



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

Seventy-sixth session

15 February–12 March 2010

### Consideration of reports submitted by States parties under article 9 of the Convention

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

##### Panama

1. The Committee considered the fifteenth to twentieth periodic reports of Panama, submitted in a single document (CERD/C/PAN/15-20), at its 1993rd and 1994th meetings (CERD/C/SR.1993 and SR.1994), held on 1 and 2 March 2010. At its 2008th meeting (CERD/C/SR.2008), held on 11 March 2010, it adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the 15th to 20th periodic reports submitted by the State party, and appreciates the opportunity to renew the dialogue with the State party after a period of 10 years. It also expresses its appreciation for the frank and sincere dialogue with the delegation and the efforts it has made to reply to the many questions contained in the list of issues and to the questions put by members of the Committee during the dialogue.

3. Noting that the report was submitted late, the Committee invites the State party to respect, in future, the deadlines set for the submission of its reports. It also urges it to observe the Committee's guidelines for the submission of reports and to involve members of civil society in their preparation and implementation.

##### B. Positive aspects

4. The Committee welcomes the State party's collaboration with the Office of the United Nations High Commissioner for Human Rights since the establishment of that Office's regional office in Panama in 2007.

5. The Committee views positively the adoption of legislation to combat racial discrimination, such as Act No. 11 of 2005 on discrimination in employment, Act No. 16 of 2002 on the right of admission to public places, and the creation of the National Commission against Discrimination under article 8 of the said Act. In particular it welcomes the reference made to the Committee in that Act.

6. The Committee welcomes the institutions set up by the State party to combat discrimination and to protect and promote human rights, such as: the Ombudsman's Office, the National Council of the Black Ethnic Community and the National Commission for Refugee Affairs.

7. The Committee welcomes the information that the State party intends to carry out in 2010 a population census which will include questions relating to self-identification for indigenous peoples and Afro-Panamanians.

8. The Committee welcomes Act No. 72 of 2008 on Communal Lands, which makes provision for land ownership by indigenous communities who do not live in an indigenous region.

### **C. Concerns and recommendations**

9. The Committee notes with concern the persistence of racial discrimination and its historical roots, which have led to the marginalization, impoverishment and vulnerability of Afro-Panamanians and indigenous peoples. It is also concerned by the absence of any general provision prohibiting discrimination on grounds of race and classifying acts of racial discrimination as offences punishable by law, in conformity with article 4 of the Convention.

**The Committee recommends that the State party adopt legislation to make fully effective the provisions of the Constitution relating to non-discrimination and expressly prohibiting discrimination on grounds of race and to guarantee the availability of effective remedies to ensure implementation of such legislation. The Committee also reiterates its recommendation to the State party that it adopt specific criminal legislation in conformity with article 4 of the Convention.**

10. The Committee is concerned by the lack of statistical data in the State party's report on the demographic composition of the population, and in particular on Afro-Panamanians, and notes with concern that the most recent population census was held in 2000. The Committee points out that this information is required in order to evaluate the implementation of the Convention and to monitor policies benefiting minorities, indigenous peoples and Afro-Panamanians.

**The Committee requests the State party to publish the results of the forthcoming 2010 population census and that the census gather, among other data, information on indigenous peoples and Afro-Panamanians. The Committee draws attention, in particular, to the importance of including in the census a question on self-identification to obtain a true picture of the ethnic dimension of the State party. In addition, in the light of paragraph 8 of the reporting guidelines and general recommendation No. 4 concerning the submission of reports by States parties (article 1 of the Convention) and general recommendation No. 24 concerning article 1 of the Convention, the Committee recommends that the State party include in its next periodic report information on the demographic composition of the population, in particular on indigenous peoples and Afro-Panamanians.**

11. The Committee expresses its concern at the fact that, in spite of the adoption of policies and the creation of national institutions, in practice Afro-Panamanians and indigenous peoples still encounter considerable difficulties in exercising their rights and are the victims of de facto racial discrimination and marginalization and that they are particularly vulnerable to violations of human rights. The Committee is also concerned by the structural causes which perpetuate discrimination and denial of access to social and economic rights and development, in particular in the areas of employment, housing and education. The Committee expresses its concern about the information that most indigenous peoples and Afro-Panamanians do not have effective access to basic services such as water supply, electricity, sanitation, education, public housing programmes and microcredit.

