



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-first periodic reports of the Bolivarian Republic of Venezuela, adopted by the Committee at its eighty-third session (12–30 August 2013)

1. The Committee on the Elimination of Racial Discrimination considered the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela, submitted in a single document (CERD/C/VEN/19-21), at its 2241st and 2242nd meetings (CERD/C/SR.2241 and 2242), held on 15 and 16 August 2013. At its 2257th and 2258th meetings (CERD/C/SR.2257 and 2258), held on 27 and 28 August 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's report and its interactive dialogue with the high-level delegation of the Bolivarian Republic of Venezuela.
3. The Committee appreciates the participation and contributions of the Venezuelan Ombudsperson during its consideration of the State party's report.
4. The Committee also welcomes the participation and contributions of representatives of civil society during the meeting, as well as the alternative reports that were submitted.

B. Positive aspects

5. The Committee commends the State party on the following legislative and institutional measures:
 - (a) The Organic Act on Indigenous Peoples and Communities (2005);
 - (b) The Indigenous Languages Act (2008);
 - (c) The Indigenous Artisans Act (2009);
 - (d) The Cultural Heritage of Indigenous Peoples and Communities Act (2009);
 - (e) The Organic Act on Racial Discrimination (2011);

* Reissued for technical reasons on 2 October 2013.

(f) The establishment of the Ministry of People's Power for Indigenous Peoples (2007).

6. The Committee welcomes the State party's implementation of its policy of social inclusion, which is based on social responsibility and justice, equality, solidarity and human rights; this has helped to reduce inequality in the State party.

7. The Committee welcomes the social development measures, programmes and plans that include indigenous peoples and people of African descent, which have helped to combat structural racial discrimination in the State party.

8. The Committee welcomes the progress made by the State party in the area of education and its efforts to reduce illiteracy, as a result of which it was declared an "illiteracy-free territory" by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in October 2005.

9. The Committee welcomes the State party's initiative to conduct its fourteenth population and housing census in 2011, which included questions that gave respondents the opportunity to self-identify as indigenous persons or people of African descent. The Committee is pleased that some of the results of the census were presented during the interactive dialogue.

C. Concerns and recommendations

Statistical data and other information on census results

10. Although during the interactive dialogue the State party provided the Committee with some of the results of the fourteenth population and housing census, the Committee remains concerned that the report did not contain recent, reliable and comprehensive statistics on the composition of the population, with disaggregated socioeconomic indicators, or information on the impact of social inclusion measures on the living conditions of indigenous peoples and persons of African descent. The Committee notes that, according to the information supplied by the State party, 62.5 per cent of revenues were allocated to social expenditure between 1999 and 2012. It regrets, however, that it has no information on what specific percentage of the budget is allocated to designing and implementing social inclusion measures for indigenous peoples and persons of African descent in the areas of education, health, social security, housing, basic services and food (art. 2).

The Committee urges the State party to take account of the results of the fourteenth population and housing census, conducted in 2011, when drawing up its inclusion policies and social development programmes and to develop indicators that will give it a clearer picture of the situation of indigenous communities and people of African descent, along with methods of measurement that will allow it to evaluate the sustainability, scope and impact of its policies. The Committee requests the State party to include such information in its next report, together with information on the percentage of its annual budget that is allocated for the implementation of programmes for indigenous communities and people of African descent.

Institutional measures

11. The Committee notes that the National Institute against Racial Discrimination, the institution that is to be responsible for implementing the Organic Act on Racial Discrimination, has not yet been set up. In addition, it regrets that, more than four years after the adoption of the Indigenous Languages Act, the National Institute of Indigenous Languages has still not been established (art. 2, para. 1).

The Committee takes note of the State party's commitment to move forward with the drafting of regulations governing the National Institute against Racial Discrimination and with its operationalization. It therefore urges the State party to expedite the establishment of this institution and to ensure that indigenous peoples and persons of African descent are involved in the process. The Committee also urges the State party to take the necessary steps to expedite the establishment of the National Institute of Indigenous Languages. The Committee requests the State party to provide both institutions with the financial resources they need to function properly.

People of African descent

12. The Committee appreciates the State party's efforts to take people of African descent into account in its social policies, but nevertheless finds that this population group is still at a disadvantage, including in participatory political and social bodies. The Committee is also concerned about the lack of specific indicators that could provide a clearer picture of the current situation of this population group (art. 1).

