



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Ecuador*

1. The Committee considered the combined twenty-third and twenty-fourth periodic reports of Ecuador (CERD/C/ECU/23-24) at its 2558th and 2559th meetings (CERD/C/SR.2558 and 2559), held on 8 and 9 August 2017. At its 2575th meeting, held on 21 August 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-third and twenty-fourth periodic reports of Ecuador. The Committee also welcomes the frank and constructive dialogue with the State party's high-level delegation and the additional information provided after the dialogue.

B. Positive aspects

3. The Committee welcomes the legislative and institutional measures adopted by the State party during the period under review, in particular:

(a) The adoption in 2014 of the Organic Act on National Equality Councils in order to promote and protect respect for the principle of equality and non-discrimination, and pursuant to which five specialized councils were established on gender, inter-generational relations, peoples and nationalities, disability and human mobility;

(b) The development of the National Agenda for Equality of Nationalities and Peoples 2013-2017 and the efforts now under way to develop the new Agenda for the period 2017-2021;

(c) The implementation of the National Plan for Good Living 2013-2017, which is based on the indigenous world view and has enabled the State party to make significant progress towards its goal of achieving a "citizen's revolution", as seen in, inter alia, the drastic reduction of poverty, universal enrolment in basic education and enhanced access to higher education, employment and social security;

(d) The implementation of Decree No. 60 of 2009, which provides for affirmative action measures in the employment sector. The Committee particularly wishes to commend the State party on the recruitment of 70 members of the indigenous, Afro-Ecuadorian and Montubio peoples to the diplomatic corps;

* Adopted by the Committee at its ninety-third session (31 July-25 August 2017).



(e) The adoption of the Comprehensive Organic Criminal Code, which has been in force since 2014 and whose articles 176 and 177 criminalize acts of racism and racial discrimination;

(f) The adoption of the Organic Act on Human Mobility, which entered into force in February 2017 and whose article 2 provides for the principle of universal citizenship and “the recognition of the capacity of human beings to move freely around the world. This implies the portability of their human rights regardless of their migration status, nationality or place of origin, thereby putting a gradual end to the status of foreigner.”

4. The Committee welcomes the wide-ranging, disaggregated data provided in the State party’s report.

5. The Committee applauds the close cooperation between the State party and the Office of the United Nations High Commissioner for Human Rights and the Office of the United Nations High Commissioner for Refugees.

C. Concerns and recommendations

Measures against structural discrimination

6. The Committee notes that, notwithstanding the State party’s considerable achievements in combating racial discrimination, the historical socioeconomic gaps between the Montubio, Afro-Ecuadorian and indigenous peoples and the population who self-identifies as white or mestizo remain, and in some domains have widened.

7. The Committee urges the State party to continue to implement social inclusion and identity-sensitive development policies designed to reduce inequality and poverty with a view to eliminating historical and structural discrimination in the State party. The Committee requests the State party to pursue its efforts to remove all barriers to the enjoyment of economic, social and cultural rights by Montubio, Afro-Ecuadorian and indigenous peoples, especially in the areas of employment, education, housing and health. Taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party take steps to break the link between poverty and racism by, inter alia, expanding special measures or affirmative action.

8. While it notes the progress achieved in consolidating a plurinational, intercultural State that respects diversity and differences, the Committee is concerned at the stereotypes and preconceived ideas circulating in society and at the persistent tensions within the State party, which constitute a barrier to intercultural acceptance and the construction of an inclusive plural society (arts. 2 and 7).

9. The Committee encourages the State party to intensify awareness-raising campaigns combating racial discrimination, stereotypes and all forms of discrimination. In addition, it recommends that the State party extend the programmes to foster intercultural dialogue, tolerance and mutual understanding regarding cultural diversity. The Committee also encourages the State party to effectively implement the Convention through the National Plan for Good Living 2017-2021, currently under development, including by allocating sufficient human and financial resources to its implementation.

Hate crimes and racial discrimination

10. The Committee welcomes the adoption of the Comprehensive Organic Criminal Code amending the Criminal Code to criminalize acts of racism and racial discrimination; however, it remains concerned at the new Code’s limited application. The Committee regrets that the State party has not provided complete information on the criminal justice system, which limits the evaluation of the application of the Code.

