



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) OF THE 1819th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 30 July 2007, at 3 p.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Seventeenth and eighteenth periodic reports of Costa Rica (CERD/C/CRI/18)

1. At the invitation of the Chairperson, the members of the delegation of Costa Rica took places at the Committee table.
2. Mr. GUILLERMET FERNANDEZ (Costa Rica) said that the fight against racial discrimination was one of the major challenges currently facing societies and that eradicating that global scourge required the commitment and efforts of every nation and of the international community as a whole.
3. Costa Rica had made progress since it had presented its last periodic report to the Committee. It had taken advantage of the process of submitting reports to the Committee and to other treaty bodies of the United Nations in order to review its public policies on human rights. The real challenge currently faced by Costa Rica was ensuring effective follow-up to the recommendations of the Committee and other United Nations treaty bodies.
4. Costa Rica's previous periodic report, submitted in 2001, had provided a valuable framework for implementing a number of measures, including: the promulgation of the new Migration and Aliens Act, adopted in 2005, which was currently undergoing a full review by the Legislative Assembly; the establishment of an Indigenous Affairs Department in the Public Prosecutor's Office designed to deal better with the needs of indigenous peoples; making judges aware in the course of their training of discrimination factors present in society and in interpersonal relations; the holding of workshops to improve care for patients suffering from sicknesses predominantly affecting the Afro-Costa Rican population, and the launch of a national employment policy specially designed for young people belonging to traditionally marginalized groups.
5. Costa Rica did not deny that some desirable measures could not be implemented owing to the lack of resources, difficulty in passing new legislation and the lack of an institutional culture.
6. Being aware of the inadequate treatment offered to indigenous populations, however, the Government had adopted very clear guidelines to help raise them to the same standard of living as the rest of the population. Thus the 2006-2010 Jorge Manuel Dengo National Development Plan stipulated clearly that its sectoral objective was to reduce discrepancies and differences in social development by establishing minimum thresholds for meeting the basic requirements of the population and by alleviating the social exclusion affecting indigenous communities and other vulnerable groups of Costa Rican society. The State had also undertaken to prepare a plan designed to improve the access of indigenous communities to institutional programmes and services.
7. Turning to the issue of legislation concerning migrants, which had been much debated at the National Assembly, he recalled that one of the first measures taken by the current President of the Republic, Mr. Óscar Arias Sánchez, had been to give priority to reforming the general

Migration and Aliens Act (para. 121). In May 2006, the Government had made every effort to arrive at a consensus regarding proposals to reform the existing law, as suggested by various national and international organizations. Several months of work had been devoted to considering the proposals of the Office of the Ombudsman, the Permanent Forum for the Migrant and Refugee Population, the Catholic Church and other religious congregations, State universities, public institutions and chambers of commerce, which had opened the way to reconciling national economic and legal realities with a legal framework appropriate for dealing with migratory movements.

8. As a result, draft legislation that took account of many of the comments made in the course of discussions concerning the general law on migrants had been submitted to the Permanent Forum for the Migrant and Refugee Population. The main features of the new legislation were a limitation on the maximum period of administrative detention, the obligation to give reasons for any decision to extend administrative detention and the alignment of the new legislation with the commitments undertaken by Costa Rica as a State party to international human rights treaties and conventions. The new text, which proposed to introduce 180 amendments to the general Migration and Aliens Act, had been submitted to the Legislative Assembly on 27 June 2007 for its consideration.

9. Pending the reform of the general Migration and Aliens Act, the director of the Migration and Aliens Office (Director General de Migración y Extranjería) had taken a series of measures, which benefited Nicaraguan citizens in particular. Multiple visas were to be issued to Nicaraguan transport companies, traders and entrepreneurs, while applications for entry and residence permits for persons seeking domestic work permits were to be dealt with in Costa Rica and residence permits for Nicaraguans would be automatically extended to 1 January 2008 rather than 1 July 2007.

10. While negotiating the Free Trade Agreement with the United States, the Costa Rican authorities had undertaken broad-ranging consultations with the private sector and other sectors of civil society in order to gather their views on all aspects of the agreement. In addition, the Ministry of Foreign Trade had prepared six specific information papers and had defined eight consultation areas in order to take account of the positions of the different sectors of civil society. The Trade Ministry had visited the most remote areas of the country, including the indigenous lands of Bribri and Talamanca, in order to consult the indigenous communities about the planned agreement. The National Indigenous Council (CERD/C/384/Add.5, para. 758) had also taken part in the four meetings which had been held on the subject in 2003.

