



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-eighth session
20 February – 10 March 2006

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

GUYANA

The Committee considered the initial to fourteenth periodic reports (the “report”) of Guyana due from 1978 to 2004, respectively, and submitted in one document (CERD/C/472/Add.1), at its 1747th and 1748th meetings (CERD/C/SR.1747 and 1748), held on 2 and 3 March 2006. At its 1758th and 1759th meetings (CERD/C/SR.1758 and 1759), held on 10 March 2006, it adopted the following concluding observations.

A. Introduction

The Committee welcomes the comprehensive report and additional written information submitted by Guyana and the opportunity thus offered to open a constructive dialogue with the State party. It is encouraged by the attendance of a high-level delegation and appreciates the detailed and frank answers the delegation gave in response to the Committee’s questions.

The Committee notes that the report was more than twenty-six years overdue when submitted and that the State party had availed itself of technical assistance provided by the Office of the High Commissioner for Human Rights. It invites the State party to make every effort to respect the deadlines for the submission of its future reports.

B. Factors and difficulties impeding the implementation of the Convention

The Committee notes that the historic ethnic polarization of the society and of the main political parties of Guyana has reinforced prejudice and intolerance in the State party.

C. Positive aspects

GE.06-41177 The Committee notes with satisfaction that the State party has ratified most of the core United Nations human rights treaties, and that the

International Convention on the Elimination of all Forms of Racial Discrimination (the “Convention”) can be directly applied in the State party’s courts.

The Committee notes with appreciation the efforts made by the State party to make the public health system reach out to remote hinterland areas, through a system of health centres and health huts at the community level, incentives to medical doctors deployed to the hinterland areas, and a system in place to airlift patients to hospitals in emergency cases.

The Committee welcomes information on the high literacy rate of the Guyanese population, as well as the efforts undertaken by the State party to increase the number of secondary schools in the hinterland areas.

D. Concerns and Recommendations

The Committee is concerned about the lack of disaggregated statistical data on the number and economic situation of indigenous peoples in Guyana and about their equal enjoyment of the rights guaranteed in the Convention. In the absence of such statistical information, the Committee finds it difficult to assess the extent of racial and ethnic discrimination within the territory of the State party.

The Committee requests that the State party provide in its next periodic report statistical information on the economic situation of members of indigenous peoples and their communities, as well as on their enjoyment of the rights protected under article 5 of the Convention, disaggregated by, *inter alia*, gender, age, and rural/urban population.

The Committee is concerned that “national or ethnic origin” is not included among the prohibited grounds of discrimination in Article 40 (1) of the Constitution of Guyana and that the list of fundamental rights and freedoms contained in that article does not cover all civil, cultural, economic, political and social rights protected under Article 5 of the Convention. (Arts. 1 and 5)

The Committee recommends that the State party take the necessary legislative measures to include “national or ethnic origin” among the prohibited grounds of discrimination in Article 40 (1) of the Constitution of Guyana and that the prohibition of racial discrimination in that article applies with respect to the enjoyment of all rights and freedoms protected under Article 5 of the Convention.

The Committee notes that the Amerindian Act of 2006 systematically refers to the indigenous peoples of Guyana as “Amerindians”. (Art. 2)

The Committee recommends that the State party, in consultation with all indigenous communities concerned, clarify whether “Amerindians” is the preferred term of these communities, that it consider the criteria laid down in article 1 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as in the Committee’s General Recommendation No. 8,¹ in defining indigenous peoples, and that it recognize the specific rights and entitlements accorded to indigenous peoples under international law

While noting with favour that the State party has adopted several measures aimed at improving the situation of indigenous people in fields such as employment, housing and education, the Committee is concerned about the absence of a national strategy or plan of action which systematically address any inequalities that members of indigenous communities face in the enjoyment of their rights. (Art. 2)

The Committee recommends that the State party adopt a comprehensive national strategy or plan of action providing for special measures, in accordance with article 2 (2) of the Convention, for the purpose of guaranteeing indigenous people the full and equal enjoyment of human rights and fundamental freedoms, and that it allocate sufficient funds for that purpose.

