



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 eighteenth to twenty-first periodic reports of Mexico*

1. The Committee considered the combined eighteenth to twenty-first periodic reports of Mexico (CERD/C/MEX/18-21), submitted in one document, at its 2745th and 2746th meetings (CERD/C/SR.2745 and 2746), held on 8 and 9 August 2019. At its 2765th meeting, held on 23 August 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined eighteenth to twenty-first periodic reports of the State party, submitted in one document. The Committee wishes to express its appreciation for the open and constructive dialogue with the high-level delegation, in which all branches of the Government of the State party were represented, and is grateful for the additional information provided after the dialogue.

B. Positive aspects

3. The Committee welcomes the progress made by the State party in combating racial discrimination, in particular the adoption of the following legislative, institutional and public policy measures:

- (a) Constitutional recognition of Mexican people and communities of African descent (2019);
- (b) Amendments to the Federal Act on the Prevention and Elimination of Discrimination (June 2018);
- (c) Establishment of the National Institute of Indigenous Peoples (2018);
- (d) Adoption of the National Programme for Indigenous Peoples 2018–2024;
- (e) Conduct of the first national survey on discrimination (2017) by the National Institute of Statistics and Geography.

4. The Committee notes with satisfaction that the State party has extended a standing invitation for special procedure mandate holders of the Human Rights Council to visit the country. In this respect, the Committee welcomes the reception by the State party of a large number of visits from mandate holders in recent years. In particular, it welcomes the visit of the Special Rapporteur on the rights of indigenous peoples in November 2017, and encourages the State party to ensure that all the recommendations made in her report (see A/HRC/39/17/Add.2) are duly followed.

* Adopted by the Committee at its ninety-ninth session (5–29 August 2019).



5. The Committee welcomes the active participation of Mexican civil society, including authorities and organizations of indigenous peoples and people of African descent, and the National Human Rights Commission in the reporting process through the submission of information orally and in writing to the Committee. The Committee encourages the State party to continue promoting opportunities for engagement with civil society and to make its cooperation with the National Human Rights Commission more robust.

C. Concerns and recommendations

Data collection

6. Although the Committee notes the efforts made by the State party to improve data collection, it is concerned by the ongoing failure to adopt a definitive method of collecting reliable information on the ethnic breakdown of the population, which means that there are still serious discrepancies in the data that are produced. The Committee acknowledges that the survey conducted in 2015, at the midpoint between two censuses, included a category that enabled persons of African descent to identify themselves as such. However, it is concerned that such persons in some parts of the country did not fully identify with the terminology that was used, which hampered the collection of reliable information on this population group (art. 2).

7. **The Committee recommends that the State party continue making efforts to improve systematic data collection and that it conduct a review of the identity categories and methods of self-identification used in the systematic collection of data with a view to producing reliable, up-to-date, disaggregated and comprehensive information on the ethnic make-up of the State party's population and on the population's socioeconomic situation, including with regard to access to employment, education, health services and justice. The Committee encourages the State party to continue its efforts to adopt, with the active involvement of indigenous peoples, Mexican persons of African descent, other ethnic groups and civil society organizations, an appropriate methodology for the 2020 population and housing census, including in respect of self-identification. The Committee draws the State party's attention to its general recommendation No. 4 (1973) on reporting by States parties with regard to the demographic composition of the population.**

Definition of racial discrimination

8. The Committee is concerned that, according to the information provided by the delegation, the laws on the prevention and elimination of racial discrimination in the State party's 32 federative entities do not uniformly include all the elements set out in article 1 of the Convention (art. 1).

9. **The Committee recommends that the State party undertake a review of federal laws and those of the federative entities to ensure that the definitions and prohibitions contained in those laws reproduce the contents of article 1 of the Convention and that they cover acts of direct and indirect discrimination in all spheres of law and public life. The Committee refers the State party to its general recommendation No. 14 (1993) on article 1 (1) of the Convention.**

Racial hatred and incitement to racial discrimination

10. The Committee reiterates its previous concern (CERD/C/MEX/CO/16-17, para. 11) about the lack of legislation criminalizing all actions mentioned in article 4 of the Convention. It is concerned about the ongoing failure to make race-based motives circumstances that aggravate an offence (art. 4).