11. The Committee urges the State party to take the necessary measures to ensure that the Comprehensive Organic Criminal Code is implemented in practice by

conducting thorough investigations into cases of racial discrimination and punishing those responsible as appropriate. It also urges the State party to collect and make available to the Committee reliable statistical data disaggregated by ethnicity, sex, age and location (urban or rural) on those who file criminal suits for discrimination offences and hate crimes.

Indigenous and ordinary justice

12. The Committee is concerned at the fact that the bill on coordination and cooperation between indigenous and ordinary justice is stalled in the National Assembly, which would suggest that there are difficulties in developing a legal framework on the powers, jurisdiction and responsibilities of the indigenous justice system. The Committee notes with interest the development of the Legal Pluralism Plan, but is concerned at its slow implementation.

13. The Committee reiterates its previous recommendation (CERD/C/ECU/CO/20-22, para. 19) that the State party expedite the adoption of the bill on coordination and cooperation between indigenous and ordinary justice that is pending before the National Assembly.

Indigenous peoples in voluntary isolation or initial contact

14. The Committee is concerned by the lack of appropriate measures to protect the indigenous peoples living in voluntary isolation or initial contact in the Ecuadorian Amazon jungle. The Committee is further concerned by the particular vulnerability of the Tagaeri and Taromenane peoples owing to logging, fishing and illegal hunting in their territories, which jeopardizes their health and their physical and cultural survival (art. 5).

15. The Committee recommends that the State party adopt, without delay, appropriate measures to guarantee the health and physical and cultural survival of the indigenous peoples living in voluntary isolation or initial contact and that it take the necessary steps to ensure their implementation. The Committee urges the State party to enforce article 57 of the Constitution and the precautionary measures ordered by the Inter-American Commission on Human Rights in 2006 with regard to the Tagaeri and Taromenane peoples.

Impact of projects involving natural resource exploitation

16. The Committee notes with concern the reports regarding the negative impact of projects involving the exploitation of natural resources, including illegal mining and logging, on the territories of indigenous and Afro-Ecuadorian peoples, which cause irreparable damage to the environment and affect their traditional forms of subsistence and exploitation of land and resources, such as hunting, fishing, farming and small-scale mining. The Committee is also concerned at the tensions between outsiders and the indigenous and Afro-Ecuadorian peoples living in these territories. The Committee is particularly concerned at the situation facing Afro-Ecuadorians in the Province of Esmeraldas and the Amazonian indigenous peoples living on the west and south-east borders of Yasuní National Park.

17. In view of the fact that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and recalling the role of both the public and private sectors in this regard, the Committee urges the State party to:

(a) **Guarantee the full and effective enjoyment by indigenous and Afro-Ecuadorian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally;**

(b) **Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous and Afro-Ecuadorian peoples;**

(c) **Adopt the necessary measures to ensure that the use of water by the mining industry does not impair access to water for the indigenous and Afro-Ecuadorian peoples living in these territories;**

(d) **Guarantee that indigenous and Afro-Ecuadorian peoples affected by natural resource activities in their territories receive compensation for any damage or loss suffered and participate in the benefits arising out of such activities.**

Free, prior and informed consultation

18. While the Committee notes that the State party has recognized the right to consultation as a fundamental right of Montubio, Afro-Ecuadorian and indigenous peoples, it is concerned by information received about the lack of effective implementation of this right. It is further concerned by the lack of regulations on the consultation of these communities in all sectors and by the fact that, even where mechanisms are in place to regulate consultations to obtain the free, prior and informed consent of communities, these consultations are not systematically conducted in connection with natural resource exploitation projects.

19. **The Committee reiterates its previous recommendation (CERD/C/ECU/CO/20-22, para. 17) on the right to prior, free and informed consultation and urges the State party to:**

(a) **Fulfil its obligation to ensure consultation, with a view to obtaining the free, prior and informed consent of indigenous and Afro-Ecuadorian peoples, as a means of effective participation in any activities relating to legislative or administrative provisions that could affect their rights, particularly their right to the land and natural resources that they own or have traditionally used;**

(b) **Adopt legislation on prior, free and informed consultation as a collective right in line with the standards set forth in International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) while ensuring that the peoples and nationalities concerned are involved in the process;**

