



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2358th meeting

Held at the Palais des Nations, Geneva, on Thursday, 6 August 2015, at 10 a.m.

Chairperson: Mr. Calí Tzay

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 9 of the Convention (continued)

Nineteenth to twenty-second periodic reports of Costa Rica (continued)
(CERD/C/CRI/19-22; CERD/C/CRI/Q/19-22)

1. *At the invitation of the Chairperson, the delegation of Costa Rica took places at the Committee table.*

2. **The Chairperson** invited the members of the delegation of Costa Rica to give their replies to the questions asked by Committee members at the previous meeting.

3. **Mr. Solano Ortiz** (Costa Rica) said that the controversy over the book *Cocorí* was not new. The discussion had waxed and waned for years among academics and the public at large, and even in judicial circles. In 1996 two Afro-Costa Rican primary school pupils had applied to the Constitutional Chamber Court for *amparo*, claiming that they had been compelled to study a derogatory text against their will and alleging that the use of the book in class had encouraged the use of racist expressions by their classmates. The Court had dismissed the application, finding no racist content in the book. It had suggested that such reactions could be prevented by judicious intervention by the teaching staff.

4. In 2003 another application for *amparo* had been made on the grounds that, notwithstanding the 1996 ruling, the book had been removed from the primary school reading list under pressure from Afro-descendant groups, and that was a violation of the right to freedom of expression. The Ministry of Education had argued that, although the book was no longer compulsory reading, it had not been banned. It could be used in the same way as any other text in primary school. The Constitutional Court had dismissed the case.

5. In that case the Court had taken account of the arguments put forward by the then President of the Republic, to the effect that the book should be removed from the compulsory reading list since, although the Court had found it not to be discriminatory or racist, it had to be recognized that many Costa Ricans had suffered in childhood as the butt of jokes based on the book. The Court had found that, while it might be suitable for mature adults who were aware of the concepts of human dignity, equality and fundamental rights, when read by children it could give rise to painful situations and cruel jibes. A guided reading of the book might be a means of dispelling racist tendencies.

6. In 2010 another challenge had been brought claiming that the book was being used in public schools despite the fact that it contained offensive racist and discriminatory content, and asking the Ministry of Education to cease authorizing its use as a literary text. The Court had again dismissed the case, finding that *Cocorí* was simply a story, albeit one arising out of what was undoubtedly a complex cultural and historical context. The Court had found that it was not its place to examine that context in order to determine what books should be the subject of school studies.

7. The issue had surfaced once again in 2015, with a request by two congressional deputies from the Afro-Costa Rican community to have the book removed from the recommended reading list, and *amparo* proceedings against the Higher Council of Education for its continued inclusion of *Cocorí* on the reading list, on the grounds that some of its contents were racist; the latter case was still pending in the Constitutional Court. In a related case, the Ministry of Culture had been prevailed upon to withdraw its subsidy for the production of a musical based on the book, although a challenge to that decision had subsequently been upheld.

8. He said that the events surrounding the most recent cases had taken the issue beyond the legal action itself and forced Costa Rica to ask complex questions about how it dealt with racism and racial discrimination in the school system and society at large. Of greatest concern to the Government were the very distressing manifestations of racism against the two deputies who had brought the case, one of whom was the Chair of the Congressional Human Rights Commission.

9. He said that the issue had given rise to considerable discussion, with thoughtful contributions from various quarters. Unfortunately it had also provoked completely unacceptable and reprehensible expressions of racism. He was convinced of the need to recognize the existence of racism, racial discrimination and xenophobia in Costa Rican society and to talk about it openly. He was sure that the Committee's recommendations would provide important guidance in that regard. Meanwhile, the Ministry of Education was committed to taking immediate steps, through the Commission of Afro-descendant Studies and the Department of Interculturality, to address the challenges of racism, racial discrimination and xenophobia.

10. **Ms. Sánchez Venegas** (Costa Rica) said that significant progress had been made with legislative measures since the State party's report had been submitted. A major step forward had been the recent adoption of a Constitutional amendment establishing that Costa Rica was a multi-ethnic, multicultural State. However, bill No. 14,352, on the autonomous development of indigenous peoples, was still encountering obstacles on the road to consensus, and Congress had recently extended the time allowed for debate on the bill for a further four years. That would keep the bill alive and discussions in the forum for dialogue with indigenous peoples would be able to continue.

