



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined 20th to 22nd periodic reports of Ecuador, adopted by the Committee at its eighty-first session (6–31 August 2012)

1. The Committee on the Elimination of Racial Discrimination considered the 20th to 22nd periodic reports of Ecuador, submitted in a single document (CERD/C/ECU/20-22), at its 2169th and 2170th meetings (CERD/C/SR.2169 and SR.2170), held on 7 and 8 August 2012. At its 2199th meeting (CERD/C/SR.2199), held on 29 August 2012, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the State party's report, common core document and update on that document. It is grateful for the oral replies given by the high-level delegation of the State party to the questions raised and appreciates the dialogue it had with the delegation.

#### B. Positive aspects

3. The Committee welcomes the adoption of the 2008 Constitution and notes with interest, among other things:

- (a) The definition of the State party as an intercultural and plurinational State;
- (b) The recognition of the rights of nature and protection of the environment;
- (c) The protection of the individual and collective rights of indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and communes.

4. The Committee welcomes the adoption of the 2011 Organic Act on Intercultural Education.

5. The Committee applauds the work of civil society on the design and implementation of the self-identification campaign for the 2010 census.

6. The Committee notes with interest the provisions of plans that support implementation of the Convention, such as the National Development Plan (National Plan for Good Living 2009–2013), which seeks to improve the situation of groups that have

traditionally been excluded and to eliminate discrimination, and the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion.

7. The Committee takes note with satisfaction of the decrease in infant and maternal mortality rates associated with improvements in the recognition and implementation of intercultural childbirth practices in public health institutions.

8. The Committee welcomes the State party's reaffirmation of its firm commitment to complying with the ruling of the Inter-American Court of Human Rights in favour of the Kichwa indigenous people of Sarayaku.

9. The Committee welcomes the contributions of the Ecuadorian Ombudsman's Office to its work.

10. The Committee notes with interest the efforts made by the State party to integrate refugees — mostly of Colombian origin — into Ecuadorian society and welcomes the recognition of these efforts by the Office of the United Nations High Commissioner for Refugees in its awareness campaign *Gracias Ecuador* ("Thanks, Ecuador").

## C. Concerns and recommendations

### **Policies on the elimination of racial discrimination**

11. The Committee takes note with interest of the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion, but is concerned by the fact that few representatives of the peoples and nationalities of the State party were involved in the preparation of the plan. It is also concerned that the plan has not been properly disseminated and implemented in the most isolated parts of the State party, where racial discrimination persists.

**The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 8) and urges the State party to draw up and implement, with the effective participation of the peoples and nationalities that continue to face discrimination and exclusion, a comprehensive national policy to combat racism and racial discrimination.**

### **Special measures**

12. While taking note with interest of Ministerial Decision No. 0142, which sets out the special measures to facilitate access to public office by Afro-Ecuadorians, indigenous people and Montubios, the Committee regrets the lack of information on the practical implementation of these special measures to assist such persons (arts. 1 and 6).

**The Committee recommends that the State party take into account its general recommendation No. 32 (2009) on the meaning and scope of special measures when taking steps to guarantee the exercise of the rights established in the Constitution and the Convention by the indigenous, Afro-Ecuadorian and Montubio population. The Committee also requests that the State party include information on this subject in its next periodic report.**

### **The Ecuadorian population of Roma origin**

13. The Committee regrets that the State party considers the Ecuadorian population of Roma origin to be a foreign group and that it does not have up-to-date information on the enjoyment by the Ecuadorian people of Roma origin of their rights (art. 2).

**The Committee, reiterating its previous recommendation (CERD/C/ECU/CO/19, para. 11), reminds the State party of its general recommendation No. 27 (2000) on**

**discrimination against the Roma and encourages the State party to adopt and put into effect national strategies and programmes to improve the situation of the Roma and to protect them against racial discrimination.**

#### **Refugees**

14. The Committee regrets that, despite the State party's efforts to integrate people in need of international protection, who are mainly refugees of Colombian origin, such people continue to face discrimination and exclusion in the exercise of their rights, including in access to employment, housing and medical care. The Committee is also concerned about reports of discrimination against children in schools on the grounds of their nationality or refugee status (arts. 2 and 5).

**The Committee urges the State party to take effective measures to promote the integration of people in need of international protection, who are mainly refugees of Colombian origin, by, among other things, guaranteeing their access without discrimination to education, employment and health services.**

#### **Migrant workers and their families**

15. The Committee is concerned that, in practice, migrant workers continue to face discrimination and problems in exercising their rights. It also points out with concern that certain media draw a link between migrants and crime (arts. 2 and 5).