11. **The Committee urges the State party to criminalize acts of racial discrimination and the actions described in article 4 of the Convention, as previously recommended by the Committee and as ordered by the Supreme Court in its decision No. 805/2018 of 30 January 2019. In addition, it recommends that the State party**

ensure that race-based motives be considered aggravating circumstances for sentencing. The Committee refers the State party to its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech.

Institutions

12. The Committee is concerned that, despite the efforts that have been made, the National Council for the Prevention of Discrimination does not have the financial, human and technical resources to respond effectively to all cases of racial discrimination in the State party. In addition, most of the State party's federative entities do not have an institution responsible for the prevention and elimination of racial discrimination (art. 2).

13. The Committee recommends that the State party make greater efforts to provide the Council with the human, financial and technical resources it needs to fulfil its mandate effectively and that it take measures to ensure that every federative entity has an institution responsible for receiving complaints relating to racial discrimination and promoting policies and measures aimed at eliminating racial discrimination. The Committee encourages the State party to set up mechanisms to enable those institutions and the Council to coordinate with each other.

Combating racial discrimination

14. Although the Committee takes note of the implementation of the National Programme for Equality and Non-Discrimination, it is concerned that structural and historical racial discrimination against indigenous peoples and the Mexican population of African descent continues to be deeply rooted and is an obstacle to the construction of a multicultural society based on equality and fairness (arts. 2 and 7).

15. The Committee urges the State party to formulate a comprehensive national policy on combating racial discrimination that entails the adoption of a national plan against racism and discrimination, while ensuring that indigenous peoples, the Mexican population of African descent and members of other minority groups who continue to be victims of racial discrimination are actively involved in the development and implementation of both the policy and the plan. The Committee also recommends that the State party earmark the necessary human, technical and financial resources and set up mechanisms to enable local, State and federal institutions to coordinate with each other in order to ensure that the policy is implemented properly.

Discrimination against the Mexican population of African descent

16. While the Committee welcomes the State party's efforts to heighten the visibility of the Mexican population of African descent, it is concerned by the lack of specific information on the particular measures it is taking to ensure that population group's exercise and enjoyment of its rights. The Committee notes with concern that Afro-Mexican people and communities continue to face discrimination, high levels of marginalization and social exclusion (arts. 1, 2 and 5).

17. The Committee, drawing on its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent, recommends that the State party, with the due involvement of the Mexican population of African descent and consideration given to that group's specific needs, take the following actions:

(a) **Adopt the special measures necessary to ensure the exercise and enjoyment by the Mexican population of African descent of its civil, political, economic, social and cultural rights with a view to advancing that population group's social inclusion and active participation in public and political life, including in decision-making positions;**

(b) **Make greater efforts to eliminate racial discrimination against the Mexican population of African descent and ensure that it is protected from all acts of**

discrimination committed by State agencies, public officials and any other person, group or organization.

Situation of indigenous peoples

18. The Committee is concerned that, despite the measures that have been adopted by the State party, indigenous peoples are still affected by racial discrimination, as evidenced by high rates of poverty and marginalization and the difficulties they face in gaining access to adequate employment, education and health services (arts. 1, 2 and 5).

19. The Committee recommends that the State party redouble its efforts to eliminate institutional and structural discrimination against indigenous peoples and to ensure that the National Programme for Indigenous Peoples 2018–2024 and other policies with similar aims are implemented. In making these efforts, the State party should take into account inequality gaps and the specific needs of indigenous peoples with a view to achieving meaningful reductions in poverty and inequality among this group of the population. The Committee recommends that the State party ensure that indigenous peoples take part in the design and implementation of social programmes meant for their benefit.

Free, prior and informed consent

20. Although the Committee notes that the State party recognizes the right of indigenous peoples to be consulted in a free, prior, informed and culturally appropriate manner, it notes with concern that there are still serious shortcomings in the consultation processes. According to reports, most consultations held with a view to obtaining free, prior and informed consent are not held in advance of the activity in question, do not take into account the traditions, customs, culture and necessary representation of the peoples concerned, do not provide clear, accurate and culturally appropriate information and, to boot, are often held against a backdrop of threats, criminalization and harassment, meaning that any consent obtained is not freely given. In this connection, the Committee notes with concern the reports that it has received on citizen consultations on large investment projects such as the Maya train and the trans-isthmus corridor, which could affect indigenous peoples' territories. The consultations in question did not take the views of indigenous communities into account or respect the requirements of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) (arts. 2 and 5).