11. Bill No. 19,062 to amend article 380 of the Criminal Code with a view to combating discrimination, incitement to hatred and the promotion of hatred and discrimination, was currently under discussion in the Human Rights Commission. Its purpose was to bring the country's criminal legislation into line with public international human rights and humanitarian law by providing effective access to justice to seek redress for those offences.

12. Bill No. 19,288 on the prevention, elimination and punishment of racism and all forms of discrimination, was also under discussion in the Human Rights Commission. Its purpose was to guarantee effective equality of opportunity to the indigenous and Afro-Costa Rican populations and the defence of individual, collective and diffuse rights, and to combat other forms of ethnic intolerance. It would give the Ministry of Labour and Social Security responsibility for bringing the Afro-Costa Rican community into the labour market and would promote indigenous and Afro-Costa Rican small businesses. It would also establish a racial discrimination ombudsman in the Office of the Ombudsman, to ensure non-discrimination and equal treatment by State bodies.

13. Bill No. 19,628 on affirmative action for Afro-descendants was currently before the Standing Special Commission on Human Rights. It sought to promote differentiated, priority treatment for the Afro-descendant community by means of affirmative action to ensure access to employment and education. For example, all State institutions would be required to set aside a quota of 7 per cent of annual job vacancies for duly qualified persons of African descent.

14. Lastly, she said that Congress was soon to debate ratification of the Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance, under bill No. 19,341; and also a bill to proclaim the month of August Afro-descendants' month in Costa Rica.

15. **Mr. Solano Ortiz** (Costa Rica), replying to questions regarding the status of international treaties in the Costa Rican legal order, said that the Constitutional Court had ruled that international human rights treaties ranked above the Constitution wherever they conferred more rights than the Constitution itself. That applied even to human rights conventions that had not been ratified by Costa Rica, since instruments relating to human rights were not subject to ratification. As to the dismissal of 17 complaints of racial discrimination, mentioned in certain reports, they had been dismissed not on the merits but for lack of evidence. He pointed out that, in a recent case, a decision to ban a secondary school student from wearing a Rastafarian hairstyle, which was a feature of certain Afro-Costa Rican cultures, had been reversed by the Ministry of Education. The Ministry's decision had been based on the Code on Children and Adolescents, which stipulated that education should aim at the full development of the individual's potential, and on the right to a cultural identity.

16. **Mr. Blanco** (Costa Rica), replying to questions concerning indigenous groups' access to the judicial system, said that the Commission on Access to Justice had a special subcommittee on indigenous persons' access to justice. The subcommittee's members were of both indigenous and non-indigenous origin and included representatives of the judiciary, the Ombudsman's Office and the Office of the Special Attorney for Indigenous Affairs, among others. There were no special courts for cases involving indigenous persons but special binding instructions had been issued to courts for dealing with such cases: among other things, hearings must be held in indigenous territories, cultural experts must be appointed to establish the identity and customs of indigenous persons so that rulings could be given based on indigenous law, the judiciary must provide, translators and interpreters, and financial assistance must be provided to those indigenous persons who needed it.

17. The Higher Council of the Judiciary had instructed courts to give preferential treatment to, and ensure equal access to services for, persons with disabilities, older persons, indigenous persons, victims and persons in special situations, in accordance with the Brasilia Regulations Regarding Access to Justice for Vulnerable People.

18. The Public Prosecution Service had set up the Office of the Special Attorney for Indigenous Affairs to promote access to justice with due respect for indigenous political and social structures and arrangements. The Office dealt with all criminal acts involving members of indigenous groups and ensured the application of international law, including the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in the proceedings.

19. In addition to the numerous ordinary courts created across the country to deal properly with cases brought by the population at large, a special land court, and a special public defender's office, had been set up to deal specifically with the land claims of members of indigenous groups in Buenos Aires de Puntarenas, whether they involved conflicts between indigenous persons or between indigenous and non-indigenous persons. Specifically, no evictions could take place as long as a case was sub judice and the court had issued an injunction suspending the eviction.

20. The Supreme Court had determined that indigenous land could be transferred only between indigenous persons and such lands were explicitly protected from encroachment by non-indigenous persons, on pain of immediate eviction without compensation. The Constitutional Court had instructed the ordinary courts to take due account of decisions taken in indigenous communities in accordance with indigenous custom and self-determination and, where conflicts arose between indigenous persons, to apply primarily international instruments such as ILO Convention No. 169, which outranked domestic legislation and provided a higher level of protection than the Constitution.