**The Committee encourages the State party to take into account its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that the State party take effective educational and awareness-raising measures to combat any tendency to stereotype or stigmatize migrant workers, especially on the part of public servants, teachers, the media and society at large. In addition, the Committee urges the State party to continue eliminating the obstacles that, in practice, hinder the enjoyment by migrants in the State party of their rights under the Convention.**

#### **Combating discrimination in the media**

16. The Committee continues to be concerned about the negative representation of indigenous and Afro-Ecuadorian people in the media (arts. 4 (a) and 7).

**The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 22) that the State party should adopt measures that focus on the social role of the media, including through the education and training of reporters and others working in the media, as well as campaigns aimed at the general public to combat the racial prejudice that can lead to racial discrimination against indigenous and Afro-Ecuadorian people and to foster tolerance and respect among the various racial groups in the State party.**

#### **Lack of participation, consultation and consent**

17. The Committee regrets that progress on the proposed law on consultation and participation has stalled in the National Assembly. The Committee 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 bar to its implementation. The Committee notes with concern the absence of any effective, systematic or regulated consultations with indigenous peoples to obtain their prior, free and informed agreement on the extraction of natural resources or on other matters that affect them. The Committee is also concerned about the public statements that have been made to justify the lack of consultation with indigenous peoples, given the importance of extractive

projects for the economic development of the State party. Although there have been no criminal convictions, the Committee is concerned about the tendency to resort to arbitrary detention and unfounded accusations against, for the most part, indigenous leaders who organize or take part in social protests relating primarily to laws and policies that regulate the use of natural resources and the right to effective consultation with a view to obtaining consent (art. 5 (b), (d) (v), (d) (ix) and (e)).

**The Committee, in the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, calls on the State party to step up its efforts to establish constructive dialogue and participation mechanisms, and urges it to implement the necessary measures to establish effective consultation processes with the communities concerned, in accordance with international standards, for any project that might affect the territory of indigenous peoples or their livelihoods. The Committee is of the view that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and it recalls the role of both the public and the private sectors in this regard. The Committee also urges the State party to protect indigenous people from physical attacks and intimidation in connection with the resources on their territories. It further invites the State party to guarantee that the legitimate fight against crime does not restrict the legitimate exercise of the freedoms of expression, peaceful assembly and association of indigenous peoples, people of African descent, Montubio people and other ethnic groups in the State party.**

#### **Lack of judicial proceedings in cases of racial discrimination**

18. The Committee is concerned by the absence of racial discrimination cases in the country's courts and by reports that such cases are often dismissed, particularly when they are brought by indigenous persons, Afro-Ecuadorians or Montubios (arts. 5 (a) and 6).

**The Committee reiterates its previous recommendation in this regard (CERD/C/ECU/CO/19, para. 21) and urges the State party to provide training to court officials who deal with cases involving racial discrimination against indigenous persons, Afro-Ecuadorians and Montubios. In the 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 recommends that the State party redouble its efforts to provide equal access to justice for all and to ensure the wide distribution of information on the domestic remedies available in cases of racial discrimination, the existing legal avenues for obtaining reparation in the event of discrimination and the individual complaint procedure provided for in article 14 of the Convention.**

#### **Coordination between the indigenous and ordinary justice systems**

19. The Committee is concerned that progress in respect of the draft bill on coordination and cooperation between the indigenous and ordinary justice systems has stalled in the National Assembly. It is also concerned by the slow pace of progress in the development of legal instruments governing the areas of authority, jurisdiction and responsibilities of the indigenous justice system (arts. 2, 5 (a) and 6).

**The Committee urges the State party to ensure respect for and recognition of the traditional systems of justice of indigenous peoples in accordance with international human rights law and reiterates its recommendation (CERD/C/ECU/CO/19, para. 12) that the State party expedite the passage of the draft bill aimed at harmonizing and regulating the functions, jurisdiction and responsibilities of the indigenous justice system and the national justice system.**

### **Economic, social and cultural rights of indigenous, Afro-Ecuadorian and Montubio peoples and nationalities**

20. The Committee is concerned by the persistent poverty and marginalization of Afro-Ecuadorians and Montubios in the State party and by ongoing discrimination against them in their enjoyment of the rights enshrined in the Convention, including access to basic services, education, employment and public office. It also regrets the difficulties faced by Afro-Ecuadorians in Esmeraldas Province in exercising their right to own property, whether alone or in association with others, and the reported cases of physical violence against members of the Afro-Ecuadorian community (art. 5).

