create an atmosphere of trust among the parties. However, according to information before the Committee, there are still obstacles to the dissemination of information about the project in the affected communities. The Committee also notes that the right to prior consultation is not applied in cases involving persons of African descent in the State party (art. 5).

24. In the light of its general recommendation No. 23 (1997), the Committee urges the State party to establish, in consultation with indigenous peoples, practical mechanisms for upholding the right to free, prior and informed consultation and to ensure that consultations are carried out systematically and in good faith. The Committee reminds the State party that it is up to indigenous peoples to choose their representative bodies using their own procedures. The Committee recalls that ILO Convention No. 169 is directly applicable and that the absence of national legal provisions in this regard does not release the State party from its obligation to honour the right to consultation. The Committee also recommends that the State party consider implementing prior consultation for persons of African descent. The Committee recommends that the State continue to act upon the recommendations of the Special Rapporteur on the rights of indigenous peoples regarding the situation of indigenous peoples affected by the El Diquís hydroelectric project.

Right to self-determination

25. The Committee is concerned that bodies established by the State party, such as the comprehensive development associations and the National Commission on Indigenous Affairs, have supplanted indigenous peoples’ own institutions in their relations with the State. As noted by the Special Rapporteur on the rights of indigenous peoples, and as acknowledged by the State party’s delegation during the dialogue with the Committee, the development associations constitute an imposed institution that does not properly represent the indigenous peoples. The Committee is concerned by the fact that the associations have extensive powers in relation, for example, to the award of land titles in indigenous territories (art. 5).

26. The Committee recommends, in the light of its general recommendation No. 21 (1996) on the right to self-determination and ILO Convention No. 169, that indigenous peoples’ authorities and representative institutions be recognized in a manner consistent with their right to self-determination in matters relating to their internal and local affairs. The Committee therefore reiterates its recommendation (A/62/18, para. 297) to remove without delay the legislative obstacles that stand in the way of the adoption of the bill on the autonomous development of indigenous peoples.

Access to land

27. While the State party acknowledges in its report that the current legal framework for the recovery of lands and land tenure for indigenous peoples does not adequately protect the rights of indigenous communities and that it is aware of indigenous peoples’ vulnerability as a result of that and as a result of the severe tensions created by the illegal occupation of their lands, the Committee notes with concern that, apart from the establishment of a discussion forum, little action has been taken. The

Committee is also concerned about Afro-descendants' right to land, particularly in the southern Caribbean coastal area. The Committee is particularly concerned by the lack of any systematic action to evict illegal occupants and by the failure to systematically implement such decisions. The Committee is also concerned by the failure to take legal action against the occupation and illegal sale of land and against acts of violence carried out in that context. The Committee is concerned by the fact that, according to information provided to it, the indigenous territories recognized by the State — many of them illegally occupied — do not include all the lands that indigenous peoples claim to have traditionally occupied (art. 5).

28. The Committee reiterates its recommendation (A/62/18, para. 303) to redouble efforts to guarantee the right to land tenure for indigenous peoples and persons of African descent. It also recommends that, as a matter of priority, the State take decisive administrative and legal action, including eviction and prosecution of those responsible, to enable indigenous peoples to recover the lands within their territories, including in cases where those lands have been occupied or purchased illegally or where the tensions caused by this situation have led to clashes or threats. The Committee also recommends that consultations on the demarcation and titling of indigenous territories be held.

Migrant workers

29. The Committee takes note of the General Act on Migration (Act No. 8764), which establishes the principles of equality, equity, non-discrimination and interculturalism. It remains concerned, however, about the situation of migrant workers, who are at particularly high risk of legal and social exclusion. It is especially concerned about the particularly vulnerable situation of indigenous migrants who have temporary jobs on coffee plantations and the situation of migrant women employed as domestic workers (art. 5).

30. The Committee reiterates its recommendation (A/62/18, para. 304) that the State party continue its efforts, in the light of general recommendation No. 30 (2004) on discrimination against non-citizens, to improve the situation of migrants in Costa Rica. It also recommends that steps be taken to: ensure decent working conditions for all workers — including domestic workers — by means of labour inspections, including inspections of coffee plantations; facilitate access to justice; facilitate coverage for migrants under the Social Insurance Fund; and ensure equal access to health-care services.

Multiple discrimination

31. The Committee is concerned that indigenous and Afro-descendent women still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2, para. 2).

32. The Committee reiterates its recommendation (A/62/18, para. 305) that the State party take into account general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it mainstream the gender perspective in all its policies and strategies for combating racial discrimination as a means of addressing the multiple forms of discrimination to which indigenous and Afro-descendent women, in particular, are subjected. It also recommends that the State party compile disaggregated statistics on this subject.

D. Further recommendations

Ratification of other treaties

33. The Committee encourages the State party to ratify those international treaties to which it is not yet a party, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, the Inter-American Convention against All Forms of Discrimination and Intolerance and the ILO Domestic Workers Convention, 2011 (No. 189).

Amendment to article 8 of the Convention

34. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, which was 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 of 16 December 1992.

Durban Declaration and Programme of Action

35. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference held in Geneva in April 2009. The Committee requests the State party to include specific information in its next report on the measures adopted to apply the Durban Declaration and implement the Programme of Action at the national level.

International Decade for People of African Descent

36. In the light of General Assembly resolution 68/237 of 23 December 2013, in which it proclaimed the International Decade for People of African Descent, 2015-2024, and General Assembly resolution 69/16 of 18 November 2014 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party develop and carry out a suitable programme of actions and policies. The Committee also requests that the State party include precise information in its next report on the specific measures adopted within this framework in the light of its general recommendation No. 34 (2011).

Dissemination of reports and concluding observations

37. The Committee recommends that the State party make its reports available to the general public as soon as they are submitted and that it ensure that the Committee's concluding observations are also publicized and disseminated in the official language and, as appropriate, in other languages commonly used in the State party.

Consultations with civil society organizations

38. The Committee recommends that the State party continue to consult and continue to broaden its dialogue with civil society organizations working to protect human rights and in particular to combat racial discrimination with regard to the preparation of its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

39. 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 these concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 16 and 24 above.

Paragraphs of particular importance

40. The Committee also wishes to draw the State party's attention to the particular importance of the recommendations set forth in paragraphs 18, 26 and 28 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to act upon them.

Preparation of the next report

41. The Committee recommends that the State party submit its twenty-third and twenty-fourth periodic reports, combined into a single document, by 4 January 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that it ensure that the report covers all the points raised in these concluding observations. In the light of General Assembly resolution 68/268 of 9 April 2014, the Committee urges the State party to observe the word limit of 21,200 for periodic reports and the word limit of 42,400 for the common core document.