21. A draft code of agrarian procedure had recently been submitted to the Legislative Assembly. It provided for procedural safeguards for the indigenous population in land disputes, and for the right of access to public defenders free of charge.

22. As to access to justice by migrants, asylum seekers and refugees, the Commission on Access to Justice had instructed courts to accept their identity documents as valid for access to judicial proceedings, to provide access to case files and to establish proper safeguards for any minors involved.

23. **Mr. Solano Ortiz** (Costa Rica) said that the Constitution and the Options and Naturalizations Act established the criteria for granting nationality. The basic requirements were permanent residence in the country, a certificate of good conduct and the ability to speak Spanish. Naturalized persons were required to renounce their original nationality unless they were allowed to retain it under a bilateral agreement.

24. According to the 2011 census, about 9 per cent of foreign residents had been born abroad, with Nicaraguans accounting for 75.57 per cent of the total. The growth rate in migrant numbers between 1984 and 2000 had been 7.5 per cent due to the political crisis in the region. The rate had declined to just 2.4 per cent during the period from 2000 to 2011. About 40 per cent of the existing foreign population had entered Costa Rica after 2000 and the majority were economic migrants. Nicaraguans tended to engage in circular migration, entering and leaving the country on a regular basis.

25. There were eight indigenous peoples in Costa Rica in 24 territories that had originally been recognized by decrees and subsequently by the Indigenous Peoples Act, Act No. 6172. However, the fact that many of the territories were still run by non-indigenous persons presented a major challenge for the State. The territories were represented by development associations established pursuant to the Indigenous Peoples Act.

26. The Costa Rican Electricity Institute (ICE) had suspended the El Diquís hydroelectric project in response to the recommendations issued by the Special Rapporteur on the rights of indigenous peoples in 2011. ICE was now developing guidelines for consultations among the indigenous peoples and consultations were planned, to be coordinated by the Office of the President. As the project was of major importance for the country's economy, work was continuing on the preliminary design, resettlement planning and improvement of electricity networks in the area.

27. Indigenous customary law courts had been established in recent years for the settlement of disputes in indigenous territories.

28. The Constitution required the State to maintain and cultivate national indigenous languages. Four languages had been preserved (Ngöbe, Bribri, Cabécar and Maleku) and the Ministry of Culture was supporting action to revitalize the Boruca and Teribe languages. The Ministry of Education had reformed the education system in recent years. Children living in indigenous territories now learned to read and write in their mother tongue, in addition to Spanish, and bilingual curricula were being developed. The Department of Intercultural Education was finalizing a road safety guide in four indigenous languages and coordinating the development of guidance for primary and secondary schoolteachers in Creole, English and Spanish, which would be used in the country's 27 regional directorates.

29. **Mr. Blanco** (Costa Rica) said that it was proposed to update the housing programme by introducing procedures for continuous dialogue and feedback between the National Housing Finance System, the indigenous peoples, construction companies and the Ministry of Housing and Human Settlements. The proposal would ensure that procedures for granting family housing allowances in indigenous areas were

transparent and complied with the regulations in force. A pilot plan for housing based on cultural, territorial and climatic considerations affecting indigenous populations would be implemented in Talamanca. The viability of increased access to non-mortgage-based loans and family housing allowances would be discussed.

30. Based on ILO Convention No. 169, persons were deemed to be indigenous if their ancestors had lived in the country, or in a geographic region to which the country had belonged, at the time of the conquest, colonial settlement or the establishment of the existing borders, and if, regardless of their legal status, they preserved all or some of their own social, economic, cultural and political institutions. The State respected traditional procedures for determining who was indigenous provided that those procedures did not breach fundamental rights.

31. **Ms. Whyte Gómez** (Costa Rica) said that Costa Rica had incorporated the ethnic-racial variable in the last two population censuses. Immigrants accounted for 17.3 per cent of the population of African descent, compared to 9 per cent for the population as a whole. Life expectancy at birth was 79 years for white and mestizo women and 78 for women of African descent. The comparable figures for men were 75 and 74 respectively. The infant mortality rate was higher for Afro-descendants but not unduly high compared with other countries.

