



San José, July 24, 2015

Reference: DH-0528-2015

**OMBUDSMAN OFFICE OF THE REPUBLIC OF COSTA RICA**  
**ALTERNATIVE REPORT**  
**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**  
**UNITED NATIONS**

**2015-2024 International Decade of Persons of African Descent**

Bo. México, 22th Street, 7 and 11 Avenue - Phone number: 4000-8500 Fax Number: 4000-8700  
P. O. Box: 686-1005 San José - Email: [defensoria@dhr.go.cr](mailto:defensoria@dhr.go.cr)  
San José, Costa Rica

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**Annex:**

- 1. Job DH- PE-0106-2014 related to request information on the action plan for a society free of racism, racial discrimination and xenophobia 2015-2018.**
- 2. Job DH- PE- 0100-2015 Request for information about the monitoring and evaluation of the National Policy for a society free of racism, racial discrimination and xenophobia, 2014-2025 and its Plan of Action 2015-2018.**
- 3. Job DH- PE- 0184-2015 related to implementation of the National Policy for a society free of racism, racial discrimination and xenophobia 2014-2025 and its Plan of Action 2015-2018.**

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**Dear Sirs  
Committee on the Elimination of Racial Discrimination**

I have the honor to address you in response to the invitation to submit **information on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination** (GH / NHRIs of 03/17/2015), the Ombudsman of the Republic of Costa Rica (hereinafter DHR) established by Law N° 7319 of 1992, as a National Institution for Human Rights Status In light of the Paris Principles and in accordance with its general attribution to protect the rights and the people, by monitoring the functioning of the public sector so that their actions conform to morality, justice and the law in force, which are part of international conventions on human rights, presented this alternative report based on systematic information investigated complaints and other labor rights protection following the methodology of the structure in accordance with the articles of the ICERD.

This document refers to the Annual Report for 2014-2015 presented by the Ombudsman to the Legislative Assembly of the Republic, in June of this year. It also refers to some topics developed on the 19th and 22nd reports submitted by Costa Rica, in January of 2014 (CERD / C / CRI / 19-22 of 04/16/2014).

**I. - Regarding the obligation of the Costa Rican government to condemn racial discrimination and the commitment to follow a policy for eliminating racial discrimination in all its forms and promoting understanding among all races (Article 2)**

1. The **National policy for a society free of racism, racial discrimination and xenophobia** 2014-2025 and its Action Plan 2015-2018, began to take effect from 1 January 2014, with its implementation and coordination being handled by the Interagency Commission for Monitoring International Human Rights Obligations (CIIDDHH for its acronym in Spanish)<sup>1</sup>, which resumed its session until October 29, 2014, with training on human rights to the members of the Commission.

2. Since the Ministry of Foreign Affairs is the coordinator of the fulfillment and implementation of both instruments and responsible for coordinating and directing the CIIDDHH, the Ombudsman in response to the powers vested in the decree that created the Commission and monitoring functions as well of the follow up of the policy itself, recommended to the Minister of Foreign Affairs to make a presentation of the Policy Plan to the Governing Council in order to obtain a commitment at the highest level for its implementation; design and implement a process of promotion and divulgation of both instruments to public institutions and civil society; a priority form the Subcommittee for the implementation of that Policy, in order to generate the coordination and joint corresponding to its implementation.<sup>2</sup> To the date of this report the Ombudsman hasn't received a reply from the Minister in response to the recommendations formulated, this institution remains committed to remain vigilant that the implementation process of these instruments is carried out in accordance with the provisions.

3. Worth pointing out that in late 2014, the Ombudsman asked the CIIDDHH to inform if the Plan was already published and the steps taken for its implementation (see attached letter N° PE- 0106-2014

<sup>1</sup> The Interagency Commission was created in 2011 as a permanent advisory body to the Executive Branch under the Ministry of Foreign Affairs, to follow up and implementation of international human rights obligations, in order to coordinate the of those obligations in the country, as well as coordinating actions carried out at international level in the field of human rights, in order to strengthen the promotion and defense of human rights (Executive Decree 36776-RE: 30 / 09/2011)

<sup>2</sup> By letter DH-PE-0184-2015 of 10/03/2015

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of 09/29/2014); later in February 2015 information was asked regarding the functioning of the subcommittee that developed the Plan, so the activity schedule was known and the Plan was evaluated (see attached letter N° 0100-2015 PE- DH- 02 /11/ 2015). Finally, in March 2015, given that the Plan wasn't been implemented, this office recommended to the Foreign Minister to present it to the Council of Government, initiate a process of promoting and disseminating the Plan and to conform an executing Subcommittee (See letter N° DH- PE- 0100-2015 of 03/10/2015 )

4. The Costa Rican State recognizes that among the obligations set out in the National Policy for a society free of racism, racial discrimination and xenophobia, is the consideration and discussion in the institutions and in consultation with indigenous peoples to identify the best strategy to overcome the irregularities of the CONAI. (Paragraph 58). However, to date, government authorities<sup>3</sup> have not defined the instance that will attend indigenous issues not fulfilling the second recommendation made by CERD in the previous report.

**II. - On the obligation to condemn propaganda and organizations based on ideas or theories based on the superiority of one race or group of persons of one color or ethnic origin, or attempt to justify or promote racial hatred and racial discrimination in any form whatsoever, and the commitment to take immediate and positive measures designed to eradicate all prompting to such discrimination or acts of discrimination (Article 4).**

5. **Bill against racial discrimination.** There are five bills under consideration in the Legislative Assembly to prevent, eradicate or punish racism, whose approval would materialize in the approval of a specific law for this purpose<sup>4</sup> and amendments to the criminal code<sup>5</sup>. Also, there is a proposal to amend several laws to enforce the multicultural and multiethnic character of Costa Rica<sup>6</sup>. In addition, legislative approval is pending on the American Convention against Racism, Racial Discrimination and Related Intolerance<sup>7</sup>. The Ombudsman ruled these bills and monitors the legislative process. With these bills, the State intends to comply with comment No. 4 of the CERD.

