



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eightieth 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

Mexico

1. The Committee on the Elimination of Racial Discrimination considered the sixteenth and seventeenth periodic reports of Mexico, submitted in a single document (CERD/C/MEX/16-17), at its 2129th and 2130th meetings (CERD/C/SR.2129 and 2130), held on 14 and 15 February 2012. At its 2158th and 2159th meetings (CERD/C/SR.2158 and 2159), held on 6 March 2012, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by the State party and the delegation's oral responses to its questions, as well as the dialogue between the Committee and the delegation.

3. The Committee welcomes the active participation of representatives of civil society in preparing and providing valuable input during the consideration of the State party's report.

B. Positive aspects

4. The Committee commends the State party on the entry into force of the reform of the Constitution of Mexico, particularly as regards *amparo*, criminal procedure and class actions.

5. The Committee also commends the State party on giving constitutional rank to the international human rights treaties it has ratified, including the Convention, thereby making them self-executing, although secondary legislation is still needed to fully implement this change.

6. The Committee welcomes the organization of a second national survey on discrimination in Mexico (2010) to raise the profile of the individuals and groups that suffer from systematic discrimination in the State party.

7. The Committee welcomes the establishment of programmes and institutions for combating racial discrimination in Mexico, particularly the National Council for the Prevention of Discrimination (CONAPRED), the General Act on the Linguistic Rights of Indigenous Peoples and the Programme for the Development of Indigenous Peoples 2009–2012.

8. The Committee appreciates the continuous cooperation since 2002 between the State party and the Office of the United Nations High Commissioner for Human Rights, and is pleased to see that such cooperation has become closer over the years.

C. Principal subjects of concern and recommendations

9. The Committee is greatly concerned that racial discrimination remains so deeply rooted in the State party despite the highly developed institutional framework for combating it. The Committee also notes with concern the lack of information on the real impact and outcomes of that framework and the related programmes, plans and strategies in the State party (art. 2).

The Committee invites the State party to devise methods for measuring the outcomes of public policies so as to enable it to assess the scope of the institutional framework and the measures taken, including the use of human rights indicators. The Committee requests the State party to provide information on the subject in its next periodic report, which should be more substantive and shorter, with tables, data and information to clarify the progress made in implementing the Committee's recommendations. The Committee recommends that the State party take into account the results of the second national survey on discrimination in designing and mounting effective campaigns against discriminatory and xenophobic behaviour. The Committee recommends that the State party take into account the results of the second national survey on discrimination to design and mount effective campaigns against discriminatory and xenophobic attitudes, and to strengthen the role and capacities of the National Council for the Prevention of Discrimination, so that it will be better equipped to combat racism, xenophobia and related intolerance.

10. The Committee notes with concern that, notwithstanding its repeated recommendations and requests, little light has been shed on the situation of people of African descent. The Committee regrets that the State party provided no detailed information on people of African descent in its periodic report, despite the Committee's request to that effect in 2006 (art. 1).

In light of its general recommendation No. 34 on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide information on people of African descent, a vulnerable and small minority that needs all the protections established in the Convention. The Committee invites the State party to consider recognizing people of African descent as an ethnic group and adopting programmes to promote their rights.

11. Although the State party has carried out important legislative reforms, the Committee notes with concern that the definition of discrimination in the Federal Act on the Prevention and Elimination of Discrimination contains no mention of racial discrimination and is not in line with the Convention. The Committee also expresses its concern that the legislation on matters affecting indigenous peoples varies greatly from one federal state to another and that policies rely heavily on the administration's agenda in each

federal state. The Committee reiterates its concern at the absence of domestic legislation that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and all acts of racially motivated violence against, in particular, indigenous people and people of African descent in the State party (art. 1 and art. 4 (a)).

The Committee notes with interest the proposed reform of the Federal Act, which contains a definition of discrimination in line with article 1 of the Convention and which is intended to pave the way for the adoption of local laws across the country, and strongly urges the State party to complete the adoption of the reform. The Committee also recommends that the State party step up its efforts to harmonize the legislation and regulations regarding the rights of indigenous peoples at all levels of the state and that it pass a law specifically to define the various manifestations of racial discrimination as an offence punishable by law, in accordance with article 4 of the Convention.

12. The Committee takes note of the recognition and application of the indigenous justice system within the local justice system by evoking “usage and customs”, particularly in the election of local representatives. However, it expresses its concern at the limited scope for applying the “usage and customs” of indigenous communities (art. 5).