32. The literacy rate for Afro-descendants in rural areas was 92.4 per cent, compared to 94.4 per cent for whites and mestizos, and 88 per cent for other groups, including the indigenous population. In urban areas, the white and mestizo population attended school for, on average, one year more than the rest of the population. School attendance was a major challenge in rural areas, with no group completing general basic education.

33. Higher unemployment rates were recorded for Afro-descendants and the rates for Afro-descendant men were higher than those for women. The extreme poverty rate for households throughout the country was 17.1 per cent, while the rate for Afro-descendants was 21.3 per cent. The proportion of Afro-descendants without access to social security was 18.7 per cent, compared to 14.5 per cent for the population as a whole.

34. Indigenous and Afro-descendent women were particularly vulnerable and prone to dual (racial and gender) discrimination. The Political Training Centre for Women, a subunit of the National Institute for Women, ran a training programme to raise awareness, eliminate stereotypes and promote cultural change. The National Forum of Indigenous Women and the National Forum of Women of African Descent also developed strategies aimed at guaranteeing respect for their rights. According to the 2011 population census, the average number of schooling years was 8.8 for women in general, 5 for indigenous women living in indigenous territories, and 4.3 for women who spoke an indigenous language. The employment rate for indigenous men living in indigenous territories was 56.2 per cent, compared to 16.9 for indigenous women. It was also virtually impossible for indigenous women to file complaints and to obtain information about the procedures for obtaining social welfare. Eleven national Forums of Indigenous Women had been held between 2008 and 2015 to address such problems. As a result, the Indigenous Programme of the Costa Rican Social Security Fund had been strengthened and the Supreme Electoral Tribunal had taken steps to register indigenous women. The National Institute for Women had organized political training courses for 2,267 women leaders throughout the country.

35. The Higher Council of the Supreme Court of Justice had issued a circular to ensure that indigenous people had access to interpreters and translators who spoke their mother tongue. If necessary, judges were also provided with anthropological or cultural documents to familiarize them with indigenous cultural norms.

36. High mortality and malnutrition rates were recorded in the Boruca region, particularly among the Ngöbe Buglé migrant indigenous communities from Panama. A further problem was the migrants' lack of documentation and the fact that many of them used a different name in each country. Inter-agency teams at the border crossings had been alerted to the problem and provided access to medical care.

37. The chair of the National Health Council for Indigenous Peoples rotated among members with a view to ensuring that all regions were equitably represented. Special health-care policies and strategies that incorporated indigenous knowledge and traditional medicine had been developed on behalf of the indigenous and Afro-descendant communities.

38. **Mr. Solano Ortiz** (Costa Rica) said that the National Statistics and Census Institute had initially complied with the recommendations of the Economic Commission for Latin America and the Caribbean (ECLAC) to avoid using categories such as "mestizo". However, it had eventually decided to include information regarding mestizos in the census because it would serve useful purposes. The decision to combine the white and mestizo categories reflected the fact that mestizos could self-identify as white because of the existing stereotypes in the country.

39. Many persons of dual nationality lived on the border between Panama and Costa Rica and frequently migrated from one side to the other. The same applied to Caribbean migrants from Nicaragua. The regulations issued by the Directorate-General for Migration contained a special section on indigenous migrants which provided for special protective treatment on account of their vulnerability.

40. In September 2014 a working session attended by representatives of the Regional Office for Central America of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government Council had been held to share information on the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia and the corresponding Action Plan.

41. **Mr. Avtonomov** said that, in his view, the legal proceedings instituted against the children's book entitled *Cocorí* had been unnecessary. It would have been sufficient for the Ministry of Education to remove it from the mandatory reading list for schoolchildren.

42. If it was not possible to enact the bill on the autonomous development of indigenous peoples because of the failure to reach a political consensus, he suggested that a package of different laws might be enacted to resolve the problem.

43. It was important to recognize the jurisdiction of traditional legal bodies and customary law. However, customary law should be monitored to ensure that it was consistent with the Constitution and international human rights law.

44. In answer to a question by **Mr. Blanco** (Cost Rica), he said that his concern was over contradictions, not violations, of international law.

45. **Mr. Murillo Martínez** (Country Rapporteur) asked the delegation to confirm that the percentage of the population who had self-identified as Afro-descendants was 7.8 or 7.9 per cent. He also wished to know whether the bill on affirmative action took that percentage into account for the purpose of participation in decision-making bodies.