11. He recalled that the draft Act for the Autonomous Development of the Indigenous Peoples (CERD/C/384/Add.5, para. 50) had been tabled for the first time before the Legislative Assembly on 16 May 2001 and that the Standing Committee on Social Affairs had held some 15 consultation meetings concerning the Act. In June 2005, the Legislative Assembly had decided to extend the time allowed for consideration of the draft legislation in order to avoid it being shelved. In August 2006, the Standing Committee on Social Affairs had decided to consult the representatives of several international organizations concerning the legislation, including the International Labour Organization (ILO), the Inter-American Institute for Human Rights (IIHR) and the United Nations Development Programme (UNDP), as well as representatives of the Supreme Electoral Tribunal (CCPR/C/CRI/5, para. 70) and the Office of the Ombudsman, for their assistance in assessing the legislation. Then on 12 September 2006, it had been decided

to hold several extraordinary sessions in order to hear the 24 Indigenous Integral Development Associations (CERD/C/384/Add.5, para. 341), which were finally held on 24 to 26 October 2006.

12. On 18 October 2006, a new motion had been tabled before the Standing Committee on Social Affairs, aimed at approving new revised draft legislation, which would take account of the comments and recommendations received in the course of the consultation process and the meetings organized with the National Office for Indigenous Affairs. Currently the new Bill, which consisted of six volumes of documents totalling over 2,000 pages, was the second item on the Standing Committee on Social Affairs' agenda.

13. In order to strengthen the participation of indigenous communities in the process of reaching decisions that concerned them, he said that the indigenous communities took an increasingly active part in discussing legislative or administrative measures which could directly affect their interests. The people living in the 24 indigenous territories had been consulted regarding the Autonomous Development of Indigenous Peoples Bill. The Department of Indigenous Affairs had also announced that it considered it essential to maintain coordination and uninterrupted contact with the National Commission on Indigenous Affairs (CONAI) (CERD/C/384/Add.5, para. 48) in order to facilitate the access of indigenous communities to the criminal justice system.

14. In preparation for the 2006 elections, the Supreme Electoral Tribunal had prepared a programme aimed at enabling citizens from all social groups to exercise their right to vote and to give effect to the principle of equality. Representatives of several indigenous communities had been consulted, making it possible to identify the main obstacles to electoral participation, their causes and possible solutions. At those elections, 25 polling boards had been set up in the indigenous communities. During the period of elections, the Tribunal visited each indigenous community at least once a year and, outside such periods, called on five communities at least in order to draw up birth certificates, deeds of recognition, identity papers and other official documents.

15. Lastly, he expressed the wish that the Committee's recommendations should be as clearly worded as possible in order to facilitate follow-up and to strengthen their impact on efforts to combat racial discrimination. He informed the members of the Committee that the resources needed for the establishment of a national mechanism for the implementation of the treaty bodies' recommendations had recently been approved as part of the "Action 2" project.

16. The CHAIRPERSON said that the Committee had already expressed the view that the procedure for submitting reports should be standardized and simplified. It was in favour of preparing a single basic document for all the treaty bodies, which would contain all the general information concerning the observance of human rights, alongside specialized reports for each of the committees, specifically intended to deal with the follow-up to their observations.

17. Mr. AVTONOMOV (Rapporteur for Costa Rica) thanked the delegation for supplying accurate and up-to-date information, both in the meeting and its written replies, concerning the legislative measures recently implemented to combat racial discrimination in the country.

18. He recalled that the State party had ratified the Convention on 16 June 1967, which made it one of the first States where the treaty had entered into force, without entering any reservation. He welcomed the country's fulfilment of its obligations by submitting its periodic reports on time ever since the Committee had existed. It had also ratified the main international instruments on human rights, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In 1993, it had in particular become a party to the ILO Convention (169) concerning Indigenous and Tribal Peoples and Independent Countries. Also the State party had passed legislation in favour of its indigenous peoples, especially the Indigenous Act (*ley indígena*) promulgated in 1977, which governed inter alia the organization of indigenous communities and their territorial rights.

