



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

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

Concluding observations of the Committee on the Elimination of Racial Discrimination

Argentina

1. The Committee considered the nineteenth and twentieth periodic reports of Argentina, submitted as one document (CERD/C/ARG/19-20), at its 1977th and 1978th meetings (CERD/C/SR.1977 and 1978), held on 17 and 18 February 2010. At its 1999th meeting (CERD/C/SR.1999), held on 4 March 2010, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by the State party. It appreciates the opportunity to renew its dialogue with the State party and expresses its satisfaction with the open and frank dialogue maintained with the high-level delegation, which was composed of numerous experts in areas related to the Convention, and with the extensive and detailed oral and written responses given to both the list of issues and the questions posed orally by Committee members.

3. The Committee takes note of the informative report submitted by the State party, which follows the Committee's guidelines for documents to be submitted by States parties and focuses primarily on the steps taken by the State party since 2004 to implement the Convention. It would like to mention, however, that the report does not focus enough on the subject of racial discrimination and does not contain sufficient statistical information to allow the Committee to achieve a real understanding of the situation of indigenous communities or persons of African descent in the State party.

4. The Committee welcomes the fact that the reports have been submitted fairly regularly and that the civil society of the State party has participated in their preparation. The Committee therefore invites the State party to continue its practice of submitting reports according to the schedule set by the Committee pursuant to the Convention, and of ensuring that civil society takes part in the preparation of those reports.

B. Positive aspects

5. The Committee welcomes the State party's recent ratification of the following international human rights instruments, which reinforce the implementation of the Convention:

(a) Optional Protocol to the Convention on the Elimination of Discrimination against Women (in 2006);

(b) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (in 2007);

(c) Convention for the Protection of All Persons from Enforced Disappearance (in 2007).

6. The Committee welcomes the promulgation of Act No. 26162 of November 2006, by which the State party accepts the jurisdiction of the Committee to receive individual complaints under article 14 of the Convention.

7. The Committee welcomes the establishment of a number of institutions to combat racial discrimination and to promote and coordinate public policies related to indigenous peoples, such as the National Institute against Discrimination, Xenophobia and Racism (INADI), the National Institute of Indigenous Affairs (INAI), and the Office of the Secretary for Human Rights of the Ministry of Justice, Security and Human Rights.

8. The Committee takes note with interest of Decree No. 1086/05, approving the document entitled "Hacia un plan nacional contra la discriminación" ("towards a national plan against discrimination").

9. The Committee also takes note with interest of Act No. 26160 of November 2006, under which a state of emergency was declared in order to halt the eviction of indigenous peoples and to permit the implementation of a territorial reorganization process and the regularization of their communal property.

10. The Committee takes note with satisfaction of the measures adopted in order to ensure that discriminatory messages are not conveyed by the media, and, in particular, of the establishment of the Discrimination in Radio and Television Observatory, an inter-institutional agency which coordinates the work of the Federal Broadcasting Committee (COMFER), the National Women's Council (CNM) and INADI.

11. The Committee notes with interest the way in which the State party has dealt with migration issues under the terms of the National Migration Act of January 2004 and in its migration regularization programmes. It also welcomes the fact that the State party has fairly progressive legislation on the protection of refugees, in the form of its general act on the Protection and Recognition of Refugees.

12. The Committee notes with satisfaction the efforts taken by the State party in the areas of intercultural bilingual education, particularly its scholarship and mentoring programmes.

13. The Committee welcomes the State party's efforts to combat anti-Semitism at the national and regional levels.

14. The Committee notes that the State party's report contains information on cases which can indicate how the law is implemented in practice and the way existing institutions are used by the population.

C. Concerns and recommendations

15. While appreciating the progress made in developing legislation on racial discrimination, the Committee notes with concern that racial discrimination has not yet been defined as an offence in domestic law in accordance with the Convention.

The Committee recommends that the State party make every possible effort to have racial discrimination defined as an offence under its law.

16. The Committee is concerned at the fact that the post of Ombudsman, the State party's national human rights institution, has been vacant since April 2009.

The Committee recommends that the State party increase its efforts to expedite the appointment of a person to the post of Ombudsman by means of an open and transparent process and ensure the effectiveness of that institution.

17. The Committee takes note of the range of institutions described by the delegation and in the national report that are entrusted with defending human rights and combating racial discrimination. It is concerned, however, about the need for their effective and efficient coordination and complementarity.

The Committee recommends that the State party increase its efforts to ensure the effective and efficient coordination of all the institutions that have been created in the State party to defend human rights and combat racial discrimination.

18. The Committee notes with satisfaction that the State party is about to conduct a new population census in 2010, which will include self-identification questions, particularly for the indigenous population and persons of African descent. As in its concluding observations of 2004, the Committee would remind the State party that such information is needed in order to assess the implementation of the Convention and to monitor policies benefiting minorities and indigenous peoples.

