



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

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Seventy-sixth session

Summary record of the 1994th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 2 March 2010, at 10 a.m.

Chairperson: Mr. Kemal

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth periodic reports of Panama (continued) (CERD/C/PAN/15-20; CERD/C/PAN/Q/15-20 and Add.1; HRI/CORE/1/Add.14/Rev.1)

1. *At the invitation of the Chairperson, the members of the delegation of Panama took places at the Committee table.*

2. **Mr. Fábrega** (Panama) said that Panama, a transit-and-trade country, was home to a multiracial, pluriethnic and multilingual society. Most of its inhabitants came from mixed national and ethnic backgrounds. While certain groups had preserved their origins and traditions, many others had mingled and their cultures had blended.

3. **Mr. Acosta** (Panama) said that the country's indigenous policy had greatly evolved since Panama's ratification in 1971 of the Indigenous and Tribal Convention, 1957 (No. 107) of the International Labour Organization (ILO) and, even more so, since the proclamation by the United Nations of the First International Decade of the World's Indigenous Peoples (1995–2004). Indigenous communities had increasingly become the agents of their own development. Divisions and departments dealing with indigenous issues, mostly headed by members of indigenous communities, had been established in ministries and other public institutions and bodies, such as the National Environment Authority. The National Directorate for Indigenous Policy, which oversaw Government action relating to indigenous communities, worked in close cooperation with those mechanisms.

4. Until the late 1980s, only geographical criteria had been used for counting indigenous people during national censuses, but other equally crucial elements such as language and culture were now also taken into account. All indigenous people were being counted, whether they lived in indigenous regions (*comarcas*) or elsewhere. The figures obtained were therefore both more precise and more realistic. The next population and housing census would be conducted in May 2010. Indigenous community representatives had participated in the drafting of the questionnaires; they would also collect data in the field. An indigenous language communication campaign had been launched in order to encourage everyone to participate.

5. Current legislation guaranteed recognition of and respect for indigenous religions and peoples. In particular, all statutes of indigenous regions contained specific provisions on the communities' beliefs. With regard to indigenous peoples' rights to the lands, territories and resources they had traditionally owned, occupied or used, which were enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, Panama's five indigenous regions had been established well before the adoption of the Declaration in 2007. A total of approximately 16,953 km² (i.e., 22.5 per cent of the national territory) were reserved for use by indigenous peoples. Lands to be designated as collectively belonging to the Bribri and Naso people and other communities living outside indigenous regions would be added shortly, representing an additional 6,000 to 8,000 km².

6. For over a decade there had been considerable seasonal migration of Ngobe workers to Costa Rica for the coffee harvest. That phenomenon posed a problem for the education of school-age Ngobe children who could not attend school regularly. In an effort to remedy the situation, the Governments of Panama and Costa Rica, with the support of the International Labour Organization (ILO) and the International Organization for Migration (IOM), had held bilateral consultations leading to an agreement whereby the education received by children of seasonal migrant workers was validated in either country.

7. Executive Decree No. 274 of 2007 had established the Department of Bilingual Intercultural Education, responsible for planning, overseeing and coordinating all activities relating to bilingual education in indigenous regions. Furthermore, the National Assembly was currently considering draft legislation on which all indigenous communities had been consulted and which provided for the implementation of a bilingual school programme.

8. A high-level commission had been set up in August 2009 to study the claims of indigenous communities affected by the construction of the Changuinola Hydropower Dam (project Chan-75) in Bocas del Toro Province. Pursuant to the work of the commission, an agreement in principle had been signed on 26 November 2009 between the Government, the AES Changuinola company and the Ngobe communities of Charco La Pava, Valle del Rey, Changuinola Arriba and Nace de Riscos. The signatories had agreed to identify practical solutions in keeping with the provisions of the American Convention on Human Rights, to which Panama was a party. The indigenous communities had acknowledged the importance of the Chan-75 project for national development and accepted the idea of relocation. AES, for its part, had agreed to compensate the families affected and help resettle them under individual agreements. The terms of those agreements were yet to be defined, under the supervision of the Inter-American Commission on Human Rights, to which the case had been referred.

