



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2357th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 5 August 2015, at 3 p.m.

Chairperson: Mr. Calí Tzay

later: Mr. Amir (Vice-Chairperson)

later: Mr. Calí Tzay (Chairperson)

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

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

Combined nineteenth to twenty-second periodic reports of Costa Rica (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. **Mr. Solano Ortiz** (Costa Rica), introducing the combined nineteenth to twenty-second periodic reports of Costa Rica (CERD/C/CRI/19-22), expressed his country's support for international law, particularly in the area of human rights, and for the treaty body system. The Legislative Assembly had recently amended article 1 of the Constitution to recognize the multi-ethnic and pluricultural nature of Costa Rica, acknowledging its historical debt to populations and groups that had been and continued to be marginalized and subject to prejudice. Other legislation, including bills to prevent and punish all forms of discrimination and to create an ombudsman for racial discrimination, was in the pipeline, and ratification of the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance was expected in the near future. In order to be effective, however, legislative change must be accompanied by cultural change and inclusive education, creating a society that respected difference.

3. Since the submission of its report, Costa Rica had formulated a national policy for a society free of racism, racial discrimination and xenophobia, thereby finally meeting a commitment made at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Afro-descendent, indigenous, migrant and refugee populations had been involved in the process and were the main focus of the policy, as vulnerable groups. The policy aimed to raise institutional awareness of their specific nature and needs and to place the country's human rights obligations at the heart of decision-making. The rights of indigenous and Afro-descendent communities could not be protected by legislation alone: policies, State action and financial resources were needed to ensure its effective application. The action plan drawn up under the policy covered seven main areas: institutional strengthening; civil and political rights; the right to education and culture; the right to health and social services; the right to decent work and economic rights; the right to an adequate standard of living; and environmental and land rights. The Inter-Institutional Committee on Follow-Up to and Compliance with International Human Rights Obligations, created in 2011 as a permanent monitoring mechanism under the auspices of the Ministry of Foreign Affairs and Worship, had met regularly since 2012 and had organized workshops on the policy. In parallel, a standing body for consultation with civil society had been established as part of efforts to encourage cooperation and feedback, though much remained to be done in that respect and in combating racism more generally. Action to implement the policy was being taken by the institutions that made up the Inter-Institutional Committee, funded from their own budgets.

4. In January 2015, the Office of the Commissioner for Afro-descendent affairs had been established within the Office of the President; its staff participated in the work of the Inter-Institutional Committee. Under Presidential Directive No. 022-P of 22 April 2015, the Office of the Commissioner would be responsible for implementing policies in line with the International Decade for People of African Descent. The Office was currently drafting a plan on recognition, justice and development for Afro-descendants for 2015-2018, with the participation of civil society and other government institutions. On 3 August 2015, the Costa Rican judiciary had become the first judicial

body in Latin America to adopt a policy on ensuring equal treatment and access to justice for people of African descent. The policy included steps to facilitate the preparation of disaggregated statistics on the specific situation and needs of the Afro-descendent population and to require prospective judges to have knowledge of human rights from the Afro-descendent perspective and of the various manifestations and effects of racial discrimination, particularly structural discrimination.

5. The Government remained committed to tackling indigenous issues, particularly land rights and security, at the highest levels. A discussion forum in place since 2013, involving representatives of the Government and indigenous peoples from the south of the country, reflected the Government's concern to ensure that indigenous peoples fully enjoyed their rights and freedoms. In its work, the discussion forum focused on five areas: public policy, the National Development Plan and development plans for the territories affected; territorial security; governance in the territories affected; the Autonomous Development of Indigenous Peoples Bill; and the right to consultation of indigenous peoples in Buenos Aires and Pérez Zeledón. Agreement had been reached on various ways to keep the channels of dialogue open, including the need to renounce violence and refrain from taking institutional action without prior consultation. Among the discussion forum's most important achievements was to agree a development plan for indigenous peoples in Buenos Aires and Pérez Zeledón with the active participation of the indigenous peoples concerned. An action plan to implement the development plan had been drawn up and was being incorporated into the activities of relevant government departments. The work of the discussion forum was being supported by the United Nations and the Ombudsman's Office.

6. With regard to land restitution, a pilot project carried out in the indigenous territory of Salitre to delimit and register land had been completed and the results submitted to the various groups involved for their consideration. The Autonomous Development of Indigenous Peoples Bill had yet to be adopted, not least because various indigenous groups had suggested that the current text should be revised. The matter had been discussed by a subcommittee of the Legislative Assembly's Standing Committee on Human Rights, which had recommended further consultations on the Bill. The Government was keen to work towards adoption of the Bill, which would strengthen respect for the fundamental rights of indigenous peoples. It had also established a dialogue mechanism with eight indigenous territories, which had resulted in a number of agreements being reached and progress being made in areas such as health, education, governance, security, infrastructure and the environment.