6. **Recognition of Costa Rica as a multiethnic and multicultural state:** With great satisfaction, on June 11, 2015 the third legislative debate on this issue was held, approving the constitutional reform that recognizes that Costa Rica is a multiethnic and multicultural state. **Bill for the development of indigenous peoples.** After 20 years of being submitted to the Legislative Assembly, the Bill for the Development of Indigenous Peoples has not been approved, and today is outdated compared to the rights recognized by the **UN Declaration on Indigenous Peoples**, so that its approval would be unconstitutional. The situation highlights the need to update the existing bill-which would mean consulting again to the indigenous peoples or, drafting a new bill to regulate the State's relationship with Indigenous Peoples and the recognition of their rights, which also would need to be consulted to indigenous peoples.

**III. - Prohibition and elimination of racial discrimination in all its forms and the obligation to guarantee the right of everyone to equality before the law, regardless of race, color, national or ethnic origin, notably in the enjoyment of rights (Article 5), by taking immediate and**

<sup>3</sup> In the current administration, the attention of indigenous issues is within the functions of the Deputy Minister for Political and Citizen Dialogue and the Ministry of the Presidency Affairs, but there is no specific institution responsible for coordinating and implementing indigenous policies.

<sup>4</sup> In that lines are Bills N° 18740 and N° 19288, the latter proposes the creation of an Ombudsman against Ethnic Discrimination.

<sup>5</sup> Bill N° 19062 proposes amendments to the Penal Code by which all forms of discrimination would be penalized.

<sup>6</sup> It corresponds to Bill N° 19279.

<sup>7</sup> It corresponds to Bill N° 19341.

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**effective measures, particularly in the fields of teaching, education, culture and information to combat prejudices which lead to racial discrimination (Article 7).**

8. **Loopholes.** Costa Rica lacks a proper legal framework to ensure the use of the right mechanisms to combat not only direct but also indirect and systematic discrimination; to demand and facilitate the adoption of affirmative action for people who have suffered discrimination, establishing penalties for those who commit discriminatory acts. There are no rules to ensure equality in key areas of social life such as employment, social services, the supply of goods and services, education at all levels. The Ombudsman is preparing a bill for a law against discrimination which will be presented to the Legislature in July.

9. **Work Agendas with people of African descent and indigenous peoples.** In order to plan the actions of protection against all forms of discrimination, in early 2015 the Ombudsman met with various organizations of the civil society, representatives of the population whose rights are made vulnerable by the conditions or particular situations of individuals, as is the case of people with disabilities, elders, people with sexual orientation to the same gender, migrants, people of African descent and indigenous people. With people of African descent and indigenous, Work Agendas were defined and submitted to government authorities for its achievement, and whose fulfillment is followed up by the Ombudsman.

10. Concerning the **right to equal treatment before the courts and other organs administering justice.** The Superior Council of Public Defense and the Office of Indian Affairs have issued guidelines and circulars related to the care and treatment of causes related to indigenous people, to ensure their access to justice causes however, many obstacles still prevail to achieve real access. For example, the Office of Indian Affairs is not an entity dedicated to prosecute crimes committed against indigenous men and women, but also pursues crimes committed by indigenous people, distorting its work by making it appear as an entity persecution of the indigenous population. Through participation in areas such as the Indigenous Affairs Commission of the Judiciary it has been demonstrated, the lack of knowledge of judicial officials not only of these measures but also of the rights of indigenous peoples, leaving these measures unattended. There are still administrative, economic and training limitations to ensure translation and interpretation of the indigenous languages, as well as to implement cultural expertise. Access barriers and centralized information are kept in bodies as the contentious administrative courts. Undoubtedly women and minors are the populations that face more obstacles and constraints. There is little progress on the recognition and enforcement of collective rights in court cases, the exception being the agrarian justice, which has generated recognized jurisprudence.

11. **Racial discrimination in the Constitutional Court.** By a systematization of the jurisprudence of the Constitutional Court from 1993 to 2015, the Ombudsman found that it has issued a total of 17 resolutions dealing with complaints for racial discrimination, of which only one has been favorable to the citizen, ergo, only in one case the Constitutional Court gave the reason the citizen, but without acknowledging that the discrimination was because of their racial condition. Other cases have been dismissed because in the opinion of the Court the appellants have not provided adequate evidence, since in its opinion "who invokes a violation of the principle of equality is obliged to provide suitable parameters so that it can be made a full comparison" (Resolution N° 13052-2011), and even in one case it has stated that alleged racial discrimination was "a simple subjective appreciation" (Resolution N° 2039-1993). The situation shows the lack of conventionality control in the resolutions of the Constitutional Court, and confirms the need for a regulatory body that incorporates the prohibition of indirect racial discrimination forms.

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12. Regarding the **right to personal security and protection by the State**. In the Work Agenda DHR- Indigenous Peoples, developed and supported by indigenous leaders earlier this year, the participants identified the need for the Ministry of Public Security to set a protocol for attention to indigenous peoples with the recognition of their worldviews and that training will be provided to the police about their cultural specificities. It's also a priority the preventive and reactive attention of the situations involving drugs (planting, storage, distribution and consumption).

13. **Right to work of indigenous people** The State affirms that: "The National Inspectorate of the Ministry of Labor and Social Security, in its annual work program includes inspecting indigenous areas, in order to ensure full enjoyment of the labor rights of indigenous peoples" (Paragraph 68). In this regard, it is clear that the indigenous and migrant population (Indigenous Ngöbe) located in the country, are not getting respect or guarantees for their labor rights<sup>8</sup>. At a recent meeting, the Ombudsman reiterated to the State its concern about the persistence of this situation as a violation of rights, to which they pledged to present a report about the actions and measures that will be undertaken to solve the situation<sup>9</sup>.