9. Under the above-mentioned agreement, the Government had undertaken to designate certain lands as the collective property of indigenous families affected by the dam construction. A task force comprising, among others, members of the National Environment Authority, the Agrarian Reform Directorate and the Industrial Policy Directorate had been entrusted with identifying those lands. It had officially begun work on 26 February 2010 and was due to submit a definitive proposal within two months.

10. The notion of *comarca* or legal designation of indigenous territories recognized by the State of Panama presupposed large-scale territorial land reorganization, its objective being to legalize the status of indigenous lands of which the communities concerned would have usufruct. The Government had also started the process of demarcation of the 16,000 ha of land allocated to the Naso in the Ngobe-Bugle *comarca*. The Intergovernmental Commission for the Development of the Ngobe-Bugle Region, established by Executive Decree No. 206 of 8 May 1995, had visited the area several times to that end. The Government would not permit any infringement of the rights of indigenous peoples living in the various *comarcas*.

11. **Ms. Vega** (Panama) said that the Inter-American Commission on Human Rights had taken temporary administrative measures against Panama in June 2009 in connection with an application for protection filed with the Inter-American Court of Human Rights by the organization Cultural Survival, representing the Ngobe Indians. The Commission had, accordingly, requested Panama to discontinue the construction work on the Chan-75 hydropower dam (CERD/C/PAN/Q/15-20, para. 13) on the Changuinola river and to protect and guarantee the integrity and freedom of movement of the Ngobe Indians living in the project area.

12. The complainant had alleged that the State had granted a 20-year concession to the AES company in May 2007 to build dykes on the Changuinola river in the west of the country. Construction of the hydropower dam had commenced in January 2008 and had affected four indigenous communities, i.e., only 1,000 individuals.

13. The Government had provided information to the Commission on 29 January 2010 on the measures to ensure the free movement and integrity of the members of the Ngobe community. In its communication to that body of the inter-American human rights system, the Government had reaffirmed its commitment to promote the ethnic and cultural identity of Panama's indigenous communities and provided detailed information on the measures

taken to reach an amicable agreement with the communities affected by the dam construction and the AES-Changuinola company, which was responsible for its construction.

14. The Government had concluded agreements concerning, among others, freedom of movement in the area with half of the members of the four communities concerned. Consequently, in its communication to the Inter-American Commission the Government had requested that the administrative measures taken against it should be lifted in the light of the progress it had with the Ngobe, and its efforts to strengthen and implement the rights of the indigenous populations concerned.

15. On 5 February 2010, the Commission secretariat had requested Panama to submit by 15 March 2010 additional information, including on the process of restoration and rehabilitation of the sites; communities that had not signed an amicable agreement with the State and the AES company; and solutions being offered to the families in the communities that had refused to negotiate any such agreement.

16. **Mr. Falcón Moreno** (Panama) said that the Ombudsman's Office was responsible for receiving complaints of discrimination and to work on human rights promotion and education by training public officials and sections of the population and through radio and television broadcasts. As of 2009, a weekly 30-minute television programme was being broadcast on the question of discrimination, which tackled the issue from different angles. Public information was thus provided on the provisions of the International Convention on the Elimination of All forms of Racial Discrimination, domestic arrangements for recording reports, and prohibited acts and expressions.

17. With regard to the measures taken on behalf of the members of the black minority, in 2007 the National Council of the Black Ethnic Community had been established and tasked with promoting the recognition and full integration of blacks in Panama's socio-economic life. In 2009, that advisory body had been allocated an operational budget of \$770,000. A special commission appointed to put in place a Government policy aimed at the full integration of the Afro-Panamanian ethnic group had also been established by decree.

18. He rejected allegations that Afro-Panamanians were often marginalized; many senior officials and judges, including the President of the Supreme Court, and other eminent persons of Panama belonged to the Afro-Panamanian community. Nine members of Parliament were also of Afro-Panamanian origin. A question about ethnic origin had been included in the most recent national census. The question, "Do you consider yourself of African descent?", and the remainder of the questionnaire had been drafted with the help of the National Council of the Black Ethnic Community.

19. Concerning questions relating to education, teachers in Panama needed to hold a postgraduate diploma. In order to obtain such a diploma, the applicant must have successfully completed a seminar on human rights.

20. **Mr. Fábrega** (Panama) regretted that his country had submitted its periodic report so late, but assured Committee members that the current Government would scrupulously meet its obligations under the Convention. Legislation in force was by no means perfect, but there was room for improvement and true political will to improve the situation with regard to the fight against racism and discrimination.