46. Welcoming the distribution the previous day of an official document concerning the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia, he asked whether it was a legally binding document and whether the requisite budgetary funds had been appropriated for its implementation. He also

wished to know whether the access to justice policy for people of African descent had been adopted and implemented by the administrative authorities and the judiciary.

47. He asked whether the forums and consultations with indigenous peoples dealt with ILO Convention No. 169, the Diquis hydroelectric project and the Special Rapporteur's recommendations. He also wondered how representative the participant ethnic groups were.

48. **Mr. Lindgren Alves** said that he had found it surprising that whites and mestizos were placed in a single category. However, he in no way opposed using the category of mestizo itself when collecting data on ethnicity. In fact he encouraged it, as the cultures of Costa Rica and other Latin American countries were defined by the mix of influences that had helped to create them.

49. The book *Cocorí* was widely acclaimed as great literature, and the Committee should be very cautious about making any statements implying that it promoted racism. It most definitely was not racist and the fact that some people might be offended by it did not make it racist.

50. **Mr. Solano Ortiz** (Costa Rica) said that *Cocorí* was still the subject of wide discussion in Costa Rican society and had become a somewhat polarizing issue. It should be viewed within its historical context, as it had been written some 60 years ago. His Government had not yet taken a stance either for or against the book, though it did condemn any manipulation or misuse of the book to denigrate persons on the ground of their ethnic or social origin. In any case, the debate it had sparked would encourage self-reflection in a society that had always viewed itself as egalitarian but that in reality did contain some racist tendencies.

51. He took note of the suggestion to replace the bill on the autonomous development of indigenous peoples with a package of bills that, taken together, would address the same issues. The feasibility of that option would have to be assessed by the competent authorities. In any case, the bill would continue to be discussed by the legislature, though the many interests at stake meant that its adoption would not be easy. If achieved, it would be an historic accomplishment, as it would create a new framework for relations between the State and indigenous peoples.

52. **Mr. Blanco** (Costa Rica) said that official recognition of indigenous jurisdiction had come about only in the last 20 years. No evident contradiction had yet arisen that might jeopardize that recognition. Ordinary and indigenous courts were in fact complementary, and in some cases indigenous courts had adopted concepts from the ordinary courts, such as concepts related to due process, in order to ensure that the decisions they issued were sound.

53. **Ms. Whyte Gómez** (Costa Rica) said that, according to the most recent census, Afro-descendants made up 7.8 per cent of the population: 1.1 per cent who self-identified as Black and 6.7 per cent who self-identified as mulatto.

54. **Mr. Solano Ortiz** (Costa Rica) said that on 3 August the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia had been adopted by the Supreme Court, making the Court the only judicial body in Latin America with a policy on the subject. The policy permitted self-identification as an Afro-descendant in judicial records, thereby making it possible to better determine the real needs of Afro-descendants and take the necessary measures. It also required judges and judicial officials to demonstrate knowledge of structural racism, and of the rights of Afro-descendants as set out in international standards.

55. **Mr. Blanco** (Costa Rica) said that the discussion forum for representatives of indigenous peoples and the Government met once a month and included one representative for each indigenous territory. As some territories had questioned the

legitimacy of the persons representing them, the Government had agreed that it would not impose any particular model for the election of those representatives. One territory had chosen to withdraw, as it preferred to have a more direct line of communication with the Government.

56. **Ms. Whyte Gómez** (Costa Rica) said that the proposed affirmative action measures to benefit Afro-descendants were based on demographic data from the 2011 census.

57. **Mr. Solano Ortiz** (Costa Rica) said that he took note of Mr. Lindgren Alves's comments about the combined white/mestizo category of ethnicity. Following an analysis by relevant stakeholders, it had been decided that such an indicator would best reflect how the Costa Rican people saw themselves.

58. **Mr. Vazquez** said that, as far as he understood, no one was calling for the book *Cocorí* to be banned. The question was simply whether it should be required reading for 5-year-old children, who might not comprehend all the nuances involved. He asked the delegation to provide examples of cases in which the Constitutional Court had applied international human rights treaties in its decisions. Citing criticisms made by the Ombudsman's Office and by the Special Rapporteur on the rights of indigenous peoples concerning, respectively, the occupation of indigenous lands and the shortcomings of the associations for comprehensive indigenous development, he asked whether the Government accepted those criticisms and whether it intended to reform the associations.

