

TREATY BODY MONITOR

International Service for Human Rights



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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 71ST SESSION COSTA RICA, 17TH & 18TH REPORT 30 JULY- 31 JULY 2007

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Information submitted to the Committee

On 30 August 2007, Costa Rica submitted its combined 17th and 18th periodic reports to the Committee on the Elimination of Racial Discrimination (the Committee).¹ The report describes the legal framework, legislative initiatives, and other measures that Costa Rica has taken to implement the Convention on the Elimination of All Forms of Racial Discrimination (the Convention). This incorporated the situation of the various indigenous populations and minority groups present in Costa Rica, and how their rights are affected in relation to education, land ownership, and access to healthcare and employment. It also addressed the situation of refugees and migrant workers. The State Party also submitted a ‘Core Document forming part of

¹ CERD/C/CRI/18, 30 August 2006, available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>

the reports of States Parties'.² Costa Rica does not have any reservations to the Convention. The delegation did raise the initial point that the real challenge for their country lies in the effective and efficient follow-up to the recommendations of the Committee, and the committees of other treaty bodies. They admitted that follow-up procedures are fundamental in ensuring the real impact of treaty bodies.

The report was comprehensive, covering all of the legal and administrative provisions in Costa Rica relating to each article of the Convention. It also included extensive data and statistics relating to the representation of various ethnic groups in the civil service, municipal administration, justice body systems, and the education and health care fields. At the time of examination by the Committee, the State party had not submitted a written reply to the list of issues.

Two NGO reports were submitted by 'Mesa Nacional Indígena,' in Spanish only.³

Themes and Issues

The delegation was headed by Mr Christian Fernandez, Director of External Policy and Minister of Foreign Affairs, and was comprised of four members in total. The other members were Ambassador and Permanent Representative of Costa Rica to the United Nations in Geneva. Ms Laura Thompson, and Advisory Ministers Ms Alejandra Segura and Mr Carlos Garbanzo of the Permanent Mission in Geneva. The Committee praised Costa Rica for originally ratifying the Convention in 1967, as it was on account of Costa Rica's ratification that the Convention entered into force. The Committee was also very pleased with the manner in which Costa Rica compiled its reports and also the timely manner in which they are submitted. They also noted that Costa Rica has never refused to accept any of the Committees' recommendations to date. Both sides sought interactive dialogue, and the State Party declared that it was very appreciative of the opportunity to engage in such a productive and candid manner, so as to be useful to certain groups, where they admit there is difficulty with racial discrimination. The majority of the questions posed by Committee members had to do with Costa Rica's indigenous population, Afro-Costa Ricans, refugees, and migrants.

Status of the Convention in domestic law

Committee member Mr Tang then asked why Costa Rican legislation expressly classifies racial discrimination as a misdemeanour in the Criminal Code, and not as a criminal offence. He noted a contradiction here, as paragraph 15 of the report further states that the legal definition of racial discrimination has not been framed in Costa Rican legislation in such a way as to meet the requirements of international instruments duly ratified by the State. In response, the delegation pointed to a decision made by their Constitutional Chamber, stating that 'where international human rights instruments in force in the country are concerned, the provisions of Article 7 of the Constitution do not apply, since Article 48 of the Constitution contains special provisions that grant such instruments constitutional rank...in so far as such instruments grant greater rights or guarantees to persons, higher than that of the Constitution'. The delegation then acknowledged that it has a form of dual system for application of international law in criminal matters, as Article 1 of the their Criminal Code also states no one can be penalized for something criminal law does not deem an offence or that has not been previously established. They concluded by acknowledging the need and understand the importance of fully implementing and applying international conventions into national law, including ensuring that racial discrimination is made a criminal offence.

² HRI/CORE/CRI/2006, 31 August 2006.