14. Aware of the working conditions and the places where the working indigenous families are being accommodated, since 2009 the Ombudsman recommended to the Ministry of Labor: 1. Make a priority to perform a preventive control timetable of labor inspections at the coffee plantations, to ensure respect for the rights of indigenous Ngöbe workers and their families, as stipulated in the Labor Code and related regulations and that the shelters provided by the farmers meet the requirements of the General Health and Safety Regulation of Labor and related standards; 2. Conduct a needs diagnosis of the Labor Inspection Offices located on the coffee harvest route followed by the Ngöbe indigenous, to manage the budgetary resources needed to provide them of staff and material and financial resources for the proper performance of the duties entrusted by law. 3. Provide the necessary actions to effectuate, through administrative and judicial actions, the criterion of the Legal Department of that Ministry in which the existence of an employment relationship between coffee growers and collectors concludes<sup>10</sup>.

15. The Ombudsman has developed different monitoring strategies, prompting authorities in different governmental periods to meet with the coffee sector, but these meetings have failed in achieving a favorable agreement to the rights of indigenous workers, although that Minister has recognized the disrespect for labor rights<sup>11</sup>. The Ombudsman regrets that indigenous people entering the country continue to face situations that violate their fundamental rights. The state actions have not been sufficient or do have responded to structural problems.

16. **Right to work of people of African descent**. In terms of employment rights of people of African descent, the State reported that the Action Plan of the National Policy on Racial Discrimination has as one of its strategic actions: "Develop prospective employment and business opportunities on the residence areas of indigenous men and women, African descendants and migrants." (Paragraph 72). However, as stated above the implementation of the **National Policy for a society free of racism, racial discrimination, xenophobia and of its Action Plan** is progressing slowly, and was not incorporated in the National Development Plan, affecting its implementation and enforcement.

<sup>8</sup> Denounced publicly in national media, for example <http://www.crhoy.com/en-costa-rica-hay-1-500-indigenas-de-panama-viviendo-en-condiciones-infrahumanas-w6l7x/>

<sup>9</sup> The report shall be submitted by the High Level Commission that was conformed June 30 at the Ombudsman's Office.

<sup>10</sup> It is the final report of case N° 19014-22-2005, of October 20, 2009.

<sup>11</sup> <http://www.elpais.cr/2015/03/02/alianza-interinstitucional-busca-solucionar-situacion-laboral-de-los-indigenas>

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17. In that regard, it should be noted that in the Work Agenda DHR-African Descent, the citizens pointed out the need for the State to take concrete affirmative action so that "in equal conditions" preference is given to Afro-descendants labor supply and the development of productive projects in the Caribbean.

18. **Right to housing for indigenous people.** While there have been important advances in the Ministry of Housing, its necessary to be much stricter with the so called Authorized Entities in terms of supervision of construction companies, because in most Indigenous territories, the complaints are regarding the poor quality of housing and the disrespectful imposition of constructive models outside their cultural particularities.

19. In the same line, the Mortgage Bank of Housing (BANHVI for its acronym in Spanish) implemented an "Agreement" between Indigenous Development Associations and the Authorized Entities responsible for the processing of housing bonds, in which elements such as the type or constructive mode to be used are defined: wood, tiles, etc. The Ombudsman, as well as the BANHVI and the Ministry of Housing, has organized information activities in various indigenous territories (Nairi Awairi, Alto Comte and Boruca), to explain why this requirement was created, advise on how to develop agreements and the procedure for handling housing bonds.

20. The Department of Housing is willing to reactivate the Indian Housing Commission formed by the MIVAH, BANHVI and the Ombudsman, as a space for institutional coordination and communication, from which they have managed to adapt some requirements and technical tools to cultural conditions of indigenous peoples; as well as jointly addressed the complaints received and provided training to indigenous peoples about the Indigenous Housing Program.

21. **Housing rights of people of African descent.** In the Work Agenda DHR-African descent population, the participants identified the need to incorporate the cultural particularities of Afro-Costa Rican population in poverty measurement tools to ensure access to social assistance among which are housing bonds so families in poverty have access to a home, but in many cases the bonds are denied because the poverty of Afro-Costa Ricans is measured with the same parameters as those of other populations.

22. **Right to health of indigenous people.** Regarding the **right to health**, the State says that: "In addition and in order to coordinate health actions aimed at indigenous peoples, the National Commission on Indigenous Peoples Health (CONASPI for its acronym in Spanish), composed of both public and private actors involved in the issue was created .This committee is led by the Ministry of Health and has as a priority, the development of the National Health Care Plan for Indigenous Peoples and Indigenous Migrants." (Paragraph 97).

23. The CONASPI was established since 2006, but it worked intermittently and with very little impact. During 2014 it was not in session and due to the change of government institutions and organizations were asked to elect their representatives. During 2015, it has met only once and does not yet have a working plan. It 's necessary to clarify that the CONASPI is only composed of public actors and a representative of the indigenous civil society and the Direction of Strategic Planning of the Ministry of Health is working on the initial phase of what could be a National Health Plan for Indigenous peoples, that not being a task or goal of the CONASPI.

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24. The Ombudsman acknowledges the efforts being made by the Costa Rican Social Security Fund (CCSS) to develop a program for differentiated and inclusive care health of indigenous peoples, using a model with an intercultural, human rights and gender approach, which relates to the State's efforts to comply with recommendation No. 7 of the Committee. To properly consolidate and generate the expected impacts is essential to permeate the entire institution, in the central, regional and local level as well as to have the necessary resources. Whereas the program is run from a year ago, the main demands of indigenous peoples continue to focus on improving the provision of health services; in having health care facilities within indigenous territories for more accessible service; have trained and sensitized permanent staff; the adequacy of requirements and procedures for the assurance by the State and the non-contributory pension scheme; ensure preferential treatment for the disabled and elderly; that it has health staff of indigenous extraction, among others.

25. Because of the spiritual value that water has in indigenous worldviews, it becomes one of the most valued and cared resources in indigenous territories and that is why there are important water sources used to supply a large population. However, within those territories there are serious problems of shortages. On the work agenda of the DHR-PI the need for work on an inventory of water resources of indigenous peoples and conservation, use and management was assessed. It was determined as a priority to work with the Costa Rican Institute of Aqueducts and Sewers in recognition of the spiritual value as the core of the actions of the institution in indigenous territories. The urgency that the right of participation and consultation mainly in regard to the delegation of rural water management is emphasized.