In light of the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide disaggregated data in its next periodic report on the geographical distribution and the social and economic circumstances of people of African descent, including from a gender perspective. The Committee invites the State party to consider extending constitutional recognition to people of African descent as members of the Venezuelan population and to include them and consult them when adopting programmes to promote their rights and when drawing up public policies. The Committee strongly recommends that the State party take steps to ensure the participation of people of African descent in political and public life.

Definition of racial discrimination

13. The Committee is concerned about the definition of racial discrimination set forth in article 10 of the Organic Act on Racial Discrimination and about the way in which the offence of racial discrimination is defined in article 37 of the Act, as these legal provisions do not contain all the elements of the definition of racial discrimination set out in the Convention (art. 1).

The Committee, bearing in mind its general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention, recommends that the State party bring the current definition of racial discrimination and the definition of the offence of racial discrimination into line with the definition contained in article 1 of the Convention. The Committee recommends that the State party introduce provisions on the establishment of responsibility in cases of racial discrimination into its criminal, civil and administrative laws.

Offence of incitement to racial hatred

14. The Committee takes note of the legislative measures adopted to combat incitement to racial hatred, such as the provisions introduced in the Organic Act on Education and the Act on Social Responsibility in Radio, Television and Electronic Media. However, taking into consideration the offences of racial hatred and incitement to racial discrimination against indigenous persons and persons of African descent, the Committee remains concerned that there is no standard legislation under which any dissemination of ideas based on racial hatred or superiority, any incitement to racial discrimination or any racially motivated act of violence constitutes a punishable offence (art. 4).

Bearing in mind its general recommendation No. 15 (1993) on the mandatory nature of article 4 of the Convention, the Committee recommends that the State party step up its efforts to harmonize legislation on racial discrimination and urges it to pass a specific law defining the various manifestations of racial discrimination as a punishable offence, in accordance with article 4 of the Convention, and to ensure the prohibition of the dissemination of ideas based on racial superiority or racial hatred, incitement to or provocation of racial discrimination, racial violence or incitement to racial violence and participation in organizations that promote racial discrimination or incite it. The Committee also recommends that the State party ensure that racial motivation is defined as an aggravating circumstance in its criminal legislation.

Information on court cases

15. The Committee reiterates its concern about the lack of information on cases of racial discrimination before the courts in the State party and points out that the absence of such cases does not mean that there is no racial discrimination, but may rather reveal the existence of lacunae in the justice system (arts. 5 (a) and 6).

The Committee reiterates its previous recommendation regarding the submission of disaggregated statistical information on cases involving racial discrimination and on the penalties imposed (CERD/C/VEN/CO/18, para. 16). Similarly, in the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party step up its efforts to ensure equal access to justice for all and that it widely disseminate information on the domestic remedies available for addressing acts of racial discrimination, on existing legal channels for obtaining redress in cases of discrimination and on the procedure for submitting an individual communication as provided for in article 14 of the Convention.

The Yanomami people

16. Despite the State party's efforts to protect the peoples of the Amazon region, the Committee is concerned about the situation of the Yanomami people, particularly in view of the presence of illegal miners and their attacks on members of the indigenous communities living in this region (arts. 5 (b) and 6).

The Committee urges the State party to increase the protection afforded to the indigenous peoples living in the Amazon region and recommends that it conduct a thorough investigation into violent attacks by illegal miners against members of the Yanomami people. The Committee urges the State party to take into account the guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay, as adopted following consultations organized by the Office of the United Nations High Commissioner for Human Rights in the region of the Plurinational State of Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and the Bolivarian Republic of Venezuela.

The Yukpa people

17. The Committee is deeply concerned about the serious acts of violence that have taken place in the Sierra de Perijá, which have involved clashes between indigenous people and occupants of the land in this area. The Committee regrets that such violence has resulted in deaths and injuries among the Yukpa people, including the murder of Chief Sabino Romero, members of his family and other members of the Yukpa community, and that such events are the consequence of a failure to demarcate the land (arts. 5 (b) and 6).

The Committee recommends that the State party conduct a thorough investigation into acts of violence against the Yukpa people and especially into the killing of members of this community. It urges the State party to put both the perpetrators and instigators of these acts on trial. The Committee calls upon the State party to take the necessary measures to prevent such violence in this region by, inter alia, adopting mechanisms to expedite the process of demarcation of the land and territories of indigenous peoples.