In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to respect the traditional systems of justice of indigenous peoples, in accordance with international human rights standards, including by establishing special indigenous courts.

13. The Committee takes note with deep concern of the reports on the violence associated with the fight against organized crime in the State party and its possible negative repercussions on the protection of the human rights of the population, including indigenous people and people of African descent, who are often in a particularly vulnerable situation (art. 5 (b)).

The Committee urges the State party to take the necessary steps to end the violence while ensuring the strict observance of human rights.

14. While the Committee takes note of the State party’s efforts to reform security and the justice system, it reiterates its concern about the obstacles to access to justice faced by members of indigenous peoples and the alarming number of allegations of irregularities in cases concerning indigenous people, as well as the number of indigenous people in prison. In particular, the Committee expresses concern about the shortage of interpreters and bilingual justice officials familiar with judicial procedures, and also about the availability and quality of federal public defenders. The Committee is concerned that existing interpretation services are withheld on the basis of a superficial evaluation of the accused’s knowledge of Spanish. The Committee notes with concern the case of Mr. Hugo Sánchez and welcomes the news that the issue has been taken up by the Supreme Court (art. 5 (a)).

Given that the lack of interpreters could be a reason for the disproportionate number of indigenous persons in prison, the Committee recommends that the State party should:

- (a) Guarantee full access for indigenous persons to bilingual public defenders and justice officials in judicial proceedings;**
- (b) Guarantee full access for indigenous persons to culturally sensitive interpretation services throughout the judicial proceedings, including in cases where the person concerned has some knowledge of Spanish;**

(c) **Continue providing courses for judges and court officers in order to guarantee effective and equal access to justice for the indigenous population.**

The Committee looks forward to the resolution of the case of Mr. Hugo Sánchez, which is before the Supreme Court. The Committee encourages the State party to explore the possibility of investigating reports of alleged irregularities in the trial and sentencing of indigenous persons.

15. The Committee expresses deep concern about the recent tragic events in which defenders of the rights of indigenous peoples were physically attacked and, in some cases, killed (art. 5 (b)).

The Committee recommends that the State party investigate and punish those responsible for the above-mentioned killings. It also urges the State party to expedite the adoption of legislation that specifically guarantees the protection of human rights defenders, including defenders of the rights of indigenous peoples, and to take timely measures to prevent such acts, inter alia by establishing a special mechanism for the protection of human rights defenders, in line with the Declaration on Human Rights Defenders, adopted by the General Assembly, and the recommendations of the Special Rapporteur on the situation of human rights defenders.

16. While taking note of the State party's efforts to guarantee the participation of indigenous peoples in the political process, and particularly in representative institutions, the Committee reiterates its concern about the number and level of government posts held by indigenous people, especially women. The Committee notes with concern that, pursuant to article 2, section A.VII, of the Constitution, the right of indigenous peoples to elect their political representatives according to their own laws is limited to the municipal level. It also notes with concern the lack of information on the political participation of people of African descent (art. 5 (c)).

In light of its general recommendation No. 23 (1997) on indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public matters, and that it take effective measures to ensure that all indigenous peoples participate at every level of the administration. The Committee also exhorts the State party to take steps to ensure the participation of people of African descent in political and public affairs. In both cases, the Committee recommends that the State party take special measures or affirmative action, in accordance with the Convention and general recommendation No. 32 (2009) of the Committee, on the meaning and scope of special measures in the Convention.

17. The Committee notes that the National Commission for the Development of Indigenous Peoples has a system for consultations with indigenous peoples, based on articles 2 and 26 of the Constitution and the Act on the National Commission for the Development of Indigenous Peoples. However, it is concerned that this consultation system does not incorporate the concept of "free, prior and informed consent". The Committee expresses its deep concern at the growing tensions between outsiders and indigenous peoples over the exploitation of natural resources, especially mines. The Committee reiterates its concern at reports of conflict on lands traditionally owned by indigenous peoples and at the failure, in practice, to fully respect their right to be consulted before work starts on exploiting the natural resources in their territories. The Committee also notes that there are three proposals for laws on the subject and regrets that it has been given no detailed information on them. The Committee is also concerned about the need for administrative measures to safeguard traditional forms of land tenure and ownership (art. 5 (d) (v)).