21. The Committee recommends that the State party:

(a) Design and adopt a legal procedure for obtaining the free, prior and informed consent of indigenous peoples, based on a method that guarantees their right to be consulted on any legislative or administrative measure likely to affect their rights, in line with international standards, in consultation with them and with consideration given to their traditions and cultural characteristics;

(b) Make certain that, before permits are granted, and from the design of economic development, energy, tourism, infrastructure and natural resource exploitation projects to their implementation, due respect is given to the right of indigenous peoples whose rights, lands, territories and resources may be affected to be consulted with a view to obtaining their free, prior and informed consent;

(c) Ensure that consultation processes are systematic, timely, transparent, culturally appropriate and safe, that they are carried out in good faith, that the peoples concerned are duly represented, and that international standards on indigenous peoples' rights are respected; ensure that, as an integral part of these processes, independent and impartial studies of the possible environmental and human rights impact of development projects in indigenous peoples' territories are conducted;

(d) Give due consideration to the recommendations on prior consultation made by the Special Rapporteur on the rights of indigenous peoples in both her report

(A/HRC/39/17/Add.2) and her technical note of February 2019 on the consultation and free, prior and informed consent of indigenous peoples in Mexico.

Indigenous lands, territories and resources

22. The Committee notes with concern that the State party does not have satisfactory mechanisms for the protection, preservation, reclamation and restitution of lands, territories and resources traditionally occupied or used by indigenous peoples. This situation, together with other factors, including the launch of investment and development projects, has led to the forced displacement of indigenous peoples, disproportionately affecting their traditional ways of life and means of subsistence. Furthermore, the Committee is concerned that the effects of the climate crisis, such as the degradation of land and water resources, may have a disproportionate impact on indigenous peoples (arts. 2 and 5).

23. **The Committee, drawing on its general recommendation No. 23 (1997) on the rights of indigenous peoples, urges the State party to:**

(a) **Establish, in coordination with the judicial and agricultural authorities and other relevant institutions, a satisfactory and effective mechanism that facilitates the reclamation and restitution of ancestral lands and territories and ensure that it has sufficient human, technical and financial resources;**

(b) **Ensure the protection of indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources by, inter alia, providing the necessary legal recognition and safeguards, in line with international standards;**

(c) **Provide satisfactory protection from forced displacement, while respecting the rights, customs, traditions and culture of indigenous peoples, taking into account article 10 of the United Nations Declaration on the Rights of Indigenous Peoples and guaranteeing, where possible, the option of return;**

(d) **Specify, in consultation with indigenous peoples, measures that promote mitigation, compensation for damage or losses and participation in the benefits of development projects; also specify measures to mitigate the effects of the climate crisis on their lands, territories and resources with a view to protecting their traditional ways of life and means of subsistence.**

Multiple forms of discrimination

24. The Committee is concerned about the multiple forms of discrimination affecting indigenous women and Mexican women of African descent, which limit their access to education, work and culturally appropriate health services and their participation in public life and decision-making. In addition, the Committee is seriously concerned by reports that medical personnel in public health institutions have been responsible for discrimination and violence against indigenous women seeking access to sexual and reproductive health services and that in some of those cases sterilization procedures have been performed without free and informed consent (arts. 1 and 5).

25. **In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:**

(a) **Step up its efforts, while giving due consideration to cultural and linguistic differences, to combat the multiple forms of discrimination faced by indigenous women and Mexican women of African descent to ensure that they have adequate access to employment, education and health services and can participate fully in public affairs;**

(b) **Ensure that indigenous women and Mexican women of African descent have access to culturally relevant sexual and reproductive health services, including by strengthening the Ministry of Health's plan for the humane, intercultural and safe care of women during pregnancy, childbirth and the post-partum period;**

(c) **Investigate all acts of discrimination and violence against indigenous women and Mexican women of African descent in the health-care system, including**

cases of involuntary sterilization, so that those responsible are prosecuted and duly punished;

(d) Conduct outreach and training campaigns for medical personnel to raise awareness and eliminate racial discrimination in the health system, particularly against indigenous women and Mexican women of African descent.