59. **Mr. Yeung Sik Yuen** asked whether indigenous courts had competence only in civil matters or also in criminal matters and whether their powers were subject to oversight by the Constitutional Court. He asked if it was possible to appeal decisions issued by indigenous courts where fundamental principles of human rights had not been respected. Referring to the gacaca courts established after the Rwandan genocide, which had handed down sentences of life imprisonment despite the absence of qualified judges, he asked whether any constitutional safeguards were in place to protect the fundamental rights of persons subject to indigenous jurisdiction.

60. **Mr. Solano Ortiz** (Costa Rica) said that no one had suggested banning *Cocorí* and that the issue at hand was simply whether or not it should be used as reading material to educate schoolchildren. A series of rulings issued by the Constitutional Court in 1993 and 1995 could be considered landmark cases concerning the implementation of international human rights treaties. He would provide further information on those cases at a later time.

61. **Mr. Blanco** (Costa Rica) said that, while the associations for comprehensive indigenous development were meant to represent the different indigenous territories, in practice many indigenous persons living in those territories were not represented. The Government was facing serious difficulties in its effort to establish a new model for the organization of indigenous peoples. It was therefore working to empower other groups, such as indigenous women's associations and associations of traditional healers, so as to ensure the participation of indigenous persons who were not represented by the development associations. A subcommittee had been set up by the discussion forum to design a proposal for the reform of the system in the light of the obstacles hindering the adoption of the bill on the autonomous development of indigenous peoples. Discussions would be held with indigenous leaders in an effort to reach consensus.

62. **Mr. Solano Ortiz** (Costa Rica) said that indigenous courts had jurisdiction over civil matters only. Ordinary courts in areas adjacent to indigenous territories had a legal obligation to provide interpretation services and specially trained staff were assigned to cases involving indigenous peoples. No court, indigenous or otherwise,

was competent to sentence offenders to life imprisonment, because the penalty did not exist in Costa Rica. All citizens, including migrants in an irregular situation, were entitled to file complaints of human rights violations with any court in the national territory.

63. **Mr. Diaconu** commended the State party's efforts to move towards a multi-ethnic, multicultural society that looked to the interests of all its citizens. With regard to indigenous education and the need to preserve indigenous peoples' linguistic identity, he enquired about the language of instruction used in indigenous schools.

64. He had been somewhat surprised to learn that the State party found it difficult to adopt legislation relating to indigenous cultures owing to a lack of clear guidelines on the matter. Both the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 clearly defined issues pertaining to indigenous culture. The State party might also wish to draw on the experience of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in that regard. He asked how the State party intended to overcome the stated difficulties.

65. **The Chairperson**, speaking as a member of the Committee, said that he failed to understand how development associations could be considered a form of indigenous self-government, for they were in fact State entities and did not truly represent indigenous peoples or values. It was also difficult to see how the practice of handing over indigenous land to those associations could be reconciled with the State party's obligation to recognize, promote and protect indigenous peoples' right to control and manage their lands, including by delimiting, demarcating and awarding title to indigenous communities for their ancestral lands.

66. It appeared that perpetrators of violence against indigenous peoples were not necessarily brought to justice. He asked the delegation to comment on an incident brought to the Committee's attention where some 100 armed men had blocked the entrance to Bribri territory in the municipality of Buenos Aires de Puntarenas, forcibly ejected the families and set fire to their homes, while the police had reportedly stood by, and talked to the attackers, but detained none.

67. Many indigenous groups deemed the term "customary law" discriminatory and objected to the idea that indigenous justice systems were often relegated to handling minor offences, while all serious matters were decided by ordinary courts. In countries where, unlike in Costa Rica, some areas had no ordinary courts, indigenous courts played a vital role. Also, national justice systems did not necessarily render justice. If the accused had the financial or other means to provide evidence, even false evidence proving their innocence, they were acquitted. If not, they were convicted. Indigenous courts, on the other hand, sought to render justice.

68. He asked how many Afro-descendant judges there were in Costa Rica, and how many had sat on the Constitutional Court when it had ruled on the *Cocorí* case.