**The Committee reiterates its previous recommendation to the State party (CERD/C/ECU/CO/19, para. 19) that it continue its efforts to implement socially inclusive policies and poverty-reduction policies in order to ensure that the rights recognized in the Convention can be exercised and urges the State party to allocate sufficient resources to the institutions responsible for combating discrimination against Afro-Ecuadorians and Montubios. In the light of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party compile disaggregated data on unemployment, access to property ownership, housing, health care and other basic services which can serve as a basis for the implementation of effective initiatives to safeguard Afro-Ecuadorians' and Montubios' ability to exercise their rights and to promote their increased participation in public affairs. The Committee urges the State party to investigate attacks against members of the Afro-Ecuadorian community and to duly punish the perpetrators.**

21. Although the Committee notes with interest that the State party takes linguistic and cultural factors into consideration when providing certain basic services, the Committee is concerned by the insufficient availability of suitable, accessible health-care services to the indigenous population, particularly in rural areas. It also regrets the lack of information on health indicators and on the steps taken to improve them (art. 5 (e)).

**The Committee encourages the State party to continue to take the necessary steps to ensure access to appropriate basic services and institutional health care, particularly in rural areas, that are adapted to the different linguistic and cultural characteristics of indigenous peoples.**

22. Although it notes with interest that bilingual intercultural education is offered in the State party, the Committee wishes to express its concern about indigenous peoples' high illiteracy rates and difficulties in gaining access to schooling, including higher education, to which only 4.9 per cent of the indigenous population has access. It is also concerned by the lack of information on the implementation of the bilingual intercultural education system (art. 5 (e) (v)).

**The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 20) and urges the State party to allocate the human and financial resources needed to implement the bilingual intercultural educational system. It encourages the State party to work in partnership with indigenous peoples to develop policies to raise indigenous peoples' educational levels and access to schooling of a type that conforms to the intercultural bilingual education model.**

### **Multiple forms of discrimination**

23. The Committee is concerned by the fact that women belonging to indigenous, Afro-Ecuadorian, Montubio, migrant and refugee communities continue to be confronted with multiple forms of discrimination and gender-based violence in all areas of life. It is also concerned by reports that such women have difficulty in gaining access to justice (art. 5).

The Committee recommends that the State party bear in mind the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it incorporate a gender perspective into all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination to which women are subject. The Committee also calls upon the State party to continue to implement the measures that it has taken to support women victims of discrimination and provide them with greater access to justice. It also requests the State party to include information in its next report on the progress made in respect of specialized courts for hearing cases involving women's issues and domestic violence.

#### **Free peoples living in voluntary isolation**

24. The Committee takes note of the information shared by the delegation concerning the mobile lifestyle of free peoples living in voluntary isolation and the demarcation of the Tagaeri-Taromenani Protected Zone. The Committee is concerned, however, about the vulnerability of these peoples, including the Tagaeri-Taromenani peoples, particularly in connection with the State party's policies on extractive industries and the actions of private-sector agents (arts. 2 and 5).

**The Committee calls upon the State party to take action, as a matter of urgency, to implement the precautionary measures established by the Inter-American Commission on Human Rights (2006) on behalf of free peoples living in voluntary isolation and urges the State party to strengthen and adapt its strategies for protecting the lives and livelihoods of those peoples. It encourages the State party to take the nomadic lifestyle of these peoples into account and to consider expanding the protected zone based on feasibility studies that take cultural and environmental impacts into consideration. The Committee urges the State party to suspend extractive activities that threaten the lives or livelihoods of free peoples living in voluntary isolation.**

### **D. Other recommendations**

#### **Follow-up to the Durban Declaration and Programme of Action**

25. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the provisions of the Durban Declaration and Plan of Action at the national level.

#### **Dissemination of reports**

26. The Committee recommends that the State party make its reports and the Committee's concluding observations available to the general public and that it disseminate the concluding observations in the official language and, where appropriate, in other languages that are commonly used in the State party.

**Follow-up to concluding observations**

27. 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 18 and 19 above.

**Paragraphs of particular importance**

28. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 21 and 24 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

**Preparation of the next report**

29. The Committee recommends that the State party submit its twenty-third and twenty-fourth periodic reports in a single document by 4 January 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also 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 reporting guidelines in HRI/GEN/2/Rev.6, chap. I, para. 19).

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