21. **Mr. Murillo Martínez** asked whether the delegation thought that the problem of racism and racial discrimination did exist in Panama, because from what it had said, all seemed to be well in the best of all possible worlds, when, in fact, according to a household survey conducted in 2008, over 2.3 million Panamanians had acknowledged the existence

of racism in Panama, especially against blacks. Recognizing that a problem existed was crucial to improving the situation.

22. **Mr. Peter** said that, following the signing of the agreements in the Charco la Pava community in 2006, the State had apparently completely withdrawn from the area and handed over control to AES Changuinola. Noting with satisfaction that new negotiations had been conducted with the indigenous people in 2009, he still wished to know how the State had ascertained that the indigenous community gave its voluntary and informed consent, whether NGOs and civil society organizations dealing with indigenous communities had been invited to attend the negotiations as observers and whether the Government had set aside other lands for the displaced persons so they could continue to derive decent livelihoods from agriculture. He also wished to know whether Panama intended to respect the decisions to be taken at the conclusion of the regional procedures initiated, including by the Inter-American Commission on Human Rights. Given the current Government's renewed interest in indigenous communities, did the State plan to ratify the 1989 ILO Indigenous and Tribal Peoples Convention (No. 169).

23. **Mr. Prosper** asked which were the practical problems of cultural, social, political and economic development that impeded the full inclusion of black Panamanians in Panamanian society.

24. **Mr. de Gouttes** said that the Committee followed with great interest the efforts made by the Panamanian Government to improve the situation in the Charco la Pava community, because it was increasingly examining urgent petitions from indigenous communities complaining of private companies' infringements of their rights. He wished to know how many families had been affected by the dam project on the Changuinola river and how many would be displaced and subsequently relocated. He would also like to know what the joint management project for the area mentioned by the delegation would comprise.

25. **Mr. Fábrega** (Panama) said that practices of racial discrimination and racism obviously existed in Panama and had done so since the black slaves' arrival in the country. It would also be naive to claim that there were no racist Panamanians. Even so, the Government did not tolerate any racist practices or conduct that targeted any community whatsoever. With regard to Charco la Pava, it was difficult to understand why the agreements had not been honoured by the previous Government. He shared one Committee member's view that it was not legitimate for a private company to take over control of a region where national interests were at stake. Mistakes had obviously been made. The Government did not consider the question of Charco la Pava a purely indigenous issue, because the Ngobe and other communities were, in the first place, Panamanians and must enjoy the same rights as other citizens, including the indisputable right to development.

26. NGOs had not been invited to the latest negotiations because the indigenous peoples had themselves appointed their representatives and it had been considered futile to increase the number of parties to the negotiations. It was inaccurate to talk about displacement of persons to describe a situation in which most families would settle less than 1 kilometre from the lands they had occupied previously. Moreover, those families would be relocated in much better conditions and would remain in their region of origin. The Government had furthermore undertaken to build a school and a health centre that would employ health professionals from the Ngobe community in order to avoid any inter-ethnic tensions. It had also made sure to deploy police officers of Ngobe origin.

27. Of the 165 indigenous families affected by the Changuinola hydropower project, 90 per cent had already concluded an agreement providing for their resettlement in another area and for compensation. The half-dozen families that had not yet signed that agreement were expected to do so in the coming weeks. Certain families had been temporarily

relocated to temporary housing in cases when the nature of the civil engineering works had required their immediate evacuation from the area, and construction of the housing allocated to them for resettlement had not yet been completed. Restrictions on the freedom of movement of indigenous people living in the area had been imposed only where the work carried out had involved the use of explosives. Those restrictions had been for their protection and had been temporary.

28. **Mr. Acosta** (Panama) said that the Ministry of Social Development and the Ombudsman's Office had conducted a joint survey to determine the precise number of persons affected by the dam project on the Changuinola river, given that even if the number of families was known (165), it did offer a sufficiently accurate idea of the number of individuals concerned. The families that had left the area from which they had been relocated had in no way been forced to do so and had taken that decision on their own.