**The Committee recommends that the State party combat discrimination and effectively implement special measures to ensure that Afro-Panamanians and indigenous peoples are able fully to exercise human rights on equal terms. While the Committee takes note of the existence of various national policies relating to special measures in a number of areas, it is concerned that those policies do not sufficiently address the structural causes responsible for the denial of access to social and economic rights and to development. The Committee recommends that the State party increase, insofar as possible, the resources allocated for policy implementation, in particular at the departmental and municipal levels, and ensure that they are efficiently and transparently monitored. The Committee again underscores the importance of organizing consultations with the indigenous peoples and Afro-Panamanians concerned in order to draw up the relevant development plans and special measures, taking into account general recommendation No. 32.**

12. The Committee expresses its serious concern about the information received that, despite the existence of the indigenous region as an entity, with provision for self-government and communal ownership of land by indigenous peoples, there are some indigenous communities that have not obtained a region or entity of similar status; this is illustrated by the exclusion of some Ngobe and Emberá communities and the fact that the Bri Bri and Naso communities have been denied such an entity. The Committee also draws attention to the failure to register children born in the indigenous regions. The Committee further wishes to express its concern at the very low standard of living in the indigenous regions, such as the area of Darién where there is poor access to basic services and to governmental poverty-elimination policies.

**The Committee recommends that the State party finalize the procedures still pending to ensure that all Panamanian indigenous communities secure a region or entity of similar status. It also urges the State party to do its utmost to ensure that its governmental poverty-elimination policies are effective throughout the country, and in particular in the indigenous regions.**

13. The Committee expresses its serious concern about the information received concerning expulsions and displacements affecting indigenous communities, in connection with energy projects, exploitation of natural resources and tourism. The Committee ventures to mention, as examples, the incidents on the coast of Bocas del Toro and in the communities of San San and San San Druy, in which the Naso community's cultural centre was even destroyed. The Committee is concerned in particular by the information on violence during these incidents and the use of the police and/or security forces. The situation is even more serious when violence is used during expulsions.

**The Committee recommends that the State party adopt the necessary effective measures to ensure the prohibition of forced removals throughout the country. The Committee urges the State party to assume its role as mediator in such conflicts by protecting citizens, including indigenous and Afro-Panamanian citizens, and that it**

**collaborate in seeking a solution to conflicts over land to allow development projects to be harmonized with the indigenous world view.**

14. The Committee notes with concern that on several occasions consultations concerning projects for the exploitation of resources, construction and tourism have been left in the hands of the private firms carrying out such projects. The Committee also notes with concern that the agreements reached through such consultations are partial and not in conformity with the international standards that should govern such agreements. It notes with serious concern that the balance of power in the negotiations and agreements weighs heavily against the indigenous communities. The Committee would like to cite as an example the case of the Chan 75 hydroelectric project. The Committee expresses its serious concern at the lack of effective mechanisms for consultation with the indigenous peoples, and highlights in particular the need to obtain prior, informed and voluntary consent for development projects, resource exploitation and tourism affecting their way of life.

**The Committee recommends that the State party institute appropriate mechanisms, in conformity with international standards, and in particular article 5 of the International Labour Organization Indigenous and Tribal Populations Convention, 1957 (No. 107), which the State party has ratified, to conduct consultations with communities potentially affected by development projects and the exploitation of natural resources so as to obtain their prior, informed and voluntary consent. The Committee also recommends that the State party should not delegate its responsibility in the process of consultation, negotiation and compensation in such situations to the third party concerned, the private enterprise.**

15. The Committee expresses its concern that the victims of displacements are not being provided with adequate redress and compensation. The Committee notes with concern that agreements are being reached with only a few members of the family and community and that inadequate amounts are being paid, and that redress and compensation are left in the hands of firms.

**The Committee recommends that effective redress and compensation be provided for persons facing displacement owing to economic projects. It also recommends that, if a displacement is shown to be necessary, the State party should ensure that the persons displaced from their properties receive proper compensation, and provide for their relocation places that are equipped with basic services such as water supply, electricity, washing facilities and sanitation and proper facilities such as schools, health centres and transport.**

16. The Committee takes note that in the cases of the Naso community in San San and in San San Druy, and of the community in Charco La Pava, the Inter-American Commission on Human Rights has ordered provisional and unembargoed precautionary measures which have not been complied with by the State party. It also further notes with serious concern that in the case of Charco La Pava, in August 2008 the Committee sent a letter under its early-warning procedure and that this case is before the Inter-American Court of Human Rights and was the object of a visit by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in January 2009.