7. The Government was taking steps to implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples with respect to the El Diquís hydroelectric project and to agree on a process for cooperation with various United Nations bodies in that regard. It considered that guidance on consultations should be prepared jointly with indigenous peoples before consultations took place. Concerning the substantive issues at stake, a document had been drafted on regulating the transfer and resettlement of indigenous lands held by non-indigenous third parties, which would shortly be submitted to the indigenous territories for comment.

8. The National Council on Migration had formed a technical committee, bringing together technical staff from other government departments and the judiciary, to prepare an action plan on migration policy and ensure that the policy was aligned with the National Development Plan. The country's migration policy had been expanded to include institutional strengthening. A national policy on human trafficking was also being formulated, based on the migration policy. Civil society was involved in the work, which was supported by the International Organization for Migration. The various regulations that existed to implement the Migration and Aliens Act No. 8764 took account of the situation of vulnerable groups: for instance, there were special

rules covering foreign indigenous populations, cross-border workers, seasonal workers and students. The Department of Integration and Human Development of the Migration and Aliens Office had developed projects to provide information on public services and various aspects of migration for Costa Rican and foreign users and to make migration services more accessible. It had also undertaken activities to promote integration and raise awareness in areas with large migrant populations.

9. With regard to lesbian, gay, bisexual, transgender and intersex (LGBTI) issues, the Government was committed to recognizing the rights of the sexually diverse population and ensuring the full exercise of their rights. Various public bodies had introduced rules and regulations or taken decisions to ensure respect for sexual identity by accepting changes of sexual identity in official identity documents, allowing same-sex partners to receive family benefit and visit their partners in hospital, and permitting conjugal prison visits for same-sex partners. Executive Decree No. 38999, issued in 2015, sought to eradicate the discrimination suffered by the sexually diverse population in institutions by providing training for staff, revising internal rules, introducing penalties for discrimination, recognizing a person's preferred gender identity and forming committees to monitor compliance with the Decree.

10. **Mr. Murillo Martínez** (Country Rapporteur) welcomed the progress made by the Government in giving effect to the Convention. Its recognition of the multicultural and multi-ethnic nature of Costa Rican society represented an important step towards combating racism, racial discrimination and xenophobia. Noting the recent attempts by the Ombudsman's Office to draft a bill to combat racism, he asked what action had been taken to ensure that each element of criminal behaviour listed in article 4 of the Convention was defined as an offence. He also asked whether any consideration had been given to shifting the burden of proof from the victim to the alleged perpetrator in cases of racism and racial discrimination.

11. While societal attitudes towards race had evolved dramatically over recent years, studies had shown that ethnic minority groups continued to experience stigmatization and discrimination. Persons of African descent in particular faced serious obstacles to the enjoyment of their rights and experienced the highest rate of unemployment and discrimination. The inclusion of the offensive and racist children's book *Cocorí* in mandatory school reading lists only served to reinforce negative racial stereotypes and perpetuate racial discrimination against the Afro-descendent community. He therefore wished to know whether the State party intended to remove it from the national curriculum and ensure that pupils received an inclusive and multicultural education that combated racial discrimination. What efforts had been made to enable persons of African descent to participate in the reform of the education system?

12. Turning to the situation of indigenous peoples, he welcomed the State party's ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and its adoption of various national programmes focusing on the indigenous community. He enquired about the legal status of the indigenous territories and asked which institutions were in charge of governing those areas. He also wished to know whether the State party intended to adopt the Autonomous Development of Indigenous Peoples Bill in the near future and whether it had held consultations with the indigenous communities affected by the El Diquís hydroelectric project. He asked whether steps had been taken to evict illegal settlers in indigenous territories, particularly in the Bribri territory, where eviction papers had already been served to illegal occupiers of indigenous land, and to prosecute the perpetrators of acts of violence against the indigenous peoples of the area in July 2014.

13. Lastly, with regard to the migrant population, he asked what measures had been adopted to protect seasonal migrant workers, particularly Panamanians, who came to Costa Rica to work in the coffee-growing regions and were subjected to frequent acts of racism and xenophobia.

14. **Mr. Avtonomov**, noting the importance of disaggregated data for the development of appropriate policies to combat racial discrimination, asked whether the State party had considered introducing an additional self-identification category in the national census for indigenous persons of foreign origin. He also requested further information on the naturalization procedure in the State party and the different categories of status for foreign-born head of households referred to in paragraph 89 of the report. What was the difference between the status of a foreigner and that of a foreigner issued with a nine-digit identity card? As for indigenous communities, he asked whether the Government had recognized indigenous peoples' customary laws and taken steps to preserve indigenous languages and develop their written forms.