The Committee requests the State party to publish the results of the next 2010 census and hopes that it will include, inter alia, information on indigenous peoples and persons of African descent. Furthermore, in the light of paragraph 8 of the reporting guidelines and general recommendations No. 4 (1973) and No. 24 (1999), the Committee recommends that, in its next periodic report, the State party provide information on the demographic composition of the population, including, in particular, information on indigenous peoples and persons of African descent, as well as other minorities, such as Roma.

19. The Committee welcomes the efforts made by the State party to introduce intercultural bilingual education. It is nevertheless concerned at the risk that minority cultures may be marginalized as a result, which would place indigenous peoples and/or Afro-descendants at a disadvantage.

The Committee recommends that the State party continue its efforts in respect of intercultural bilingual education and ensure that in the learning process, all cultures and languages find their appropriate place in order to build a truly multicultural State.

20. The Committee takes note of Act No. 26160 of November 2006, under which a four-year state of emergency was declared in order to halt the eviction of indigenous peoples and to permit implementation of a territorial reorganization process and the regularization of their communal property, and of the work of the National Registry of Indigenous Communities (RENACI) in promoting the registration of indigenous communities and assisting them to complete the necessary formalities. While the Committee also notes that the law's application has been extended for another four years, it is seriously concerned by

the fact that six of the State party's provinces have not agreed to apply this national law (Salta, Formosa, Jujuy, Tucumán, Chaco and Neuquén).

The Committee recommends that the State party increase its efforts to have this law implemented in all provinces which have a large indigenous population and where the struggle for control over natural resources has led to violence and forced evictions. The Committee urges the State party to take whatever steps are necessary to halt evictions and as appropriate to safeguard the communal property of indigenous peoples. It also recommends that the State party increase its efforts to align RENACI with the provincial registries.

21. The Committee observes that the State party's national plan against discrimination is intended to ensure that indigenous peoples have access to justice, and that in this respect INADI is backing indigenous groups' efforts to lodge complaints in the courts and helping to publicize their territorial disputes (regarding their ancestral lands and their opposition to logging operations and the pollution of rivers). It is concerned, however, about the failure to prosecute and punish those responsible for the perpetration of violent acts during the forced evictions, particularly in view of the fact that a person died in Tucumán Province on 12 October 2006 and that two violent evictions recently occurred in Neuquén Province.

The Committee recommends that the State party increase its efforts to ensure that indigenous communities make effective use of free legal advice services (*guardia jurídica gratuita*) and take steps to ensure that such services are accessible to the population as a whole. It also urges the State party to investigate and punish those responsible for deaths and injuries occurring in connection with forced evictions in the provinces.

22. The Committee takes note of the fact that the budget of INAI has been increased in order to improve its operations; it recalls with concern, however, that no high-profile political figure is currently advocating the nationwide implementation of INAI's mandate, as well as the comment made by the State party's delegation regarding the need to realign the role of INAI.

The Committee recommends that the State party take steps to secure the passage of a bill designed to strengthen the national role of INAI by empowering it to advance the indigenous population's agenda at the political level, not only nationwide but also in the provinces, where most of the disputes take place, thereby providing the indigenous communities with an interlocutor that responds to their needs more effectively. This bill could also set out definitions of a greater number of discrimination-related offences, as discussed by the delegation.

23. The Committee notes that INAI is currently in the process of creating and consolidating effective mechanisms enabling the participation of indigenous peoples in the development, implementation and monitoring of public policies that affect them, through the establishment of the Council on Indigenous Participation, pursuant to INAI Decision No. 152 of 6 August 2004 and Amendment No. 301/04, and, at a second stage, of the Coordinating Council, whose establishment is provided for in Act No. 23302. The Committee is concerned, however, by information it has received indicating that, notwithstanding the mechanisms that are in place, the final decision regarding the representation of indigenous peoples lies in the hands of the State rather than in those of the indigenous groups in question.

The Committee recommends that the State party continue to take its internal debate to a deeper level in an effort to find a better way to achieve an appropriate form of representation of indigenous peoples, in particular in matters that concern them.

24. The Committee welcomes the steps being initiated by the State party to achieve the recognition and integration of persons of African descent in the State party. It is seriously concerned, however, about the widespread perception that no population group of African descent exists in the State party and about the apparent disregard of this group in public policies at national level.

The Committee recommends that the State party continue its efforts to acknowledge and integrate the persons of African descent in the State party, along with migrants of African descent, and to achieve the full development and enjoyment of their human rights.

25. The Committee reiterates its concern at the lack of sufficient information in the State party's report regarding complaints related to acts of racial discrimination and the corresponding legal action taken by, and on behalf of, victims, including complaints of alleged violent racist attacks and acts of police brutality committed on racial grounds.