The Committee notes the lack of information on the practical application of criminal and other legislation aimed at eliminating racial discrimination, such as the Racial Hostility Act (1997), the Prevention of Discrimination Act (1997), or Article 149 of the Constitution of Guyana. (Arts. 2 (1) (d), 4 and 6)

The Committee requests the State party to ensure and monitor the effective implementation of all legal provisions aimed at eliminating racial discrimination, and to provide in its next report updated information concerning the application by the Guyanese courts of criminal law and other legal provisions punishing and/or prohibiting acts of racial discrimination. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.

¹ CERD, 38th session (1990), General Recommendation No. 8: Identification with a particular racial or ethnic group (Arts.1 (1) and 4).

The Committee is concerned about the absence of statistical data on the representation of ethnic minorities, including indigenous women, in public offices and government positions. (Article 5 (c))

The Committee urges the State party to ensure that all ethnic minorities have adequate opportunities to participate in the conduct of public affairs at all levels, including Parliament and the Government. Taking into account paragraph 8 above, the Committee particularly requests the State party to provide in its next periodic report updated statistical information, disaggregated by ethnic group, gender and rural/urban population, on the percentage, functions and seniority of minority representatives, including Afro-Guyanese and indigenous people, holding public offices and government positions.

While noting that the Constitutional Amendment Act of 2000 establishing the Ethnic Relations Commission does not require the representation of any particular ethnic group on the Commission, the Committee is nevertheless concerned about the absence of any indigenous representatives on that Commission. (Art. 5 (c))

The Committee recommends that the State party ensure that the ethnic composition of the Ethnic Relations Commission be as inclusive as possible, and that the representatives of indigenous communities be consulted, and their informed consent sought, in any decision-making processes directly affecting their rights and interests, in accordance with the Committee's General Recommendation No. 23.²

The Committee notes with deep concern that, under the Amerindian Act (2006), decisions taken by the Village Councils of indigenous communities concerning, *inter alia*, scientific research and large scale mining on their lands, as well as taxation, are subject to approval and/or gazetting by the competent Minister, and that indigenous communities without any land title ("untitled communities") are also not entitled to a Village Council. (Art. 5 (c))

The Committee urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation. In particular, it urges the State party to recognize

² CERD, 51st session (1997), General Recommendation No. 23: Indigenous peoples, at para. 4 (d).

and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.

The Committee is deeply concerned about the lack of legal recognition of the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy and about the State party's practice of granting land titles excluding bodies of waters and subsoil resources to indigenous communities on the basis of numerical and other criteria not necessarily in accordance with the traditions of indigenous communities concerned, thereby depriving untitled and ineligible communities of rights to lands they traditionally occupy. (Art. 5 (d) (v))

The Committee urges the State party to recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources, and to safeguard their right to use lands not exclusively occupied by them, to which they have traditionally had access for their subsistence, in accordance with the Committee's General Recommendation No. 23³ and taking into account ILO Convention No. 169 on Indigenous and Tribal Peoples. It also urges the State party, in consultation with the indigenous communities concerned, (a) to demarcate or otherwise identify the lands which they traditionally occupy or use, (b) to establish adequate procedures, and to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.

The Committee notes with concern the extensive exception to the protection of property in Article 142(2)(b)(i) of the Constitution of Guyana, authorizing the compulsory taking of the property of Amerindians without compensation "for the purpose of its care, protection and management or any right, title or interest held by any person in or over any lands situated in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community." (Art. 5(d) (v) and 6).

The Committee recommends that the State party afford non-discriminatory protection to indigenous property, in particular to the rights of ownership and possession of indigenous

³ CERD, General Recommendation No. 23: Indigenous peoples, at para. 5.

communities over the lands which they traditionally occupy. It also recommends that the State party confine the taking of indigenous property to cases where this is strictly necessary, following consultation with the communities concerned, with a view to securing their informed consent, and to provide these communities with adequate compensation where property is compulsorily acquired by the State, as well as with an effective remedy to challenge any decision relating to the compulsory taking of their property.