(c) **Investigate the complaints arising from the alleged displacement of Shuar families in connection with the San Carlos Panantza mining project, and take the appropriate measures;**

(d) **Comply fully with the 2012 judgment of the Inter-American Court of Human Rights in *Sarayaku v. Ecuador*, notably as regards the development, with the participation of the representative organizations of indigenous communities and peoples, of laws regulating the right to prior, free and informed consultation in strict compliance with international standards;**

(e) **Conduct impact studies, using an independent body, before authorizing natural resource exploration and exploitation activities in areas traditionally occupied by Montubio, Afro-Ecuadorian and indigenous peoples.**

Human rights defenders

20. Even though the Constitution recognizes that individuals have an equal right to organize, assemble and protest freely and voluntarily, the Committee notes that human rights defenders and members of indigenous organizations continue to be the target of attacks and threats. In many instances, attacks and arrests have occurred in connection with conflicts linked to the exploitation of natural resources. The Committee is concerned that protests often lead to criminal proceedings being brought against activists on charges such as terrorism, sabotage, attack and resistance, or paralyzing of a public service, resulting in conviction and hefty fines completely out of proportion with the seriousness of the acts (art. 5 (b)).

21. **Taking into account general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and general recommendation No. 23 on the rights of indigenous peoples, which**

safeguards the effective participation of indigenous peoples, the Committee urges the State party to:

(a) **Adopt effective and timely measures to prevent acts of violence against human rights defenders, including leaders and defenders of the rights of Montubio, Afro-Ecuadorian and indigenous peoples, and to ensure the effective protection of their lives and personal safety;**

(b) **Conduct a thorough investigation into the persecution of and sanctions against human rights defenders.**

Awá indigenous people

22. The Committee is concerned at the situation of the Awá indigenous people who live on the border with Colombia, some of whom crossed the border as they fled the armed conflict.

23. **The Committee recommends that the State party provide information on the situation of the Awá people in its next periodic report and indicate the measures taken, as appropriate.**

Measures against multiple discrimination

24. The Committee is concerned that women and girls who belong to indigenous, Afro-Ecuadorian, Montubio, migrant and refugee communities continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life (art. 2 (2)).

25. **The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination affecting in particular women in the aforementioned communities. It also recommends that the State party compile disaggregated statistics on this subject.**

Access to higher and bilingual education

26. The Committee welcomes the progress made by the State party to improve the enjoyment of the right to education by Montubio, Afro-Ecuadorian and indigenous peoples. It is concerned, however, that there are still significant disparities in access to higher education, primarily affecting Montubio, Afro-Ecuadorian and indigenous peoples and migrants.

27. **The Committee recommends that the State party redouble its efforts to ensure the availability, accessibility and quality of education for Montubio, Afro-Ecuadorian and indigenous peoples and migrants, especially at the higher education level.**

28. The Committee notes the State party's efforts in the area of bilingual intercultural education. Nevertheless, it is concerned that bilingual education is not available in many rural areas. It is further concerned that the current education policy does not fully satisfy the goal of preserving the right to cultural identity of indigenous and Afro-Ecuadorian peoples (art. 5).

29. **The Committee recommends that the State party pursue its efforts regarding bilingual intercultural education in order to ensure that all cultures and languages are given their rightful place in the learning process with a view to building a truly multicultural society. The Committee also recommends that the State party take the necessary steps to ensure that policies on ethno-education and intercultural education satisfy the goal of promoting and preserving the cultural identity of indigenous and Afro-Ecuadorian peoples.**

Combating discrimination in the media

30. The Committee notes the significance of devoting 5 per cent of daily media programming to intercultural content (arts. 4 (a) and 7). However, the Committee is concerned that examples of racial discrimination persist in the media, along with

preconceived ideas and stereotypes, especially about persons of African descent, indigenous peoples and migrants who tend to be linked to crime even though there is no evidence of a connection.

31. Taking into account general recommendation No. 35 (2013) on combating racist hate speech, the Committee reiterates its previous recommendation (CERD/C/ECU/CO/20-22, para. 16) that the State party should adopt appropriate measures to combat racial prejudice in the media, and requests statistical data on the implementation of the law prohibiting the broadcasting of advertisements that incite to violence. The Committee recommends that the State party continue its work, in consultation with Montubio, Afro-Ecuadorian and indigenous peoples and migrants, to adopt measures focused on the social role of the media and develop public awareness campaigns to fight the prejudice behind racial discrimination.