15. **Mr. Diaconu** asked what measures had been taken to improve access to water for indigenous peoples and remove without delay the legislative obstacles preventing the adoption of the Autonomous Development of Indigenous Peoples Bill. In that connection, he urged the State party to resolve the discrepancy between Act No. 7052 establishing the National Housing Finance System, which granted formal land titles for private properties built with a family housing allowance in indigenous territories, and the system of collective ownership that predominated in indigenous territories. He also asked what policies had been introduced to uphold indigenous peoples' access to appropriate health care and to ensure that indigenous children received instruction in their native language at school. Lastly, he wished to know what progress had been made towards the restitution of indigenous land pursuant to the recommendation made by the Special Rapporteur on the rights of indigenous peoples following his visit to Costa Rica in April 2011.

16. **Mr. Lindgren Alves**, noting the lack of an official State religion, asked whether there were plans to remove the reference to faith from the title of the Ministry of Foreign Affairs and Worship so as to prevent discrimination on religious grounds and ensure equal respect for all cultures. In addition, he urged the State party to implement the required reforms to bring national legislation into line with the Convention and continue the progress made in respect of the early warning procedure framework and the situation of indigenous peoples affected by the El Diquís hydroelectric project. As for the categories of racial self-identification contained in the national census, he wished to know whether the Government intended to split the category of "white or mestizo" into two separate categories, in accordance with a recommendation made by the Economic Commission for Latin America and the Caribbean. Lastly, he requested further information on the influence of the children's book *Cocorí* on contemporary Costa Rican society and its impact on anti-racism efforts.

17. **Ms. Hohoueto** said that she would like further information on the mandate and resources envisaged for the ombudsman for racial discrimination. While welcoming the drafting of a bill to combat racism, she wished to know what progress had been made towards defining each element of criminal behaviour listed in article 4 of the Convention as an offence and increasing the penalties in proportion to the gravity of the offence.

18. **Mr. Bossuyt** said that he would like updated information regarding the El Diquís hydroelectric plant and its impact on neighbouring indigenous communities. Noting that indigenous persons were required to prove their indigenous status in order to obtain State benefits, he asked what documentation was accepted as proof of indigenous heritage. As for the migration status of foreign nationals, he wished to know why there was a tendency in the State party to conceal family members in an

irregular situation. In that connection, he questioned how the figures given in the report could be said to represent a decrease in immigration between 1984 and 2011, when the 2011 census had indicated that over 40 per cent of foreigners living in Costa Rica had entered the country after the year 2000. Lastly, he questioned the relevance to the State party's implementation of the Convention of the density of the public telephone network referred to in paragraph 204 of the report.

19. **Mr. Kemal** said that, while he welcomed the State party's efforts to respond to the Committee's previous concluding observations (CERD/C/CRI/CO/18), he remained concerned by some of the weaknesses highlighted in information received from the Ombudsman and wondered whether they were being addressed. He particularly wished to know whether the Ministry of Foreign Affairs and Worship had responded to the Ombudsman's recommendations with regard to the implementation of the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia and its Action Plan, and what asked was being done to rectify irregularities in the National Commission on Indigenous Affairs. He was concerned that, despite having been before the parliament for 20 years, the racial discrimination bill had still not been adopted and had long since become outdated. He wished to know how the State party intended to proceed in that regard. He also wondered what would be done to overcome the problem of racial bias in the decisions of the Constitutional Chamber of the Supreme Court. Lastly, he wished to know how indigenous peoples' right to work was upheld and what measures were in place to ensure that they, and people of African descent, fully enjoyed their rights to basic services such as health care and housing.

20. **Mr. Vásquez** asked what progress was being made with respect to the reform of the National Commission on Indigenous Affairs and what measures were being taken to overcome the problems faced by the Associations for Integrated Indigenous Development, which were the mouthpiece for indigenous peoples during consultations. He was particularly worried that the representatives of the Associations were often non-indigenous and that they tended to approve the ownership of indigenous interests by non-indigenous persons, thus hampering indigenous peoples' enjoyment of their rights. He wondered whether the State party intended to reform the Associations.

21. Regarding the El Diquís hydroelectric project, he asked whether the State party accepted the recommendations made by the Special Rapporteur on the rights of indigenous peoples (A/HRC/18/35/Add.8). The admission by the Ministry of Health that almost 40 per cent of indigenous deaths were preventable was a cause for concern. He asked what steps were being taken to improve indigenous access to health care and said he would appreciate more information about the role of the National Council for Indigenous Health, how its activities were funded and how it operated. He inquired about the status of the draft national gender plan for indigenous women and what progress, if any, had been made with regard to its adoption. He wished to know what measures were in place to protect the languages spoken by Afro-descendent and indigenous populations, in particular Creole.