26. **Right to health of people of African descent.** In the Work Agenda DHR-population African Descent, the participants of the civil society identified discrimination as a lack of a policy for dealing with racial ethnic propensity diseases that affect the black population, since health authorities do not recognize the problem or the need for specialists in those ailments, to give particular attention to Afro-descendants.

27. **Right to education of indigenous people.** In recent years there have been a number of complaints related to academic and administrative performance of schools located throughout the country Indigenous Territories. Therefore, it was considered necessary to make a general inquiry dossier N° 99378-2012. The specific aspects that were addressed in the investigation refer to the conditions in which the Indigenous Education Subsystem is developed in all Indigenous Territories of Costa Rica, the administrative procedures concerning the selection and recruitment of faculty / staff, teaching and academic quality aspects and the educational infrastructure in each of the Indigenous Territories.

28. As for culturally relevant Academic Programs, importantly, a culturally relevant approach should consider the different worldviews, customs, history, traditions and languages of each indigenous group living in the country. In this context, the design of a curriculum that respects and incorporates all these elements and encourage the development of academic texts (when possible), whose task communal actors, children and adolescents necessarily must participate in, is considered necessary for the teaching-learning process.

29. **Right to education of people of African descent.** In the Work Agenda DHR-population of African Descent, the participants identified the need to strengthen ethnic education throughout the country (including increasing the number of Afro-Costa Rican teachers) as a key element to eradicate racial discrimination.

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30. The Ombudsman filed a writ of amparo<sup>12</sup> in relation to the educational use of the literary work "Cocori", referring not to the content of the book and the author's intention, but rather that a number of situations generated from reading it in the schools of the country, which deserves either withdraw the book from the required reading list or set by the Higher Education Council or- if the book is kept within this list- that appropriate pedagogical mediation is given by the educators.

31. Also, the Minister of Education was requested<sup>13</sup> that while the work of training and socialization of the education system is important, internal regulations regarding uniform and the way students wear their hair, prevent manifestations of their identity culture (in case of dreadlocks for example), and it affects the permanence in the education system of a young Costa Rican afro, violating his right to education. It has been urged to the Higher Education Council to issue a policy to eliminate all discriminatory rules towards the Afro culture of Regulations and Internal Rules standards. On July 17, 2015 the Minister of Education ordered the school to remove the part of the school regulations that expressly prohibited the dreadlocks. The Ombudsman acknowledged the progress in this specific case while requested that the measure be extended to other schools.<sup>14</sup>

32. **Right to participate in cultural activities.** In the Work Agenda DHR-African Descent Population, the participants identified the need to recognize and protect the Afro-Costa Rican cultural elements, such as the Creole language, traditional medicine, the original nomenclature of African peoples and the celebration of anniversaries, as fundamental actions to eradicate racial discrimination. They also noted the need to promote spaces for national dialogue to eradicate discriminatory attitudes in sports, the business sector (Tourism, Public Transport), in the Media (Radio and TV) and the public sector. This issue is closely related to recommendation N° 13 issued by the Committee.

33. **Right to land and territory of indigenous people.** The Costa Rican government recognizes in its report that "the recommendations of the Special Rapporteur went beyond the PHED, and Costa Rica assumed and expressed before the Human Rights Council in September 2011 its will to seek ways of dialogue with indigenous communities to address issues of great importance for the indigenous peoples and welfare of the Costa Rican society. (Paragraph 292), through processes of dialogue between Indigenous Peoples and the Government of the Republic".

34. Unfortunately since 2012 do violent clashes between indigenous and non-indigenous have been going, especially in the Indian Territory of Salitre, for the recovery of land because the State has not expropriated and compensated the owners or possessors in good faith, who still are living in indigenous territories before the Indian Act of 1977 and subsequent decrees that declared the land as Indian property. Nor has the State acted diligently in the administrative and judicial eviction of usurpers, illegal buyers and holders of bad faith that have been introduced to the territories after the 1977 Act, which prohibited the purchase and sale of Indian lands.

35. From the conflict, the Government of the Republic formed a dialogue with indigenous leaders close to the conflict zone or (cantons of Buenos Aires and Perez Zeledon) indigenous territories, and, among other things, initiated a process of delimitation and demarcation of the Indigenous Territory of Salitre, confirming the limits in an executive order of 1982, which is disputed by the Indians because allege that various lands they claim as part of their ancestral territory were left out. The same in these

<sup>12</sup> Constitutional Court File N° 15-006359-0007-CO

<sup>13</sup> File N°161946-2015 of the Ombudsman Office

<sup>14</sup> According to letter N° DM-1114-07-2015 of 07/17/2015 signed by the Minister of Education

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cases is that an indigenous consultation, in which broad participation is given to the elderly, because they are who can remember, interpret and display the ancient boundaries of the territory.

36. In July 2014 a conflict of great magnitude rises again, because although part of the territory was delimited, the underlying situation has not been resolved; ergo, expropriation and eviction of all people who are not indigenous and still living in the area. Days before, the Ombudsman had received information about some recovery processes of land in Salitre being undertaken by the indigenous community and an armed mobilization of peasants (farmers and laborers) from the canton of Buenos Aires. The situation involved the displacement of a government delegation headed by the Vice Minister of the Presidency, seeking to mediate between indigenous and farmers. Functionaries of the Ombudsman Office attended Salitre, observing the mediation process and the signing of agreements taken on July 7-8. In response to the commitment, the Ombudsman<sup>15</sup> has followed the implementation of agreements; officials have toured Salitre to verify the security conditions and the authorities have been asked for information on government interventions, on the reports issued and the attention to police intervention, strengthening checkpoints was requested and the preventive presence of police presence.

37. In November 2014, the Ombudsman again had to appear in person at Salitre to verify the threats and intimidation from non-indigenous people against indigenous families. One of the highlights occurred on November 25 during the visit to an estate of which a family was expelled by a group of armed men. The inspection report is made known to the local police to immediately proceed to take crime prevention measures and subsequently informed the authorities of Public Security and the Presidential Palace.