Discrimination in the justice system

26. The Committee is concerned that corruption and the lack of transparency, as well as the persistence of discriminatory practices in the justice system, significantly hamper indigenous peoples' access to justice and result in violations of their rights to due process and an adequate defence. In addition, the Committee notes with concern the high degree of impunity in the justice system, including in relation to gender-based violence, and emphasizes that the lack of coordination between the ordinary and the indigenous justice systems is an obstacle to access to justice for indigenous persons, in particular indigenous women who are victims of gender-based violence (arts. 2 and 6).

27. **With reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and operation of the criminal justice system, the Committee recommends that the State party:**

(a) Eliminate racial discrimination in the justice and prison systems by providing training for police officers, prosecutors, lawyers, defenders, judges and justice and prison system officials in order to raise their awareness of the negative effects of racial discrimination and ensure the effective application of the Convention;

(b) Take the necessary measures to combat corruption and ensure transparency in the justice system as a means of combating racial discrimination and safeguarding respect for human rights;

(c) Intensify its efforts to ensure access to justice for indigenous peoples, upholding their fundamental rights and due process guarantees, ensuring access, when necessary, to qualified lawyers with knowledge of indigenous languages and interpreters who can explain to them the content of judicial proceedings;

(d) Conduct thorough investigations into all cases of gender-based violence, including sexual violence, against indigenous women and Mexican women of African descent, ensuring that the perpetrators are duly punished and guaranteeing the victims access to justice and effective and culturally appropriate protection mechanisms;

(e) Continue making efforts to recognize, respect and strengthen the indigenous justice system, in line with international human rights law, including through harmonization, cooperation and coordination involving the authorities of the ordinary and indigenous systems of justice at both the local and the federal levels, not least with regard to access to justice for indigenous women who are victims of gender-based violence.

Freedom of expression

28. The Committee is seriously concerned by reports of attempts on the lives of journalists and community communicators who denounce human rights violations, in particular violations of the rights of indigenous peoples, including to their territories. Attacks on journalists are reported to have increased by more than 163 per cent between 2010 and 2016. The Committee is also concerned by the bureaucratic obstacles to registering community radio stations, including indigenous community radio stations, and the limited support in the budget for their operation (arts. 2 and 5).

29. **The Committee urges the State party to conduct thorough investigations into all attempts on the lives and harassment or persecution of journalists and community communicators, those defending the rights of indigenous peoples in particular, and to prosecute and duly punish the perpetrators. The Committee recommends that the State party take the necessary steps to facilitate the registration of indigenous**

community radio stations and ensure enforcement of the Federal Telecommunications and Broadcasting Act, so that indigenous community radio stations, in view of their fundamental role in transmitting indigenous knowledge, culture and traditions, have the financial support they need to operate.

Human rights defenders

30. The Committee is gravely concerned that human rights defenders, including leaders and defenders of the rights of indigenous peoples, Mexican persons of African descent and migrants, continue to be subjected to violence, threats and attempts on their lives. The Committee is also concerned by the misuse of the criminal justice system to prosecute defenders of the rights of indigenous peoples, Mexican persons of African descent and migrants. In addition, it notes with concern reports that both State authorities and representatives of the private sector sometimes make statements to call into question the legitimacy of the work of defenders of the rights of indigenous peoples (arts. 2 and 5).

31. **The Committee recommends that the State party:**

(a) **Conduct thorough, impartial and effective investigations into all reports of attempts on the lives, physical integrity or freedom of human rights defenders, as well as violence, threats, harassment, intimidation, bullying and defamation targeting indigenous leaders and defenders of the rights of indigenous persons, Mexican persons of African descent and migrants;**

(b) **Adopt the necessary measures, including the relevant budgetary earmarks, to ensure the effective performance of the mechanism for the protection of human rights defenders and journalists, so that, with the effective participation of civil society and representatives of indigenous peoples and Mexican persons of African descent, it can design and adopt effective protection strategies in which the cultural, regional and gender differences that may characterize indigenous peoples and the Afro-Mexican population, as well as the collective approach required by some measures, are taken into account;**

(c) **Organize information and awareness-raising campaigns on the crucial work done by human rights defenders and have the federal and State authorities give public recognition to that work with a view to creating a climate of tolerance in which human rights defenders can work free from all forms of intimidation, threats and reprisals.**

Working conditions

32. The Committee notes with concern that Mexican indigenous persons and Central American indigenous migrant workers, in the agricultural sector and in domestic service in particular, are victims of discrimination and violations of their labour rights, resulting in labour exploitation (arts. 2 and 5).