22. Turning to the issue of the status of treaties, he said that, according to information before the Committee, the Constitutional Chamber of the Supreme Court did not apply international human rights treaties; in the case of a boy who had been suspended from school because his Rastafarian hairstyle had been deemed inappropriate, the Constitutional Chamber had not invoked international law. He wished to know whether that was likely to change in the future.

23. **Mr. Amir** asked whether indigenous peoples in Costa Rica enjoyed the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. With regard to skin colour, he asked whether the phenomenon of attempting to change one's

skin colour through cosmetic surgery in order to avoid discrimination and stigmatization posed a problem, as it did in some other countries in Latin America. He asked whether discrimination on the grounds of skin colour, which was an increasing problem the world over, was a cause for particular concern in the State party.

24. **Mr. Khalaf** said he would welcome clarification with regard to the status of the draft National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia. He wished to know the composition of the Inter-Agency Commission, how and by whom it had been established and whether it had independent status. He requested further information on the relationship between the Inter-Agency Commission and the Standing Committee for Civil Society Organizations, particularly since the State party report had been submitted to civil society representatives for consultation rather than to the Standing Committee. He wondered whether the Standing Committee had the authority to put pressure on the State authorities to ensure effective application of the Convention.

25. **Mr. Yueng Sik Yuen** said he was concerned about the potential disappearance of Creole and wished to know what measures were being taken to protect that and other indigenous languages, since all of Costa Rica's languages were a fundamental part of the State party's cultural heritage. Regarding *Cocorí*, he said that, while it might be considered a literary classic and had not been written with the intention of causing offence or promoting racism, it had also, presumably, not been written with the intention of becoming compulsory reading on the national curriculum for primary schoolchildren. The remark of the white girl heroine, "I thought he was a monkey", at the sight of the Afro-descendent boy *Cocorí*, could, in a modern multi-ethnic society, create enormous discomfort and imbue the society with racism. Given that in other countries attitudes towards controversial books had changed over time, why could the same not apply to *Cocorí*? He asked whether *Cocorí* remained on the national curriculum and, if so, whether there was any intention to remove it. Lastly, he would appreciate further information on the functioning of the Inter-Agency Commission responsible for drafting the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia and would be particularly interested to hear how regularly it met.

26. **The Chairperson**, speaking in his capacity as a member of the Committee, said, with regard to *Cocorí*, that, under the Convention, the State party was obliged to investigate any complaint whatsoever regarding racial discrimination as defined in article 1. He had been very concerned to hear about the shockingly offensive messages received by those who had called for *Cocorí* to be removed from the national curriculum. Regarding the situation of Afro-descendent workers in coffee plantations, the Ministry of Labour had suggested conducting a study with a view to improving the deplorable conditions in such plantations and he asked what steps had been taken in that regard. He wondered why progress with regard to the draft National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia was slow.

27. He was particularly concerned about the prosecution of cases related to indigenous issues; crimes committed by indigenous peoples were prosecuted, while crimes committed against them by the State were not. While he welcomed efforts to promote prior, free and informed consultations, he regretted that the Committee had not received the information it had requested with regard to consultations on the El Diquís hydroelectric project.

28. He wondered what was being done to eliminate structural discrimination, and in what time frame. He asked whether any tangible targets were in place to ensure that efforts to eliminate racial discrimination bore fruit. While he welcomed efforts to demarcate indigenous lands, some people still remained landless. The State party must look for any cases that might have fallen beyond the scope of that demarcation

process. The Committee was particularly worried about the situation of migrant workers, who worked in extremely difficult conditions on coffee plantations. The Committee had been informed in that regard that the State party engage in tended to dialogue only with chosen interlocutors rather than with all those involved. He asked how the Government could explain the withdrawal of the Bribri people from that dialogue.

29. **Mr. Solano Ortiz** (Costa Rica) said, in preliminary response to some of the questions raised, that the census had been designed in consultation with a variety of contributors. With regard to the nine provenance categories on identity documents, he explained that there were seven provinces in Costa Rica; categories one to seven referred to those provinces, category eight referred to naturalized foreigners and category nine referred to Costa Ricans born abroad, who had registered their nationality through a Costa Rican consulate. Costa Rica was not yet a secular State; Catholicism was the official religion. Plans were, however, in place for the country to become a secular State and, to that end, a new concordat was currently being negotiated with the Vatican, which, when concluded, would lead to constitutional reform. The Ministry of Foreign Affairs and Worship did not oversee the activities only of the Catholic Church in Costa Rica but those of all religions. While religious marriages were recognized, all marriages must be registered on the civil register. Such registration occurred automatically for Catholic weddings, since Catholic priests were authorized civil registrars.

The meeting rose at 6 p.m.