38. For the Ombudsman it is clear that conflicts over land possession in Salitre and other indigenous territories of Buenos Aires do not follow a particular economic situation but have deep historical roots, which have grown and strengthened by the invisibility of the rights of indigenous peoples and the environment of ethnic discrimination in the area.

39. The complexity of the context generated by the conflict has worsened and therefore the Ombudsman esteems it urgent for the Costa Rican State to conduct an objective analysis of the situation involving the social, cultural and political context of the canton of Buenos Aires, and with the participation of the parties concerned, to jointly build a comprehensive care plan, taking as a priority, to guarantee the indigenous community of Salitre the right to their land and territory.

40. **Injunction of the Commission in favor of the Teribe and Bribri from Salitre.** The Costa Rican government, in the figure of the Government of the Republic, should recognize that apart of the reinforcement of police patrols in the community of Salitre, in the other agreements related to the recovery of the land has not progressed; so that at any time new clashes may occur. Precisely for these reasons, in April of this year, **the Inter-American Commission on Human Rights issued** precautionary measures in favor of indigenous Teribe and Bribri people from Salitre<sup>16</sup>, so that the State guarantees the life and physical integrity of members of the indigenous peoples Teribe and Bribri from Salitre, which must be agreed with the beneficiaries and their representatives; and investigate the alleged facts that led to the adoption of this precautionary measure to avoid its repetition. The Ombudsman is following up the fulfillment of the injunction.

<sup>15</sup> Ombudsman Office file N° 162796-2015

<sup>16</sup> IACHR, Resolution 16/15, Precautionary Measure No. 321-12, of April 30, 2015.

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41. **Land rights for Afro-descendants.** The African descent of the South Caribbean communities are submerged in fear and anxiety, because since November 30, 2012 the threat of being evicted from their ancestral lands is hanging over them, in compliance with recommendations issued by the General Comptroller of the Republic, which has issued reports on the state of the refuge, in which consultation and territorial rights granted to people of African descent by the Convention 169 of the ILO have been omitted. The Ombudsman has found that environmental protection policies have not considered the relationship of African descent to their ancestral lands or have recognized their traditional ways of farming and traditional fishing, and have affected intangible cultural heritage as holiday traditions that took place in territories that today are within the biological reserve, to which actually the African descent peoples can enter after paying an entrance fee and whose boundaries were never consulted to them.

42. Moreover, it is the duty of all State institutions to comply with the General Recommendation No. 34 adopted by the Committee on the Elimination of Racial Discrimination on October 3, 2011, in which it is recognized: II. Rights. 4. a) The right to property and the right to use, conservation and protection of traditionally occupied lands and natural resources, if their livelihoods and culture are linked to the use of the land and resources<sup>17</sup>. This condition is met by the South Caribbean afro-descendant residents; therefore, any judicial or administrative decision must abide by it and built on it. Despite this, the Executive approved an emergency law<sup>18</sup>, in which a two-year moratorium on evictions and demolitions were pending, while finding a solution was granted. The situation remains uncertain.

43. There have been presented several bills, however, on the basis of legislative proposals the right to ownership and use, conservation and protection of the lands ancestrally occupied by people of African descent living in the South Caribbean continues been obscured. In fact, in some proposals they were degraded from the status of owners to mere occupiers subject to the constraints and requirements of the environmental and municipal authorities (squatters or dealers).

44. Moreover, on October 28, 2010 the Inter-American Commission on Human Rights granted an audience to the Association for Integrated Development of Manzanillo and other community organizations in the South Caribbean to expose on the "**Human Rights Situation of Afro-Caribbean, peasants and indigenous of the canton of Talamanca, Costa Rica**", in which representatives of the State claimed that the measures had been consulted with the people, but the fact of the matter is they **have never been consulted on the terms stipulated in the Convention 169**<sup>19</sup>. The authorities also pledged to give participation to organizations in the solutions to be undertaken, and to date they aren't a part of the interagency committee that is making decisions that affect the rights and interests of these people.

45. The Costa Rican government must recognize and respect the right to own the land the people of African descent living in the South Caribbean have occupied ancestrally, and should consult on the terms of Convention 169 any measure affecting their rights, thus giving active participation in negotiating solutions.

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<sup>17</sup> CERD / C / GC / 34 03/10/2011

<sup>18</sup> N° 9073 Act for protection of specially classified land occupants " Moratorium Law ", N° 9205 Act Degree in property law of the Board of Port Administration and Economic Development of the Atlantic Coast; N° 9221 Act Framework Law for the declaration of coastal urban area and its regime of use and territorial development and Act N° 9223 Recognition of the rights of the inhabitants of the Southern Caribbean law.

<sup>19</sup> <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=18>

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46. **Gender equality. Health status of migrant women.** Among the migrant and refugee women concur special conditions that deepen the violence and discrimination they suffer. For example, the experience is not comparable to a woman who is a citizen with a foreign or between an indigenous woman and an Afro. Nor are comparable experiences between foreigners, because the immigration process has different nuances depending on the particular condition of each migrant woman. Migrant and refugee women face situations of inequality and violence depending on their migratory status or documentation. Having the current documentation or to be regularized in the country allows women to access better job opportunities, access to health, justice, to alimony, to report domestic violence, economic benefits and housing , among others; while women who are in irregular or undocumented immigration status in the country, have a higher risk of having their rights violated. This concern has already been manifested by the Committee issuing recommendations No. 9, 10 and 12.

47. A clear violation of their rights, in recent years has been the refusal of the State to provide medical services in prenatal care and the prohibition of indirect access to insurance or family benefits. For migrant women, this type of violation has been a recurring theme in Costa Rica. The Ombudsman opened an inquiry<sup>20</sup> at the disposal of the State Coverage Area of the Costa Rican Social Security denying prenatal care to pregnant foreign women who are undocumented. The denial of prenatal care to undocumented women was found, based on that provision, which was in force from October 31, 2012 to May 10, 2013, resulting in a clear discrimination and violation of the special protection for pregnant women and their children established both by international and national human rights instruments. The Ombudsman considers that the refusal to receive prenatal attention to these women attacks the right to health and life of the pregnant mother and unborn child, by placing them in a situation of high vulnerability and risk that is exacerbated by the poverty presented in these cases.