³ Programa De Observancia Y Verificacion Regional De Derechos De Los Pueblos Indigenas De Abya Yala, July 2007, available at <http://ohchr.org/english/bodies/cerd/cerds71.htm>

Definition of discrimination

The delegation mentioned briefly that despite the fact that legislation contains no specific definition of discrimination, the Criminal Code does mention, and it was quoted, 'a number of closely related international crimes such as genocide, conspiracy, extolling crime and incitement of hatred.'⁴ Furthermore, the delegation pointed out that the Committee's concerns relating to the fact that racial discrimination was not classified as a misdemeanour, will duly be communicated to the competent authorities of the Legislative Assembly, and that this will enable them to consider reform proposals on the need to criminalize discrimination on the grounds of national or ethnic origin and racial discrimination by groups or private associations, as well as to review the fines prescribed. Lastly, in order to guarantee the enjoyment of all the rights conferred by the Constitution and international human rights treaties, Article 48 of the Constitution provides for unrestricted recourse to the remedies of *amparo* and habeas corpus.

Indigenous Populations

Committee members were predominantly concerned with the multi-ethnic character of Costa Rican society, and the types of laws and initiatives that have been set up to protect rights. There are officially considered to be eight ethnic groups or indigenous peoples in Costa Rica. Each of these groups or peoples has its own cultural tradition and, although Costa Rica is a small country, each has quite distinct social and cultural characteristics. In turn, the main question posed by the Committee was whether any specific group had specific advantages over the other. In general, the delegation expressed regret in how Costa Rica has allowed its indigenous people to live in conditions far worse than the rest of the population.

One initiative that was discussed was the draft law on the *Autonomous Development of Indigenous Peoples Bill*. This was first reviewed in mid-2001, was then considered by the Committee on Social Affairs. In June 2005, approval was given for an extension of consideration until July 2009. The Bill sets out a series of regulations and actions to be implemented in areas such as administration, education, health, environment, housing, land and infrastructure. The Bill also recognizes the autonomy of indigenous peoples and their right to their own culture.

Several members of the Committee asked questions related to the National Commission on Indigenous Affairs (CONAI). In its State report, Costa Rica referred to the legal mandate of CONAI as one of the most noteworthy developments in the period under review. The primary purpose of CONAI is to promote the living condition of indigenous people, provide services, and ensure respect for minorities, and act as a liaison body for the Inter American Commission and others. Delegation member Ms Thompson went on to describe the history of CONAI and how not only has it become a State government body, but also that its composition has changed. One delegate from each integrated development association (bodies which legally represent indigenous communities) is represented, so now it is composed exclusively of indigenous people and guarantees equal participation for all development associations and indigenous reserves. However, the delegation noted that there is still a difficulty in terms of representation since not all associations have chosen representatives to serve on it. The delegation stated that this stemmed primarily from a lack of awareness. They concluded there is a general interest in CONAI functioning better than it has in the past, and that the Government and President are in favour of supporting it and ensuring it performs its functions properly.

Migrants

According to the delegation, Costa Rica has a long tradition of welcoming asylum-seekers, and it receives among the highest number of immigrants in the world in relation to its size and capacity. Therefore, it was not surprising that the Committee was interested in whether or not the rights of such people were being safeguarded, especially in terms of racial discrimination, and if they or others receive preferential treatment.

⁴ CERD/C/CRI/18, 30 August 2006, paragraph 19.

According to paragraph 106 of the State report, 'Costa Rican laws do not differentiate between the rights of national and non-nationals, regardless of migration status; the law is applied equally to everyone'. The head of the delegation further pointed out that, 'the report of 2001 was an important framework for some specific actions'. One of the actions was the promulgation of the *Migration and Aliens Act*. In September 2005, an executive decree was adopted to reform the current regulations of the Act.

The Committee was also concerned about the status of migrant women since the 2000 census recorded a significant population of Nicaraguan women, who as research has shown, are highly disadvantaged, primarily in terms of education, which in turn impacts their worth in the labour market. In response, the delegation stated that the Ministry of Labour was evaluating its employment policies so as to provide for equal standards and opportunities for both men and women. Additional remedies include, ongoing training by immigration police about specific subjects, such as respect for the human rights of migrants, as well as workshops on migration issues for labour inspectors.

Lastly, Committee member Mr Rodriguez asked about clarification on how the Permanent Forum for the Migrant and Refugee Population, which was established at the request of the Office of the Ombudsman 10 years ago, influenced both migrant as well as refugee policies. The response was that its focus is now centred on consultations regarding laws related to these groups of people, and also is the body representing the Ministry that deals with these laws overall.