Human mobility

32. The Committee notes the adoption of the progressive law on human mobility and welcomes the recently adopted regulations in this regard as well as the closure of the Hotel Carrión detention centre. It commends the State party on its numerous awareness campaigns concerning decent conditions for domestic workers and school bullying. However, the Committee is concerned by: (a) discrimination, stigmatization, prejudice and stereotypes in relation to migrants; (b) the administrative barriers many migrants, including asylum seekers and refugees, face in accessing health care, education, employment, the family support programme and the Human Development Bond cash transfer; (c) delays in the registration of refugees and the issuance of identity documents which are required to access public and social services; (d) discrimination against and bullying of children in school on account of their nationality or refugee status, which in many cases leads to them dropping out; (e) the unstable and discriminatory working conditions of many women refugees; and (f) the lack of a regulatory framework on a statelessness determination procedure under the Organic Act on Human Mobility (arts. 2 and 5). The Committee further notes the lack of information from the State party on the discrimination and racism often experienced by migrants (arts. 1, 2 and 5).

33. The Committee reiterates its previous recommendation (CERD/C/ECU/CO/20-22) and, taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party take the necessary action to ensure the protection of non-nationals, most of whom are of Colombian origin. In particular, the Committee requests the State party to:

- (a) Implement measures to promote the full participation and integration of migrants in the State party and respect for their rights;**
- (b) Conduct awareness-raising, information and education campaigns to dispel stereotypes that malign migrants;**
- (c) Remove the administrative barriers to access to health care, education, employment, the family support programme and the Human Development Bond cash transfer, and expedite the registration of refugees and the issuance of identity documents that are required to access public and social services;**
- (d) Explore further the causes of race-based bullying, continue awareness-raising campaigns designed to stop such bullying and establish mechanisms making it easier to report cases;**
- (e) Pursue efforts to improve the working conditions of domestic workers in keeping with ILO Domestic Workers Convention, 2011 (No. 189);**
- (f) Submit statistical data on the visits carried out by the Labour Inspectorate, the offences uncovered and sanctions imposed in relation to the working conditions of migrants;**
- (g) Adopt a regulatory framework on a statelessness determination procedure under the Organic Act on Human Mobility.**

Trafficking in persons

34. The Committee is concerned at reports of the sexual and/or labour exploitation of domestic workers and of workers on plantain, banana and palm plantations, in floriculture and in other areas of the informal economy and of how the situation disproportionately affects migrants, refugees, Afro-Ecuadorians and indigenous peoples (arts. 5 and 6).

35. **The Committee recommends that the State party step up its efforts to combat trafficking in persons and that it provide, in its next periodic report, information on the fight against trafficking in persons, including data on the complaints received, the number of legal proceedings undertaken and the reparation provided to victims.**

D. Other recommendations

Ratification of other treaties

36. The Committee urges the State party to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

Durban Declaration and Programme of Action

37. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at 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. The Committee requests the State party, in its next periodic report, to provide specific information on plans of action and other steps taken to give effect to the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

38. In the light of General Assembly resolution 68/237 declaring 2015-2024 the International Decade for People of African Descent and resolution 69/16 on the programme of activities for the implementation of the International Decade, the Committee requests that the State party include, in its next periodic report, specific information on the tangible measures taken in this connection taking into account general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultation with civil society organizations

39. The Committee recommends that the State party engage in consultations and expand its dialogue with civil society organizations active in the sphere of human rights protection, in particular with regard to combating racial discrimination, when preparing its next periodic report and in its follow-up to the present concluding observations.

Follow-up to the present concluding observations

40. In accordance with article 9 (1) of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 13, 20 and 32 (c) above, within one year of the adoption of these concluding observations.

Paragraphs of particular importance

41. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 18 (c) and 22 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination of information

42. The Committee recommends that the State party make its reports available to the public as from the time of their submission and that it disseminate the present concluding observations in its official language as well as in other commonly used languages.

Preparation of the next report

43. The Committee recommends that the State party submit its twenty-fifth periodic report by 1 January 2020, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In accordance with General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words set for periodic reports.