48. In October 2014, the Board of Directors of the Costa Rican Social Security Fund amended several articles of the Health Insurance Regulations; the proposed change in Article 20 on family benefit requirements, established that this modality is directed only to Costa Rican citizens because it is required the use of an identity card, leaving aside the benefit for people with a Foreign Migrant Identification Document (known as "DIMEX"), passport, residence identity card or pending regularization procedure. Finally authorities of the Costa Rican Department of Social Security complied a resolution of the Constitutional Court and by Circular rectified the error, instructing that foreigner family benefit claimants were to be granted that modality of insurance by presenting the documents required in accordance with their status of foreigners.

49. The Ombudsman is concerned that because a misinterpretation of the Social Security Fund authorities, many migrants had refused the family benefit on equal conditions that of Costa Rican citizens, particularly foreign women who mostly require and request the family benefit to receive health services, due to their economic dependence on spouse or life partner. It should be taken into account that this economic dependence of women is joined to the obligations and responsibilities that are socially assigned to them by role, and which relate to the care of children and household management conditions that prevent them from accessing just wage labor and therefore the possibility of contributing to the CCSS schemes. Likewise, family responsibilities do not allow women to exercise other economic activities that would release them of this dependence. It is for this reason that the only way to have access to that health care is through the modality of family benefit.

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<sup>20</sup> File N°. 127733-2013, Final Report of 06/02/2014

San José, July 24, 2015

Reference: DH-0528-2015

50. This type of state actions violate the human rights of migrants, leaving them unprotected, without being able, they and their families to receive health services. The Ombudsman has recommended<sup>21</sup> that the Family Benefit adscription service must be provided without discrimination and without violating the human rights of foreigners, specifically women who are the beneficiaries and who are affected by such measures. In sum, the denial of prenatal care and negative assurance in the form of family insurance prevent access of migrants to health services, a problem that remains a recurring theme, which is why the Ombudsman is concerned that despite that the provisions that limited their access to medical services were annulled because it was found that they violated national and international norms of protection equal and non-discrimination for pregnant women and the unborn children, incurred again in this violates practice of the rights of that population.

51. The Ombudsman considers it imperative that the authorities of the CCSS take appropriate measures to ensure that these types of anomalies are not resubmitted, consequently, it was recommended that in the future the issue of circular by the Head of Coverage of the State of the CCSS where fundamental rights of pregnant women are treated, regardless of their nationality, insurance, immigration status or documentation- has necessarily to be reviewed prior by the Legal Department of the institution, so as not to put pregnant women and their children in obstetric risk.

52. This office also urged to promote and disseminate good practices of migrant foreign people attention internally in the offices of the CCSS, following the guidelines and clearly defined requirements, promoting the eradication of discrimination and the violation of the right to equality for foreigners. Also, it was issued that the administrative offices of the CCSS that perform procedures of assigning Family Benefit that grant such protection to foreign persons, should receive the application and consider it on an equal basis in regarding the requirements requested for Costa Rican citizens.

53. **Migrant women and domestic work.** Among the sectors that are more sensitive to social and legal exclusion, migrants have their status restricting their rights, especially when it comes to people without legal status (undocumented). This exclusion and discrimination increases when it comes to women, who in the vast majority perform domestic work.

54. According to the National Institute of Statistics and Census (INEC) approximately 60% of domestic workers in Costa Rica are foreign. This sector of the population continues to be occupationally discriminated despite the reform of Chapter VIII of the Labor Code<sup>22</sup>, which placed this population on an equal conditions by recognizing the workday defining guidelines on wages, establishing compulsory insurance before the Costa Rican Social Security and recognizing the holiday period, disabilities, probation, work risk insurance, among other concessions in accordance with international human rights instruments.

55. The Ombudsman recognizes that the implementation of the reform has been slow making visible a weak management in this process by the Ministry of Labor and Social Security conducive to employers to comply with the rules adopted. Consequently the Ombudsman will ensure that the Ministry of Labor improves their mechanisms for inspection, monitoring and punishment, in order that the labor rights of this population are recognized and to ensured.

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<sup>21</sup> File N° 127733-2013, Final Report of 06/02/2014

<sup>22</sup> Paid Domestic Work Act under Law N° 8276 of July 2, 2009.

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San José, July 24, 2015

Reference: DH-0528-2015

56. On behalf of the institution affirmative actions have been taken to ensure that the domestic worker population is informed of their rights. Also inquiries have been received regarding the application of the law, which have been properly addressed and evacuated.

57. One of the sticking points that has generated doubts and queries is the compulsory insurance before the Costa Rican Social Security, since in our society a large number of these workers do not work full time, a situation that generates the CCSS's refusal to authorize insurance for part-time domestic work. That results in a violation of the right to social security.

58. Currently the Ombudsman is conducting activities to promote labor rights of domestic workers to draw attention to employers about the obligation to comply with the law, and transform the skewed view of domestic services which places the women workers in a vulnerable position and with a regime that requires long hours coupled with a poor financial remuneration for their services.

59. The Costa Rican government must be respectful of General Recommendation N° 26<sup>23</sup> of the Committee on the Elimination of All Forms of Discrimination against Women, concerning Migrant Workers, which refers to the need to protect this population. This general recommendation leads to contribute on the fulfillment by State parties of the obligation to respect, protect and facilitate the exercise of human rights of migrant workers as well as legal obligations under treaties and other international commitments.

Grateful for the advisory deference, I take this opportunity to express to the members of the Committee the assurances of my highest consideration,



Montserrat Solano Carboni  
Costa Rican Ombudsman

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<sup>23</sup> Adopted by the Committee on the Elimination of Discrimination against Women in its 32nd session, held on January, 2005.