While noting the State party's special recruitment measures for the Armed Forces and the police in favour of indigenous people and other applicants from the hinterland areas, the Committee remains concerned about the ethnic composition of the Armed Forces and the police of Guyana which are predominantly recruited from the Afro-Guyanese population. (Art. 5 (e) (i))

The Committee encourages the State party to continue and intensify its efforts aimed at ensuring a balanced ethnic representation in the composition of its Armed Forces and police, i.e. by implementing the recommendations of the Disciplined Forces Commission charged to address existing imbalances, by extending its special recruitment policy to all ethnic groups that are under-represented, in particular the Indo-Guyanese, and by providing incentives for members of under-represented ethnic groups to join the forces.

The Committee is deeply concerned that, despite the State party's efforts mentioned in paragraph 6 above, the average life expectancy among indigenous peoples is low, and that they are reportedly disproportionately affected by malaria and environmental pollution, in particular mercury and bacterial contamination of rivers caused by mining activities in areas inhabited by indigenous peoples. (Art. 5 (e) (iv))

The Committee urges the State party to ensure the availability of adequate medical treatment in hinterland areas, in particular those inhabited by indigenous peoples, by increasing the number of skilled doctors and of adequate health facilities in these areas, by intensifying the training of health personnel from indigenous communities, and by allocating sufficient funds to that effect. Furthermore, it recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.

While noting with favour that the State party provides school uniforms to all indigenous children free of charge and that indigenous students are the only ethnic group for which special scholarship programmes exist, the Committee is nevertheless deeply concerned about the low secondary school and university attendance by indigenous children and students, as well as about the reported lack of qualified teachers, textbooks and classrooms at schools in areas predominantly inhabited by indigenous peoples. (Art. 5 (e) (v)).

The Committee urges the State party to ensure equal quality of teaching for, and increase school and university attendance by, indigenous children and adolescents and to that end, to the maximum of its available resources, intensify the training of, and provide incentives for, hinterland teachers, proceed with the construction of schools in hinterland areas, ensure the availability of culturally appropriate textbooks, including in indigenous languages, in schools with indigenous pupils, and further increase the outreach of scholarship programmes for indigenous pupils and students.

The Committee notes that only few complaints about acts of racial discrimination have been brought before the Ethnic Relations Commission and none before the courts which, according to the State party, can partly be attributed to the high standard of proof required in judicial proceedings and to the difficulties to secure witnesses in a small society such as the Guyanese society. (Art. 6)

The Committee recommends that the State party consider sharing the burden of proof in civil and administrative proceedings once the commission of an act of racial discrimination has been sufficiently substantiated by the complainant, and that it allocate sufficient funds to witness protection programmes in cases concerning acts of racial discrimination.

The Committee expresses its concern about the existing ethnic tensions in Guyana which constitute an impediment to inter-cultural recognition and the construction of an inclusive and politically pluralistic society. (Art. 7)

The Committee encourages the State party to provide education and to actively support programmes that foster inter-cultural dialogue, tolerance and understanding with respect to the culture and history of different ethnic groups within Guyana. The Committee further endorses the recommendation of the Special Rapporteur on contemporary forms of racism, racial

discrimination, xenophobia and related intolerance to establish a constitutional commission on inter-cultural dialogue.⁴

The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards Articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

The Committee notes that the State party has not made the optional declaration provided for in Article 14 of the Convention, and recommends that it consider doing so.

The Committee strongly recommends that the State party ratify the amendments to Article 8, paragraph 6, of the Convention, 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. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized, including in indigenous languages.

Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 15, 16 and 19 above, within one year of the adoption of the present conclusions.

The Committee recommends to the State party that it submit its fifteenth and sixteenth periodic reports in a single report, due on 17 March 2008.

⁴ Mission to Guyana and Trinidad and Tobago, Report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E/CN.4/2004/18/Add.1, 8 January 2004, at para. 41.