33. **The Committee urges the State party to guarantee, in law and in practice, fair and satisfactory working conditions for indigenous Mexican workers and indigenous Central American migrants working in the agricultural sector and in domestic service. It also urges the State party to adopt appropriate measures to prevent forced labour and to investigate and prosecute all cases of labour exploitation, including forced labour, guarantee that victims have access to justice and the labour inspection system and receive adequate protection and redress, and ensure that the parties responsible are duly prosecuted and punished in a manner commensurate with the seriousness of the offence.**

Migrants, asylum seekers and refugees

34. The Committee recognizes that the State party is a "migration corridor". However, it is concerned that, on occasion, the implementation of the migration policies that have been adopted does not properly ensure that the rights of migrants and asylum seekers, children in particular, are given effective protection. The Committee notes with concern that asylum seekers and migrants in an irregular situation, including accompanied and unaccompanied

children, are automatically placed in so-called migrant holding centres, where living conditions are unsatisfactory. The Committee is also concerned about the possible negative impact of the work of the National Guard on migration control and the use of racial profiling by migration authorities, which has led to arbitrary detention and systematic refoulement without adequate legal advice. Similarly, it is seriously concerned about discrimination and excessive use of force against migrants. Lastly, the Committee also notes with concern that the phenomenon of migrant caravans has led to an increase in discourse informed by discriminatory views, racial hatred and xenophobia targeting migrants (arts. 2 and 5).

35. **The Committee urges the State party to:**

(a) **Honour its commitment to implement the Migration Policy 2018–2024 in a way that respects and protects the human rights of migrants, abides by the principle of non-refoulement and takes due account of the Global Compact for Safe, Orderly and Regular Migration;**

(b) **Develop alternatives to the detention of asylum seekers and migrants in an irregular situation;**

(c) **Ensure that, in accordance with the General Act on the Rights of Children and Adolescents, no migrant children are detained on account of their migration status and that adequate care and protection protocols are followed, with consideration given to the principle of the best interests of the child;**

(d) **Take the measures necessary to ensure that living conditions in migrant holding centres are satisfactory, in accordance with international standards;**

(e) **Assess the effects of the deployment of the National Guard for the control of migration with a view to withdrawing it from that task and step up efforts to eliminate racial profiling in migration management and operations, including by distributing the guide on public action for the prevention of racial profiling widely and duly following its precepts;**

(f) **Conduct thorough investigations into all acts of discrimination, excessive use of force and abuse of authority committed against migrants, ensuring that victims have access to effective judicial remedies and that perpetrators are prosecuted and duly punished;**

(g) **Take effective measures to prevent and combat incitement to racial discrimination and expressions of racism against migrants in the media.**

D. Other recommendations

Ratification of other treaties

36. **Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights treaties that it has not yet ratified, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the 1961 Convention on the Reduction of Statelessness, and the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189). Lastly, the Committee recommends that the State party consider ratifying the 2013 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the 2013 Inter-American Convention Against All Forms of Discrimination and Intolerance.**

Follow-up to the Durban Declaration and Programme of Action

37. **In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World**

Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account 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 taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

38. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report detailed information on the concrete measures adopted within that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

39. The Committee recommends that the State party continue consulting and increasing its dialogue with the National Human Rights Commission and civil society organizations concerned with human rights protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

40. The Committee recommends that the State party make its reports available to the general public as soon as they are submitted, and that it disseminate the present concluding observations in the official language and in other languages commonly used in the State party.

Follow-up to the present concluding observations

41. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 11 (racial hatred and incitement to racial discrimination), 21 (b) (free, prior and informed consent) and 31 (b) (human rights defenders) above.

Paragraphs of particular importance

42. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 15, 23, 25 and 35 (e) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

43. The Committee recommends that the State party submit its combined twenty-second to twenty-fourth periodic reports, as a single document, by 22 March 2022, taking into account the reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.