19. Since the submission of the sixteenth periodic report in 2000 and its oral presentation in 2002, the State party had furthermore ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air and the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

20. The status of international legal instruments on human rights within the internal legal system had been established by the highest authorities in the country, which had recognized that the human rights instruments in force in Costa Rica not only ranked equal with the Constitution but took precedence over it in cases where they granted better individual rights and guarantees.

21. Despite its ratification of the main international instruments, however, the State had not undertaken firmly and resolutely to promote and apply international conventions on non-discrimination effectively; many aspects covered in those instruments had not been properly integrated within national policies and clear public policies against discrimination were still lacking.

22. The periodic report dealt frankly with existing problems in the country but although the authorities publicly promoted the effort to combat racial and ethnic discrimination, the effect was weak in practice. It would be interesting to know, in view of the information supplied in paragraphs 41, 49, 50 and 51 of the report, whether the possibility that permanent residents and Costa Rican citizens belonged to indigenous peoples outside Costa Rica was taken into account during and after national censuses. If not, he would welcome some clarification in that respect.

23. He said it would also be useful to hear the Costa Rican delegation's comments on job discrimination affecting indigenous communities, mainly those made up of people from Panama, in the Bribri/Sixaola region, the canton of Talamanca and in the province of Limón, and on double gender and job discrimination affecting indigenous women working in the banana plantations (with lower wages, longer working days, unpaid overtime and holidays, no paid leave, etc.).

24. Mr. VALENCIA RODRIGUEZ said that the implementation of the Convention was particularly important in Costa Rica in view of the country's considerable number of foreigners (285,000), persons describing themselves as indigenous (64,000), Afro-Costa Ricans (73,000), as well as a Chinese community and many migrants and refugees. In that context, he wondered

what advantage the indigenous people found in remaining in the “indigenous territories” and whether it would not be preferable to encourage them to settle in areas with better living conditions.

25. He also thought the Committee should recommend the State party to align the provisions of article 373 of its Criminal Code, under which racial discrimination offences were punishable with a fine and any repeat offence could cause a public official to be suspended from his or her duties or post, with those of article 375 on genocide and with the relevant international standards.

26. Similarly, the Committee should take note of the appointment of a special attorney for indigenous affairs and the Supreme Court’s instruction to the effect that indigenous peoples should be consulted on all cases brought before a court. It would be useful to have clarification regarding the exact nature of that instruction and the question of the return of lands to indigenous peoples.

27. He hoped that the projects undertaken for the benefit of indigenous peoples would produce positive results before long and that a gender-specific policy would be adopted in that connection. It would be interesting to know whether measures had been adopted with Nicaragua and Panama to coordinate the protection of indigenous communities living in their border areas with Costa Rica.

28. Since Costa Rica was one of the countries in the world that took in most migrants in relation to its population and capacity, he welcomed the introduction of human rights training courses for officials of the special migration police, and the adoption of a new migration law criminalizing migrant smuggling (coyotaje) and regulating marriage between foreigners and Costa Ricans, as well as other initiatives intended to improve the situation of migrants. More attention should be paid, however, to the condition of migrant women.

29. He thought further study should be made, in consultation with the vulnerable communities and groups concerned, of suitable measures to protect the rights to housing, education, health, security and social protection for indigenous people, Afro-Costa Ricans, migrants and refugees.

30. Mr. KJAERUM welcomed the fact that the State party had introduced a national follow-up mechanism in accordance with the Committee’s recent instructions concerning the follow-up to its conclusions and recommendations and was looking forward to information concerning the practical steps taken in that respect.

31. In view of the concern expressed by the Committee in 2002 in its previous concluding observations concerning the fact that under Costa Rican legislation racial discrimination was considered merely a misdemeanour and was not defined in accordance with the provisions of the relevant international instruments, including the Convention, he thought it would be useful to know why the Government, in view of its powers under article 123 of the Constitution, had merely reported that fact to the Legislative Assembly without tabling any draft legislation to align domestic law with international law. It would also be interesting to know which national laws, in accordance with the Protocol, served to prevent, suppress and punish trafficking in persons, especially women and children, and provided the means to prosecute and really bring to justice those involved in the trafficking of persons other than migrants.