69. **Mr. Solano Ortiz** (Costa Rica) said that the four indigenous languages currently spoken in Costa Rica were Ngöbe, Bribri, Cabécar and Maleku. The Constitution, as amended in 1999, enshrined the State's obligation to preserve Costa Rica's indigenous languages and the Ministry of Education had a Department of Indigenous Education. Primary school education for indigenous children was bilingual. In primary schools, one teacher was in charge of language teaching, while another taught the children about their own indigenous culture and world vision, and about the indigenous political and economic system. In order to remedy the shortage of teachers who spoke indigenous languages, the training of indigenous educators had been made a priority. Although Creole was not an official language in education, there was a programme to preserve and promote its use. Creole was generally transmitted within the family and was intrinsically linked to the identity of Afro-descendants in Costa Rica.

70. **Ms. Whyte Gómez** (Costa Rica) said that the 2014-2023 National Policy on Cultural Rights was the country's framework for multiculturalism. It included indigenous peoples' cultural rights as one of its five strategic themes. In recognition of the diverse fabric of Costa Rican society, the Policy sought to promote dialogue and exchange, mutual respect and mutual learning and to dispel notions of hierarchy associated with belonging to a particular ethnic group.

71. **Mr. Blanco** (Costa Rica) said that wide consultations had been held with indigenous peoples on the National Policy on Cultural Rights, which included a section on indigenous cultural rights. Those consultations had been largely in line with the requirements for prior consultation set forth in ILO Convention No. 169 and had involved several visits to each of the indigenous territories. The bill on cultural rights currently before Parliament covered, among other topics, the cultural rights of indigenous peoples and provided for the establishment of an office to assist indigenous peoples in cultural matters.

72. **Mr. Solano Ortiz** (Costa Rica) said that the National Policy and Action Plan for a Society Free from Racism, Racial Discrimination and Xenophobia contained a chapter on cultural rights, establishing measures, indicators and goals. It had been adopted by executive decree and budget allocations had been made for its implementation in the 2016 budget. It was a new instrument and detailed information on its implementation would be provided in the State party's next report.

73. He agreed that it was important to bear in mind the difference between indigenous and Western concepts of justice. Western legal systems applied the law, whereas indigenous courts sought to render justice. In Costa Rica, indigenous jurisdiction was limited to smaller offences, often related to indigenous principles and practices; only State courts had criminal jurisdiction.

74. **Mr. Blanco** (Costa Rica) said that indigenous schools in Costa Rica were by law staffed exclusively by indigenous educators in order to ensure the transmission of traditional knowledge to future generations.

75. He acknowledged that the legitimacy of indigenous development associations as representatives of indigenous communities, and by extension the appropriateness of handing over indigenous land to those associations, was questionable. However, the current legal framework did not permit handing over indigenous territory directly to the claimant communities. The Government would seek to strengthen dialogue with indigenous communities in order to identify a way forward and solve their long-standing concerns in that regard.

76. **Mr. Vazquez** requested clarification about the relative powers of ministers and the courts. Was the decision of the Minister of Education in favour of the student who had been suspended from school for wearing a Rastafarian hairstyle final, or would there be a court ruling on the matter? Also, according to information before the Committee, the decision of the Minister of Culture to remove *Cocorí* from the compulsory primary school reading list had been overruled by the Constitutional Court, and the Minister had later been asked to resign.

77. **Mr. Solano Ortiz** (Costa Rica) said that, in the case of the student wearing a Rastafarian hairstyle, the Constitutional Court had declared itself not competent. The Minister of Education had the power to establish guidelines for the sector, had done so invoking the Convention on the Rights of the Child and the Code on Children and Adolescents, and had thus set a precedent.

78. The Minister of Culture had resigned for reasons other than the *Cocorí* issue.

79. **Mr. Murillo Martínez** (Country Rapporteur) said that the issue of *Cocorí* provided an excellent opportunity for Costa Rican society to take a close look at racial

discrimination and the Committee valued the attention being paid to the issue at all levels. The Committee respected the independence and powers of the judiciary to rule on the matter and in no way wished to criticize its decision. However, the State party might wish to revisit the practice of issuing compulsory reading lists for schools, which had been abandoned in many countries. The commendable decision of the Minister of Education regarding the student wearing a Rastafarian hairstyle should be applied throughout the education system. He noted the significance of the package of laws on discrimination currently before Parliament, and encouraged the adoption of legislation criminalizing racial discrimination and promoting affirmative action. He had been pleased to learn that the High Council of the Judiciary had adopted affirmative action measures for Afro-descendant members of the judiciary.

80. The Committee would follow the process of prior consultations in regard to hydroelectric projects closely, and pay special attention to compliance with ILO Convention No. 169.

The meeting rose at 1 p.m.