Traditional indigenous justice

18. The Committee takes note of the establishment of a special ombudsperson's office for indigenous peoples to act as an advisory body holding a nationwide mandate to safeguard and monitor the implementation of the constitutional rights and guarantees of the indigenous communities and peoples in the country. The Committee also notes that a draft bill on special indigenous courts is currently under discussion. Nevertheless, the Committee is concerned at the absence of information on respect for the traditional systems of justice of indigenous peoples and their harmonization with the national judicial system (arts. 2, 5 (a) and 6).

Taking into account its general recommendation No. 31 (2005), the Committee encourages the State party to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. It recommends that the State party ensure that the main objective of the draft bill on special indigenous courts is to regulate and harmonize the functions, powers and responsibilities of indigenous peoples' system of justice and the national justice system.

Consultation with indigenous peoples

19. Although the State party has made efforts to ensure the participation of the indigenous peoples and has recognized, in the Organic Act on Indigenous Peoples and Communities, their right to prior consultation, the Committee is concerned about the lack of information on how this right has been implemented (art. 5 (c)).

Bearing in mind its general recommendation No. 23 (1997) on indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people — especially women — in all decision-making bodies, particularly in representative institutions and in public affairs, and that it take effective measures to ensure that all indigenous peoples participate at all levels of the public administration. The Committee recommends that the State party implement special measures (affirmative action), as described in the Convention and the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.

Measures to combat structural discrimination

20. The Committee welcomes the fact that the Organic Act on Indigenous Peoples and Communities contains provisions that could provide effective means of combating structural discrimination, such as the recognition of the right of older adults belonging to indigenous groups to receive an old-age pension or financial assistance in line with the life expectancy and particular circumstances of each indigenous people. However, the Committee regrets that it does not have more information on the practical application of this measure and whether specific criteria have been established for its implementation (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion policies aimed at reducing inequality and poverty with a view to eliminating structural and historical discrimination of long standing in the State party. The Committee recommends that the State party take the necessary administrative measures to implement the special pension or financial assistance scheme provided for in the Organic Act on Indigenous Peoples and Communities and that it clearly define the criteria to be used in its application. The Committee also urges the State party to assess whether the above-mentioned scheme could be extended to the Afro-descendent population.

Multiple forms of discrimination

21. The Committee welcomes the adoption of the Organic Act on the Right of All Women to a Life Free from Violence and the establishment of such bodies as the Coordinating Office for Women of African Descent and the Coordinating Office for Indigenous Women. However, the Committee remains concerned that women belonging to indigenous, Afro-Venezuelan, migrant and refugee communities continue to encounter multiple forms of discrimination and gender violence in all areas of social, political, economic and cultural life (art. 5).

The Committee recommends that the State party take into account the Committee's general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and that it incorporate a gender perspective in all policies and strategies for combating racial discrimination, so as to address the multiple forms of discrimination that affect women. The Committee urges the State party to continue its efforts to support women victims of racial discrimination and to improve their access to justice. The Committee requests that information be provided in the State party's next report on the progress of cases involving domestic violence and racial discrimination targeting women who are protected under the Convention.

Situation of migrants

22. The Committee is concerned at the situation of migrants and refugees, most of whom come from Colombia or Haiti, in particular with regard to their vulnerability to such hazards as smuggling and trafficking of persons, exploitation, violence and discrimination (art. 5 (d) and (e)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary measures to protect migrants and their rights. The Committee invites the State party to include information in its next periodic report on the progress made with regard to the situation of migrant workers in the State party.

Denunciation of the American Convention on Human Rights

23. The Committee is concerned at the State party's denunciation of the American Convention on Human Rights, whereby the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights will have ceased to have jurisdiction in relation to the State party as from 6 September 2013.

The Committee urges the State party to reconsider its position and to withdraw its denunciation of the American Convention on Human Rights.

D. Other recommendations

Ratification of other treaties

24. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to the Convention relating to the Status of Refugees and to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Amendment to article 8 of the Convention

25. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, 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. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

26. 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 that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

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

Follow-up to concluding observations

28. 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 11, 14 and 16 above.

Paragraphs of particular importance

29. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 15 and 17 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Preparation of the next report

30. The Committee recommends that the State party submit its twenty-second through twenty-fourth periodic reports, combined into a single document, by 4 January 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chap. I, para. 19).