32. He would like the delegation to inform the members of the Committee whether the allegations published on 30 August 2006 by the Tico Times in an article concerning the abolition of the National Commission on Indigenous Affairs (CONAI) and the Integral Development Association in accordance with the law on the development of indigenous peoples were well-founded and, if so, if they could offer some explanation.
33. Similarly, the Committee would welcome further details regarding the discussions taking place in the working group of the National Institute for Women and specific measures aimed at lowering the infant mortality rate among indigenous communities, which was higher than that observed around indigenous territories and in the other groups making up the Costa Rican population.
34. With regard to the need to combat double discrimination against women, the Committee would welcome information concerning any initiatives taken to improve the situation of migrant women workers employed in the domestic service sector, who were often underpaid and deprived of any social protection.
35. With regard to the cooperation programme with the Colombian Government, the Committee would like to know what guarantees had been put in place to ensure protection of confidential data concerning the 10,000 or so Colombian refugees living in Costa Rica and more generally speaking concerning asylum-seekers and refugees.
36. Mr. CALI TZAY asked the delegation to say whether indigenous people were responsible for the criminal behaviour mentioned in paragraph 221 of the report or whether they were victims, and whether they were involved in the running of marijuana plantations situated on indigenous reservations.
37. With regard to indigenous languages, he asked whether it was a matter of satisfaction that the persons questioned for the 2000 census identified themselves not as speakers of an indigenous language - even though they spoke it - but only as Spanish-speakers (para. 359). In that connection, he noted a contradiction between paragraph 360 of the report, which stated that illiteracy was assessed in relation to Spanish, and paragraph 366, according to which the answer to the question “Do you know how to read and write?” would refer to the respondent’s mother tongue.
38. Referring to paragraph 369 of the report, according to which certain communities such as the Chorotega and the Huetar peoples no longer spoke their indigenous tongue, he asked what measures the Costa Rican State was taking to avoid the disappearance of indigenous languages and to preserve ancestral knowledge and traditional medicine.
39. Recalling lastly that Costa Rica had been one of the first States to have ratified ILO Convention 169 concerning Indigenous and Tribal Peoples, he wanted to know to what extent the provisions of that Convention were applied in practice by the State party.
40. Mr. THORNBERRY, referring to paragraph 100 of the report, which mentioned a bill “on the restoration of human dignity to indigenous peoples”, regretted the fact that the law was aimed only at individual rights and not communal rights, whereas for many indigenous peoples communal rights constituted the very essence of human dignity.

41. Referring to paragraph 102 of the report, which reported that the “Day of the Meeting of Cultures” had not achieved its objective of integrating the different ethnic groups in the country, he wished to know what policy the State party pursued with regard to integration.

42. He also wanted to know whether the State party’s adoption of the United Nations Declaration on the rights of indigenous peoples had meant that it had made many changes in its laws or whether current legislation on that subject was in line with the Declaration. In that respect he wondered whether Costa Rican law recognized the right of indigenous people to self-determination.

43. Referring to the table shown in paragraph 363 of the report, he asked the delegation to explain why the further indigenous people lived away from their territory, the more their rate of illiteracy diminished. Noting the high rate of school enrolment among the Afro-Costa Rican population and their above-average unemployment rate, he said he suspected that the members of that community might be the victims of job discrimination. He asked the delegation to confirm whether that was so.

44. Lastly he would like more details about the Commission for Afro-Costa Rican Studies, whose objective was to study racial diversity, and he wanted to know whether the question of the transatlantic slave trade was addressed in school programmes.

45. Mr. TANG, noting the statement in paragraph 15 of the report that Costa Rican legislation expressly classified racial discrimination as a misdemeanour punishable by a fine and that paragraph 12 of the report stated that a treaty or an agreement took precedence over domestic law, recalled that the Convention considered all incitement to racial discrimination as an offence punishable by law and he thought that the State party should bring its legislation into line with the provisions of the Convention.

46. Mr. LINDGREN ALVES, noting that the head of the Costa Rican delegation was also Minister for Foreign Affairs and Religion, asked whether Costa Rica was a secular State.

47. He asked why the members of the Government or the Legislative Assembly had not tabled a bill making racial discrimination an offence as required by the Convention, considering that they had the right to initiate legislation.

48. Referring to paragraph 49 of the report, he asked whether there was a difference between the terms “Afro-Costa Rican” and “Black” and why people of mixed origin were not one of the possible categories for replies to the section of the 2000 census concerning cultural belonging.