**The Committee urges the State party to pay careful attention to the statements and decisions of regional and international bodies on the issue, in order to prevent situations that violate the human rights of its indigenous communities. The Committee urges the State party to reconsider its position and to heed the requests by the Inter-American Commission on Human Rights, and the recommendations of the Special Rapporteur, and also to heed the calls made by this Committee and suspend construction of the dam on the Changuinola river and to endeavour to ensure that the human rights of its indigenous communities continue to be protected. It also**

**recommends that a careful examination be made of the agreements reached on this matter to ascertain whether or not they comply with the State party's international obligations in respect of human rights. If that is not the case, the Committee recommends that the State party seek mechanisms in order to negotiate appropriate agreements for those communities.**

17. The Committee expresses its serious concern at the refugee recognition process under way in the State party, and in particular at the situation of the refugees from the Emberá population fleeing from their place of origin in Choco (Colombia).

**The Committee recommends that the State party ensure that its asylum application mechanisms conform to the relevant international standards. It urges the State party in particular to respond to the specific situation of refugees belonging to the Emberá population.**

18. The Committee expresses its concern at the existence of negative stereotypes and perceptions of minorities propagated by the media and history books. It notes with particular concern the statements by Government officials against persons of foreign origin, especially Colombians and persons from outside the American continent.

**The Committee recommends that the State party urgently carry out campaigns to raise awareness of racial discrimination and to combat existing stereotypes. It also recommends that it provide its Government officials with education and training in that sphere.**

19. The Committee notes with concern the levels of HIV/AIDS infection among the Kuna indigenous community and, in this respect, also notes with concern the limited access to sexual and reproductive health services for indigenous peoples and Afro-Panamanians.

**The Committee urges the State party to ensure that sexual and reproductive health services are available for and accessible to the whole population, and in particular the Kuna community. It also urges it to carry out a campaign to raise awareness of sexually transmitted diseases.**

20. The Committee is concerned by the information received about the intimidation and persecution of indigenous leaders and communities for militancy in protecting indigenous rights, and in particular in connection with major economic projects in the fields of hydroelectricity, mining and major works or tourist projects.

**The Committee urges the State party to step up measures to ensure the safety of indigenous leaders and communities, and in this respect to pay particular attention to the precautionary measures ordered by the Inter-American human rights system. In view of the valuable role the Ombudsman's Office plays in preventing violations, the Committee recommends that the State party increase the funds assigned to the Office.**

21. The Committee expresses its concern at the fact that the administration of justice has not adopted suitable measures to protect the rights of Afro-Panamanians and indigenous peoples and that the perpetrators of violations are as a rule unpunished. The Committee is also concerned that legal advice is inadequate and not always available in the indigenous languages.

**The Committee draws the attention of the State party to its general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. It encourages the State party to strengthen the provision of legal advice and to ensure that proper interpretation into indigenous languages is provided during trials. The Committee recommends that the State party pay particular attention to the conditions of imprisonment of the large number of Afro-Panamanians deprived of their liberty. In addition, the Committee urges the**

**State party to ensure that remedies are effective, independent and impartial and that victims receive fair and proper compensation. The Committee urges the State party to investigate and punish the practice of racial profiling used by the police against the population of African descent.**

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified; in particular it urges it to consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

23. In light of its general recommendation No. 33 on follow-up to the Durban Review Conference, the Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by 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, when incorporating the Convention into domestic law. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

24. The Committee recommends that the State party continue consulting and expanding the dialogue it has initiated with civil society organizations working in the field of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

25. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention and 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 and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee draws attention to General Assembly resolutions 61/148, of 19 December 2006, and 62/243, of 24 December 2008, in which it strongly urged States parties to the Convention 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.

26. 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 Committee's observations on these reports be similarly publicized in the official and other commonly used languages, as appropriate.

27. Noting that the State party submitted its core document in 1996, the Committee encourages it to submit an updated version in conformity with the harmonized guidelines on reporting to the human rights treaty bodies, and in particular those on the core document, adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

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 the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 13 and 14 above.

29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 9, 11, 15 and 18 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

30. The Committee recommends that the State party submit its twenty-first, twenty-second and twenty-third periodic reports in a single document by 4 January 2013, taking

into consideration the guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention, adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations.

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