Refugees

Committee member Mr Aboul-Nasr asked a general question about the status of refugees and their composition within Costa Rica. According to the delegation, Costa Rica is ranked number two in terms of how many refugees it has, second only to Ecuador. They stated that 13,000 people are living in Costa Rica with refugee status, 10,000 of which are Colombian, and that they receive around 130 new applications every day. The delegation went on to affirm its commitment to domestic legislation on refugees in light of the 1951 Convention Relating to the Status of Refugees and its 1967 protocol, and that its legislation on the determination of refugee status is not applied in a discriminatory manner.

The delegation claimed that traditionally Costa Rica has a policy whereby they were open to providing room for refugees, but after some time an abuse of the system began to take place. For one reason or another, there was a time when people were granted refugee status despite not always meeting the necessary requirements. However, the government is now trying to regulate this more strictly. In case of Columbians there were many who entered the country as legitimate traders, but there were also many who used refugee status as an excuse to enter the country for other reasons, such as to deal drugs. As a result, many legitimate Colombian refugees were being denied status in Costa Rica, and discriminated against, out of fear of an alternative motive. In response, the delegation simply identified a specific decree that it passed establishing an application procedure, which it sought to align with the 1951 Convention and 1967 Protocol. They asserted that pursuant to Article 14 of the decree the expulsion of a refugee may only be ordered for reasons of national security or public order, or if the refugee has been convicted of a particularly serious offence and constitutes a threat to the national community.

Committee Mr Kjaerum concluded on the subject by asking about a particular incident whereby Costa Rica presented Colombia with the names of 10,000 Colombian refugees, in an effort to stimulate consultation between the two States on the matter. He identified this a serious breach of confidentiality, and asked what had been done to deal with this issue. The delegation responded by acknowledging that this was a mistake, and that it was done in the interest of national security, but that it would never happen again. To help clarify, they noted that the Minister who was in charge of this breach was responsible for the arrest of 4 people who had plotted to assassinate him and the brother of the President of Costa Rica.

Other minority groups

Much of the debate surrounding minority groups had to do with how such groups were referred to by name, and their attitudes towards how they are labelled by society. A national census carried out in 2000 showed that 7.8 percent of the total population were born abroad. According to the survey people were asked to identify themselves as: indigenous, Afro-Costa Rican or Black, Chinese, or none of the above. Mr. Avtonomov proceeded to comment that as a guideline for the census, it might be necessary to determine the criteria of a culture in a more inclusive way including practical traditions and values associated with the ethnic priorities of the people, rather than physical appearance, colour of skin, and place of origin, as this practice may breed ideas of discrimination. He then asked whether those born outside of Costa Rica who consider themselves 'indigenous' were taken into consideration, since according to the parameters 'indigenous' were those people who were either direct descendents or interbred with indigenous people born in Costa Rica, and not those who were born abroad. Delegation member Mr Fernandez responded by acknowledging the difficulties and flaw in determining the origin of all indigenous as well as minority populations. Furthermore, he made mention of Article 33 of the Constitution which states the equality of all persons before the law, and so for that reason the authorities conducting the surveys did not feel a need to differentiate in such a way, and this was guided by good intentions. According to Mr Fernandez, the problem which needs to be addressed is to ensure that these assumptions do not cause minority groups to be invisible, and that such methods of fact-finding should be in conformity with the position of the Committee.

Education

According to the State system, both primary and secondary education are free and paid for by the State. Several Committee members raised the concern that according to statistics, the vast majority of indicators, including literacy rates, enrolment figures, duration of schooling, and drop out rates, were all consistently low among indigenous peoples, and in indigenous territories, compared to the rest of the population. The Committee enquired what the State was doing to combat what appears to be a pattern of discrimination at work.

The delegations responded that this was a problem based on a shortage of infrastructure, and not one rooted in discrimination. Considerable effort and a lot of political will was being put forth to assign funds to this matter. It was also noted that the Government has received \$30 million (US) from the World Bank which it is using to meet the educational needs of indigenous people and those of African origin. The Department of Education has also been drawing up strategies to deal with drop-outs, and it aims is to reduce such rates by 10% at primary and secondary centres, and also by means of supporting and managing scholarships.