## **EXECUTIVE SUMMARY**

Costa Rican society has historically been characterized by its multiethnic and multicultural nature and as a receiver country of migrants from various nationalities. However, racism and xenophobia are a reality in the country and a cause of the violation of human rights of many people.

As a National Institution for Human Rights, the Ombudsman presented in this alternative report the State's progress in fulfilling its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, but also points out what are the major debts of the State in this matter.

In compliance with the commitments made in the Durban Review Conference in 2009, the Costa Rican government issued in 2014 a National Policy for a Society Free of Racism, Racial Discrimination and Xenophobia, which implies an important advance for the right articulation of the State action in this area but still presents difficulties for its implementation. Another development is the recent amendment to the Constitution to recognize the multiethnic and multicultural nature of the Costa Rican society, whose correct incorporation into the legal system and state action is monitored by the NHRI.

The country has significant deficiencies ensuring economic, social and cultural rights to indigenous people and migrants mainly to those who leave their countries for economic reasons. In this case, the violation of rights realizes the existence of a systemic discrimination affecting these sectors of the population. Regarding the right to work of the indigenous Ngöbe-migrants the state's inability to guarantee labor rights provided by law to this section of the population, brings obvious consequences on the quality of life of these people and their families. This situation also occurs in the case of migrant women working in domestic service, whose right to social security as a derivation of the right to work is violated, due to administrative arrangements that do not recognize the type of time job and the multiplicity of employers.

In other rights such as the right to housing, education or health, racial discrimination is manifested by imposing unique models of service, deny and ignore the cultural characteristics of the various groups and affecting the enjoyment of those rights.

Special mention has the status of land ownership by indigenous peoples and Afro-descendants living on the shores of the Caribbean Sea. The protection of indigenous territories is guaranteed by international instruments and national legislation. However, the State has failed to fulfill its obligations to guarantee and protect this right to indigenous people, allowing the permanence of non-indigenous people or new invasions of their territories. Currently, the Inter-American Commission on Human Rights called a request for precautionary measures to ensure the protection of this right to indigenous peoples living in the Teribe and Bribri territories of Salitre, located in the province of Puntarenas.

People of African descent have historically been located in the Caribbean Sea part of the country, building its culture from their link to natural resources. In application of environmental legislation, there are orders from the country's authorities to evict them from their lands, a situation which threatens the permanence of their culture.

## **2015-2024 International Decade of Persons of African Descent**

Licda. Carolina Molina Barrantes  
Área Derechos Humanos, Seguridad Humana y Derecho Humanitario  
Dirección General de Política Exterior  
Ministerio de Relaciones Exteriores y Culto  
Correo electrónico: [cmolina@rree.go.cr](mailto:cmolina@rree.go.cr)

**Asunto: Solicitud de información sobre el Plan de acción para una sociedad libre de racismo, discriminación racial y xenofobia: 2015-2018.**

Estimada Licenciada Molina:

Reciba un cordial saludo. Considerando que la Defensoría de los Habitantes funge como observadora y asesora técnica de la "Comisión Interinstitucional para el seguimiento e implementación de las obligaciones internacionales de Derechos Humanos" y que en el marco de esta Comisión se elaboró la **Política Nacional para una Sociedad Libre de Racismo, Discriminación Racial y Xenofobia 2014-2025** y el **Plan de acción para una sociedad libre de racismo, discriminación racial y xenofobia: 2015 -2018**, resulta de sumo interés para esta Institución, conocer las acciones que se estén coordinando para la inclusión de ambos instrumentos en el Plan Nacional de Desarrollo.

Es menester recordar que la Política propone que el Estado adopte medidas eficaces que propicien la generación de prácticas sociales, intergeneracionales, inclusivas y respetuosas de la diversidad, de acuerdo con los enfoques étnico, de diversidad cultural, igualdad y equidad para garantizar el ejercicio pleno y efectivo de los derechos humanos de los pueblos indígenas y afrodescendientes, migrantes y refugiados en la sociedad costarricense.

Asimismo, resulta importante para la Defensoría conocer si el Plan de Acción ya se publicó y las gestiones emprendidas para su ejecución.

La información solicitada y cualquier otra relacionada puede ser remitida al apartado postal 686-1005 Barrio México, al fax número 4000-8700 o presentada en las oficinas centrales de la Defensoría, situadas en Barrio México, 450 metros al norte de Torre Mercedes Benz en el Paseo Colón.

Agradeciéndole la atención oportuna a la presente, me suscribo atentamente,

  
Álvaro Paniagua Núñez.  
Director de Protección Especial.  
Defensoría de los Habitantes de la República.



Licda. Carolina Molina Barrantes  
Coordinadora  
Comisión Interinstitucional para el Seguimiento e Implementación  
de las Obligaciones Internacionales de Derechos Humanos (CIIDDHH)  
Ministerio de Relaciones Exteriores y Culto  
Correo electrónico: [cmolina@rree.go.cr](mailto:cmolina@rree.go.cr)

**Asunto: Solicitud de información sobre el monitoreo y la evaluación de la Política Nacional para una sociedad libre de racismo, discriminación racial y xenofobia, 2014-2025 y su Plan de Acción 2015-2018.**

Estimada Licenciada Molina:

Reciba un cordial saludo. Conocedores de que la **Política Nacional para una Sociedad Libre de Racismo, Discriminación Racial y Xenofobia 2014-2025** fue publicada de manera integral en La Gaceta N° 224 del 20 de noviembre del 2014 y el **Plan de acción para una sociedad libre de racismo, discriminación racial y xenofobia: 2015 -2018** en La Gaceta N° 225 del 21 de noviembre del 2014, es de interés para la Defensoría de los Habitantes mantener un monitoreo permanente de su ejecución.