The Committee requests the State party to include in its next periodic report disaggregated statistical information on investigations and prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination, where the relevant provisions of the existing domestic legislation have been applied, in particular violent racist attacks and alleged offences committed by law enforcement personnel. In this regard, the Committee recalls its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights and encourages the State party to improve the training of law enforcement officials so that the standards of the Convention are fully implemented. Referring to its general recommendation No. 31 (2005) (para. 1 (b)), the Committee recalls that the absence of cases may be due to the fact that victims have inadequate information on judicial remedies, and it therefore recommends that the State party ensure that domestic law makes appropriate provision for effective protection and remedies against violations of the Convention and that the general public is duly informed both of their rights and of the legal remedies available to them in the event of a violation of those rights, including the individual complaints procedure under article 14 of the Convention.

26. The Committee is deeply concerned at information that, although the law explicitly prohibits eviction, indigenous communities have recently been expelled from their ancestral lands. The situation is made even more serious when violence is used during evictions. The Committee is greatly concerned at the incidents that occurred recently in the course of the evictions of the Chuschagasta indigenous community in Tucumán Province and of the Currumil community in Aluminé, in Neuquén Province. It is also gravely concerned that, notwithstanding the State party's ratification of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), the State party has not set up effective consultation mechanisms in order to obtain the free, prior and informed consent of communities that might be affected by development projects or the exploitation of natural resources.

The Committee recommends that the State party take the necessary effective steps to ensure that the law prohibiting forced eviction is applied equally throughout the national territory. The Committee recommends that the State party establish appropriate mechanisms, in accordance with ILO Convention No. 169, to consult with communities that might be affected by development projects or the exploitation of natural resources in order to obtain their free, prior and informed consent. It also recommends that, where it is determined that eviction is necessary, the State party ensure that those evicted from their lands receive adequate compensation, and that it provide relocation sites equipped with basic services, such as drinking water, electricity, washing facilities and sanitation, and adequate social services, including schools, health centres and transport. The Committee also recommends that the State

party investigate recent occurrences of evictions of indigenous peoples, punish those responsible and offer compensation to those affected.

27. The Committee takes note of the State party's efforts fully to embrace its multi-ethnic dimension, but views with deep concern reports of a perception of the State party as a country with primarily white European origins, to all intents and purposes denying the existence of native indigenous peoples and communities of African origin.

The Committee recommends that the State party step up its efforts to recognize itself as a multi-ethnic State, which values and learns from its indigenous and African cultures. To that end, it recommends that the State party run campaigns to raise awareness among the population and promote a positive image of the country.

28. The Committee notes with concern the low level of participation by the indigenous peoples in political life and their poor representation in Parliament.

In light of its general recommendation No. 23 (1997), paragraph 4 (d), on the rights of indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure full participation by indigenous peoples, especially women, in public life, and that it take effective steps to ensure that all indigenous peoples participate in the administration at all levels.

29. The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular those living in Chaco Province, remain among the poorest and most marginalized groups.

The Committee recommends that the State party take the necessary steps to ensure effective protection against discrimination in various areas, particularly in employment, housing, health and education. It also calls on the State party to include in its next report information on the impact of programmes designed to guarantee the economic, social and cultural rights of the indigenous population, as well as statistics on progress made in this regard, with particular reference to efforts undertaken to improve living standards in Chaco Province.

30. While noting the programmes implemented by the State party, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, such as persons of African descent.

The Committee recommends that the State party take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among all racial groups in the State party. The Committee further recommends that the State party extend information campaigns and educational programmes on the Convention and its provisions, and that it strengthen training activities for the police force and criminal justice officials regarding existing legal mechanisms and procedures in the field of racial discrimination.

31. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party, when incorporating the Convention into its domestic legislation, bear in mind the relevant elements of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the Outcome Document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party, in its next periodic report, provide concrete information on plans of action and other steps taken to give effect to the Durban Declaration and Programme of Action at the national level.

32. The Committee recommends that, in preparing its next periodic report, the State party consult extensively with civil society organizations working in the field of protection of human rights, especially in efforts to combat racial discrimination.

33. The Committee recommends that the State party's reports be promptly made available and accessible to the public at the time they are submitted and that the Committee's comments on those reports likewise be published in the official language and other widely used languages.

34. Noting that the State party submitted its core document in 1996, the Committee encourages the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the preparation of the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

35. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the Committee's recommendations in paragraphs 21, 26 and 29 above within one year of the adoption of the present concluding observations.

36. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 20, 23 and 35 above, and requests the State party to provide detailed information in its next periodic report on the concrete steps taken to implement those recommendations.

37. The Committee recommends that the State party submit its twenty-first periodic report in a single document by 4 January 2013, taking into account the guidelines for the specific document to be submitted to the Committee on the Elimination of Racial Discrimination by States parties under article 9, paragraph 1, of the Convention, as adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain updated information and answer all the points contained in the concluding observations.