49. In his opinion, the fact that the census had shown that only people of a high educational standard were aware of their racial status was perhaps a sign that the phenomenon was not very widespread in the State party and that the poorly educated members of indigenous communities were not affected.

50. Noting that Colombians made up the largest group of refugees, he wondered what the typical profile of Colombian migrants was, considering that Costa Rica was not much wealthier than Colombia. Were they guerrilla fighters, civilians fleeing from the guerrilla forces or perhaps former army personnel who had committed crimes?

51. Mr. PILLAI welcomed the election of new board members to the National Commission on Indigenous Affairs (CONAI), since that was expected to put an end to internal differences and to legal management difficulties, as a result of which the Commission had breached the law on indigenous affairs and which should now make it possible for the Commission to fulfil its mandate properly. It would be interesting to know whether the Commission, whose task was to coordinate the activities of governmental and non-governmental institutions, had the power to table legislation and to propose programmes aimed at improving the lives of indigenous people.

52. Noting with concern from the report that in indigenous territories the basic needs of only 7.6 per cent of indigenous persons were being met (para. 300), he asked whether the State party had adopted specific programmes aimed at ensuring access for that group of persons to basic services and, more generally, at improving the human development indicators for indigenous communities.

53. Referring to paragraph 200 of the report, he asked the delegation to say what the State party intended to do in order to settle the financial and other problems that still stood in the way of implementing the Constitutional Chamber's ruling, according to which lands illegally occupied or sold were to be restituted to three indigenous communities.

54. Lastly, considering that Costa Ricans of African descent made up a large proportion of the population and that the human development indicators for that group were not encouraging, it would be worth knowing what the State party was doing to respond to those people's basic needs.

55. Mr. AMIR expressed concern at the fact that, according to the report, some non-indigenous families owned as much as 5,000 hectares of indigenous land (para. 278). He asked whether the indigenous communities who had lived on those lands earlier held titles to the lands and whether they could institute court proceedings to recover the land if they held titles drafted in their own language rather than in Spanish. If they had no written document proving that they owned the land, could they still plead before the courts that they had lived on the land since time immemorial?

56. He also wanted the delegation to explain whether the persons occupying indigenous lands were authorized to do so by court order and to describe the legal criteria according to which the lands of indigenous peoples could be expropriated. He recalled that, for the State party as much as for other countries in the region, the recognition of the rights of indigenous people to their ancestral lands was crucially important, since it could help prevent the occurrence of social upheavals.

57. Mr. KEMAL asked the Costa Rican delegation whether the Government offered any special incentives, such as wage increases and advancement, in order to encourage doctors and teachers to work in the areas inhabited by indigenous communities, thereby alleviating the shortage of medical and teaching staff affecting the populations in those areas.

58. He also asked whether the State party had taken the necessary steps to prevent the indigenous people's traditional knowledge of medicinal plants from being exploited by foreign multinationals without compensation.

59. The CHAIRPERSON, speaking as a member of the Committee, asked the Costa Rican delegation briefly to sum up the results achieved by the special attorney for indigenous affairs (para. 459), if one had been appointed, and to provide further details concerning the implementation of the instructions contained in the Supreme Court's circular concerning the need to consult with indigenous peoples on all cases that concerned them (paragraphs 460 and 461 of the report).

60. Mr. YUTZIS asked for further information concerning the "technicality" referred to in paragraph 33 of the report, which could for the second time cause the Autonomous Development of Indigenous Peoples Bill to be shelved. He also asked whether the National Commission on Indigenous Affairs (CONAI) was authorized to take decisions and he requested the delegation to supply further details concerning the procedure for appointing members of that body.

61. Regarding the issue of double discrimination, he noted from the report that the State party did not yet have a policy that addressed the problems of indigenous women's rights (para. 79) and had not carried out any national study for use as a reference regarding the situation of Afro-Costa Rican women (para. 88). He would like the delegation to explain why the Government was so little interested in defending the rights of that group of women. Furthermore, he failed to see how conducting a study on Afro-Costa Rican women could be a problem, since Costa Rica had enough specialists with all the required skills to do the job. Having also been struck by the fact that the school enrolment indicators tended to improve the further away that community lived from the indigenous territories (para. 364), he asked whether the Government intended to do anything to reverse that trend, by taking measures to meet the needs of indigenous communities living in remote areas of the country.

The meeting rose at 6 p.m.