In light of its general recommendation No. 23 (1997), the Committee recommends that the State party should:

(a) **Ensure that effective consultations are carried out at each stage of the process with communities likely to be affected by projects to develop and exploit natural resources, with the aim of obtaining their free, prior and informed consent, particularly in the case of mining projects. It also recommends that everything possible be done to expedite the adoption of a law on the subject, and reminds the State party that the absence of implementing regulations for the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), is no obstacle to holding prior consultations;**

(b) **Promote forums where government representatives can actively participate in different discussion groups with indigenous peoples, ensuring that these lead to concrete, viable and verifiable agreements that are properly implemented; and also encourage the use of alternative dispute-settlement methods in line with international standards in the field of human rights and the rights of indigenous peoples;**

(c) **Ensure, in exceptional cases where it is deemed necessary to relocate and resettle indigenous peoples, compliance with international standards in the relocation process. In this connection, the State party is requested to include in its next periodic report information on indigenous peoples and land tenure, particularly in cases where attempts are being made to exploit the natural resources on the land.**

18. The Committee is very concerned that, according to the United Nations Development Programme (UNDP) 2010 publication *Informe sobre Desarrollo Humano de los Pueblos Indígenas en México*, 93.9 per cent of the indigenous population is denied one, and 64.2 per cent at least three, of the following rights: the rights to education, health, social security, housing, basic services and food. Some 70.9 per cent of the indigenous population falls into the category of “living in multidimensional poverty”, defined as the percentage of persons on a low income with at least one social disadvantage. The Committee is also concerned about reports that, in terms of the human development index, the native population of towns in Mexico has lower levels of human development than the non-indigenous population (art. 5 (e)).

The Committee urges the State party to take steps to eliminate the historical, structural discrimination found in Mexico by adopting social inclusion policies to reduce the high level of inequality and the levels of poverty and extreme poverty and thus fully guarantee the rights of all Mexicans, especially indigenous ones, to education, health, social security, housing, basic services and food, while respecting their cultural origins and consulting with the peoples who might be affected by such State initiatives.

19. The Committee acknowledges the efforts made by the State party to provide health care for indigenous people that takes account of their cultural characteristics. However, it is concerned that the highest figures for maternal and infant mortality are found among the indigenous population. The Committee expresses its concern at the lack of adequate and accessible services for such communities and at the shortage of data on health indicators and on the steps taken to improve those services (art. 5 (e)).

The Committee recommends that the State party draw up, in close cooperation with the communities concerned, a comprehensive and culturally sensitive strategy to ensure that indigenous peoples receive quality health care. The implementation of the strategy should be guaranteed by an adequate allocation of resources, the collection of indicators and transparent monitoring of progress. Particular attention should be paid to improving access to health care for indigenous women and children. The

Committee underlines the need for interpreters in this area too, in order to ensure that indigenous people have full access to health services. It is important that the health system recognize, coordinate, support and strengthen indigenous health systems and use them as the basis for achieving more effective and culturally sensitive coverage. The Committee requests the State party to provide clear data on maternal mortality and life expectancy in indigenous communities and among people of African descent. Lastly, the Committee recommends that the State party step up its efforts to improve the sexual and reproductive health of indigenous women and women of African descent.

20. The Committee remains concerned about the situation of migrant workers, most of whom come from indigenous communities in Guatemala, Honduras and Nicaragua, and migrants in transit, especially with regard to women who are the victims of abuse. The Committee expresses its deep concern at the vulnerability of these communities to kidnapping, torture and murder, and is also extremely concerned that their fear of being subjected to discrimination and xenophobia prevents them from seeking assistance and protection when needed (art. 5 (e) (i)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee again recommends that the State party ensure that programmes and measures to protect migrants and their rights are properly implemented in practice. The Committee invites the State party to include in its next periodic report information on the progress made with regard to the situation of migrant workers in Mexico.

21. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

22. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the Convention into its domestic legislation, the State party bear in mind the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, together with 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, include specific information on plans of action and other steps taken in order to give effect to the Durban Declaration and Programme of Action at the national level.

23. The Committee notes with appreciation that the State party makes its reports available to the general public as soon as they are submitted and recommends that it ensure that the Committee's concluding observations are also publicized and disseminated in the official and other commonly used languages, as appropriate.

24. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10 and 17 above.

25. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 15 and 18, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

26. The Committee recommends that the State party submit its combined eighteenth to twenty-first periodic reports by 22 March 2016, taking into account the specific guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all

the points raised in these concluding observations. The Committee also invites the State party to update its common core document (HRI/CORE/MEX/2005). The Committee urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized guidelines on reporting contained in paragraph 19 of document HRI/GEN.2/Rev.6).