Considerando que la Política establece su modelo de gestión y un proceso de monitoreo y evaluación, le solicitamos referirse ampliamente a lo siguiente:

1. **¿Se reestableció la subcomisión que elaboró las propuestas de ambos instrumentos y que tendrá a cargo su seguimiento? ¿Se reconfirmaron las instituciones y funcionarios participantes?**
2. **¿Cuál es la agenda de trabajo de la subcomisión y la calendarización de las reuniones, en atención a la periodicidad establecida en el plan?**
3. **¿Se han realizado las gestiones necesarias para garantizar la participación de la sociedad civil en la subcomisión?**
4. **¿Se elaboró el programa de evaluación? ¿Fue presentado ante la Comisión?**

Adicionalmente es necesario conocer qué gestiones concretas ha realizado la Comisión -en su condición de responsable de garantizar el acatamiento de la recomendación del EPU- ante el Ministerio de Planificación Nacional para garantizar que tanto la Política como el Plan de Acción contra la Discriminación sean integrados al Plan Nacional de Desarrollo.



San José, 11 de febrero de 2015.  
Oficio N° DH-PE-0100-2015.

La información solicitada y cualquier otra relacionada, así como los documentos probatorios correspondientes deberán de ser remitidos dentro de los **cinco días hábiles** posteriores a la recepción de este oficio, al fax número 4000-8700 o presentados en las oficinas centrales de la Defensoría, situadas en Barrio México, 450 metros al norte de Torre Mercedes Benz en el Paseo Colón.

Agradeciéndole la atención oportuna a la presente, me suscribo atentamente,

Montserrat Solano Carboni.  
Defensora de los Habitantes de la República.

c.c. Archivo.

Lic. Manuel González Sanz  
Ministro de Relaciones Exteriores y Culto  
Fax: 2257-1239

**Asunto: Implementación de la Política Nacional para una sociedad libre de racismo, discriminación racial y xenofobia 2014-2025 y de su Plan de Acción 2015-2018.**

Estimado señor Ministro:

Sirva la presente para saludarlo cordialmente así como para externarle, con ocasión de la celebración del **mes de la no discriminación**, mi preocupación porque hasta la fecha no se está implementado ni la *Política Nacional para una sociedad libre de racismo, discriminación racial y xenofobia*, ni su primer *Plan de Acción*.

De acuerdo con el artículo 4° del Decreto Ejecutivo 38140-RE-PLAN, publicado en La Gaceta N° 34 del 20 de febrero del 2014, ambos instrumentos **empezaron a regir desde el 1° de enero del 2014**. No obstante, de acuerdo con la información suministrada<sup>1</sup> por la señora Linyi Baidal, Directora General de Política Exterior y Presidenta de la Comisión Interinstitucional para el seguimiento de las obligaciones internacionales de Derechos Humanos (CIIDDHH), fue hasta el pasado 29 de octubre que la Comisión reinició sus sesiones, en la cual con fines de difusión se informó sobre la Política y su Plan de Acción; asimismo, previo a realizar cualquier acción o conformar las subcomisiones de trabajo, se ha considerado necesario nivelar el conocimiento en materia de Derechos Humanos de las personas miembros de la Comisión.

Si bien la Defensoría de los Habitantes reconoce la importancia de estas acciones, es claro que ha transcurrido más de un año desde que entraron a regir ambos instrumentos y que el tiempo es un recurso fundamental para la consecución de los objetivos planteados y para la definición e implementación de acciones administrativas, las cuales además se deben enmarcar en los planes operativos de cada institución. Tómese en consideración que algunas acciones trazadas en el Plan debían ejecutarse durante el año 2014 y otras desde inicios del 2015.

Considerando que ese Ministerio es la instancia coordinadora del cumplimiento e implementación de ambos instrumentos y que es el responsable de coordinar y dirigir la CIIDDHH, la Defensoría de los Habitantes, en atención a las competencias reconocidas en el decreto de creación de la CIIDDHH<sup>2</sup> y las funciones de monitoreo y seguimiento establecidas en la propia Política, me permito realizar las siguientes **recomendaciones**, con la finalidad de que se agilice, facilite y fortalezca de manera respetuosa, inclusiva y participativa el proceso interinstitucional de implementación:

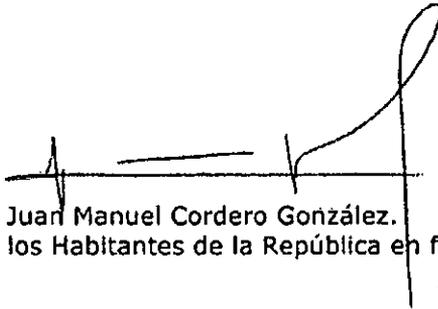
<sup>1</sup> Oficios DGPE-1033-14 del 5 de noviembre del 2014 y DGSE-0168-2015 del 16 de febrero del 2015.

<sup>2</sup> Decreto Ejecutivo N° 36776-RE, publicado en el Diario Oficial La Gaceta 188 del 30 de setiembre del 2011.

- Realizar ante el Consejo de Gobierno una presentación de la Política y el Plan, con la finalidad de conseguir un compromiso al más alto nivel para su ejecución y para la designación de representantes institucionales en la Comisión y en las Subcomisiones, garantizando su activa participación.
- Diseñar y ejecutar un proceso de promoción y divulgación de ambos instrumentos para las instituciones públicas y la sociedad civil de los grupos prioritarios de atención definidos en los instrumentos, en procura de asegurar su participación plena y efectiva. En las actividades de capacitación dirigidas a las instituciones, es indispensable la participación de líderes y lideresas de esos grupos de población para lograr un efectivo dialogo intercultural.
- De manera prioritaria conformar la Subcomisión para la Política, en aras de generar las coordinaciones y articulaciones correspondientes a su implementación y es fundamental que en el corto plazo se elabore el plan de trabajo para cumplir con los plazos y objetivos trazados.

Finalmente, considero que es indispensable que ese Ministerio asuma con decidida voluntad y compromiso la Política y el Plan, Instrumentos concebidos desde su seno y se den pasos efectivos hacia su implementación.

Con las muestras de mi sincera consideración y estima, se suscribo cordialmente,



Juan Manuel Cordero González.  
Defensor de los Habitantes de la República en funciones.



C.c. Archivo.