The delegation followed that the State has had some success in creating new educational centres. Education has also been supported though television, and there has been a steady increase in the number of bilinguals. There has been support from Intel, a company providing technology for schools, and also technological support from others, to set up satellite networks, which are necessary considering the topography of the area. The Department of Education also believed that it was important for indigenous teachers to be educated bilingually, so training opportunities for them have been facilitated.

An additional point of concern was the preservation of traditional languages. Similar initiatives are under way. For example, the University Anthropology Department has made an effort to recover and restore indigenous languages. The focus has been on two or three for the present time. In addition, a portion of the \$30 million from the World Bank is also being used for preservation work.

Lastly, Committee member Mr. Lindgren identified the danger that if a group of people, in this case the indigenous people, are found to have lower educational standards, then this may result in them being completely unaware of the rights that are entitled to them, as well as have the ability to take legal action when their rights are violated, which in turn may breed further discrimination. The delegation concurred with this

statement and hoped that the current initiatives under way would help to prevent such scenario from becoming more of a reality.

Land

Access to and ownership of land by indigenous people was an issue of concern to the Committee. The 2000 census revealed that in the indigenous territories only 1 in 10 hectares is owned by an indigenous titleholder, which is contrary to what the law advocates for, which is full ownership of that land by indigenous people. In addition, it was discovered that there are non-indigenous families who own more than 5,000 hectares, which reflects a disturbing trend towards the concentration of indigenous land in the hands of non-indigenous persons. Mr. Amir asked several questions related to the issue of land, including whether people, and farmers in particular, occupy land through a judicial process consistent with the Constitution. He also asked in what way indigenous peoples' right to land is protected, and on what basis one can expropriate.

The delegation responded that the legal framework surrounding the ownership of land specifically provides for land ownership in indigenous territories. Furthermore, this is inalienable and not subject to any statutes or reservations. In short, other people may not in any way have rights to these lands, and any transactions carried out by people other than those who are indigenous are considered null and void. However, he stated that the topography makes these lands hard to protect and there have been abuses, especially in the sense that there are many non-indigenous people who own and inhabit land in these indigenous territories. He mentioned that cases had been brought to the courts, but that other fundamental barriers stood in the way of resolving such cases, including that the financial sum required to recover these lands amounted to some \$60,000 (US). A decision was also taken by the Constitutional Court to recognize the property of indigenous people, but has not been put into place yet due to financial problems, which the delegation did not specify or elaborate on.

The delegation concluded that there is no current expropriation of land, and that the *Autonomous Development of Indigenous Peoples Bill* is going to change, since CONAI is in the process of change as well. CONAI is in consultation to set up a new council and fund to deal with the issue of people living in indigenous territories. Although State banks do compete with private banks, they also recognize traditional procedures and rights to land by people, from executing decisions to actually setting up land boundaries. If this 'new and fully comprehensive law' is approved, the delegation stated that banks will get hold of land with no need to re-compensate former owners. Indigenous offices will be set up to deal with these issues as well.

Health issues

According to statistics from the 2000 census, it was evident that indicators on access to health care and the infant mortality rate generally appeared to be better for indigenous populations living outside indigenous territories. Mr. Calitzay specifically referred to this point and asked what was being done to overcome these problems. Mr. Fernandez responded by saying that these differing statistics and conditions were not a result of discriminatory policies, but rather can be attributed to a difficult economic state and the location of such indigenous territories. Many of Costa Rica's indigenous territories are located in remote mountainous regions where accessibility is made very difficult due to poor road conditions and other natural factors. He also noted that there is social investment in those areas, and that several Ministries have managed to collect a budget surplus of close to \$15 million (US), which it plans to use primarily in areas of vulnerability, and with an emphasis on improving health care. There are also ongoing awareness campaigns around the country.

Another initiative that the Ministry of Health has been working on is a National Health Plan and program specifically geared towards indigenous people. The initiative entails one or two people who travel around various communities, enabling people to remain where they are and receive attention, as opposed to having to travel long distances to clinics or other health facilities. These health care workers play a preventative role as opposed to solely a treatment role. They provide advice and vaccinations, and are also trying to encourage

indigenous people to utilize the added value of their traditional medicines. According to the delegation, the National Health Plan is also developed with a gender approach to focus on the needs of both sexes separately.

Mr. Kemal also asked whether there were any incentives for medical personnel to serve in depressed areas. Delegation member Ms. Thompson responded by saying that doctors and certain other health care personnel have an obligatory social service to carry out at the beginning of their careers, where the State assigns them to a certain area, usually the most vulnerable, for approximately two years.

Employment

The Costa Rican Constitution provides that the State 'should endeavour to see that everyone has lawful and useful employment, duly remunerated, and prevent the establishment on that account of conditions which might in any way curtail a person's freedom or dignity or degrade their labour to the status of a mere commodity'. However, Committee member Mr. Thornberry was particularly concerned with paragraph 255 from the State report, which stated that although the Afro-Costa Rican population has a generally positive image and is known for its high level of schooling, when it comes to occupational indicators the picture changes dramatically, with unemployment figures for young Afro-Costa Ricans high above the national average. This scenario, according to Mr Thornberry, could be an indication of discrimination. In response, the delegation did not have much to say other than that the National Production Council, which is the official institution that provides support to the production sector, is currently engaged in developing various production projects in the indigenous territories, for the direct benefit of some 1,308 indigenous persons. They added that the Ministry of Labour is trying to push for an increase in the minimum wage, particularly in the indigenous territories where they are most unequal to the rest of the country.

Mr. Avtanamov also raised the concern about employment problems in regions such as Talamanca Bribri and Limon, where the majority population are Panamanian men and there are few employment opportunities for women, pointing to a gender bias in recruitment. The head of the delegation responded by acknowledging this issue, and the double vulnerability that women face in the labour market. He assured the Committee that the Government was also very concerned about this issue and that the Office of the Ombudsman is undertaking work in promoting the rights of women in this sector.

Other issues

The issue of trafficking of people was an area of concern to the Committee. The delegation responded by saying that, although Costa Rica has ratified the Protocol on trafficking to the Convention against Transnational Organised Crime, there was a flaw in the new legislation regarding the exact definition of the term 'trafficking'. They stated that this was being revised. Also, Costa Rica held a regional meeting on trafficking and stated that a public awareness plan regarding trafficking of persons was in place.

Another question raised by the Committee was on the status of a possible free trade agreement with the United States. The delegations response was simply that they were planning to hold a referendum to hear the opinions of the people, and from there consultation on the matter would proceed, and that if it turns out to be accepted there would be no discrimination in how the agreement is administered.

The issue of discrimination with regard to marriages between people of different nationalities was also raised. The delegation responded by pointing out the need to eliminate marriages of 'convenience', whereby a couple weds for the sole purpose of having one member gain citizenship or permanent residence, as this has been a popular trend in Costa Rica. They recognized the difficulty in trying to differentiate between genuine marriages and those of convenience, but also highlighted the need for this to be dealt with by legislation, in particular by the Ombudsman, and that a reform is being drawn up to include an article in the Constitution challenging marriages of convenience among those couples where there is no cohabitation, in order to avoid flaws.

Conclusions and next steps

Mr. Fernandez gave the closing remarks on behalf of the delegation. He admitted that it is not quite clear yet what implementation mechanism would be used, but that a good first step will be carry out a study to examine what a good possible legislative framework will be for both near and long term as a means of implementing the recommendations of the Committee and other treaty bodies. It was suggested that such a framework should also incorporate the annual reports of the Office of the Ombudsman and Ministry of Foreign affairs when taking the Committees recommendations into consideration. He also suggested to the Committee to invite them to submit either a core document or a target report on related issues. Lastly, he stated that Costa Rica will take into account the value of statistics, as it is a valuable tool for drafting national legislation. Country rapporteur Mr. Avtonomov presented the closing remarks on behalf of the Committee. He stated he was very happy with the follow-up proposals made by Mr. Fernandez. He affirmed that Costa Rica has to deal and respond to their obligations in such a way that their recommendations and proposals are not drawn up in theory alone, but that they should be practical to the State party as well.

The Committee requested that Costa Rica submit its nineteenth, twentieth and twenty-first periodic reports in a single document by 4 January 2010.

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