29. Although much progress had been made in terms of the protection of indigenous peoples' rights, as evidenced by the adoption over the past years of many laws guaranteeing the rights of those minorities, obstacles to their full social integration persisted. The most important was access to education. Development plans should be adopted in order to enable indigenous peoples to study both in the country's best universities and abroad. An encouraging development was that while in the first decade of the twenty-first century the Ngobe-Bugle region had only one indigenous doctor, 25 health professionals belonging to the region's ethnic minorities had been trained and 15 of them planned to return to their communities of origin. He was convinced that the Government's efforts would enable indigenous peoples to acquire the necessary skills to gain entry to international agencies. Also, many indigenous people who had been living in urban areas for generations were cut off from their roots and no longer spoke the language of their community of origin. The only trait identifying them as indigenous peoples was their physical appearance.

30. **Mr. Mendoza Gantes** (Panama) said that Panama had not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, because the instrument was incompatible with the Constitution and the domestic legal and political order. Panama was already a party to ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, on which ILO Convention No. 169 was based. Moreover, Convention No. 169 obliged States parties to adopt legislation in areas, including land law, which, in his Government's view, did not fall within the remit of the ILO. The fact that ILO had oversight mechanisms tasked to monitor the implementation of Convention No. 169 entailed constraints to which his Government did not wish to be subject.

31. **Mr. Diaconu** pointed out that the purpose of Convention No. 107 was essentially to integrate indigenous peoples into society, while Convention No. 169 aimed at ensuring that the States parties respected the language, culture, traditions and specific way of life of indigenous peoples and, accordingly, the right of those peoples to own and use their lands was intrinsically linked to their way of life. Consequently, it would be useful for Panama to review its position and examine the possibility of acceding to Convention No. 169, all the more so since most Latin American countries had come to recognize the need to respect the traditional way of life of indigenous peoples and thus recognize their rights to their ancestral lands.

32. **Mr. Peter** asked whether the State party intended to temporarily suspend the evacuation of indigenous peoples affected by the construction of the Changuinola river dam pending the decision of the Inter-American Court of Human Rights on the petition of the communities concerned, referred to it by the Inter-American Commission on Human Rights.

33. **Mr. Fábrega** (Panama) said that the decision of the Inter-American Commission on Human Rights declaring the petition admissible and requesting the Panamanian Government to take interim measures was non-binding so that Panama felt in no way obliged to implement it. Consequently, the construction of the dam had not been interrupted and the last families living in the area would be evacuated.

34. **Mr. Thornberry** said he took it from the delegation's remarks that the population's individual or collective rights — in that case those of the indigenous minorities — came after national interest. One might wonder by what criteria was a project judged to be of national interest and whether the authorities, when deciding on projects with consequences for indigenous minorities thought about whether they might not be disproportionately affected and whether their rights were taken into account. The idea was certainly not to set the national interest against indigenous rights, but, rather to strike a balance between the rights of the different segments of society. The Committee observed that the overall number of development projects was increasing worldwide and that, at the same time, the indigenous people whom they affected increasingly claimed their rights, which were often not taken into consideration. The consequences of an isolated project might, of course, not be too serious at the country level, but conversely, the cumulative effect of several projects could be catastrophic for a country's indigenous people. The Panamanian Government should therefore be aware of that risk.

35. **Mr. Cali Tzay** (Country Rapporteur) welcomed the fruitful dialogue with the delegation. In his analysis during the previous meeting, he had used many documents from NGOs and based himself essentially on Panama's periodic report. He had, however, noted a considerable discrepancy between the information provided by the State party and that produced by NGOs. Especially, even if the Government affirmed that Afrodescendants were an added value to the Panamanian identity, they continued to be discriminated against in day-to-day life. He had been surprised to learn from the delegation that indigenous people living in urban areas no longer spoke the language of the minority to which they belonged, which seemed to prove that Panamanian society — like many other Latin American societies — had a discriminatory attitude to indigenous people and that, contrary to what one of the members of the delegation had said, racism had not appeared with the arrival of African slaves, but had been present long before and exercised against the indigenous peoples.

36. The explanations provided by the delegation on the provisions of domestic legislation relating to the use and management of natural resources had shown that Panamanian legislation was not incompatible with ILO Convention No. 169. He therefore hoped that the State party would review its position and ratify the instrument.

37. With regard to indigenous land rights, he would have welcomed more information on the way in which those rights were implemented in practice. Given that indigenous peoples wishing to travel to Charco la Pava must pass three checkpoints, one might wonder whether that did not constitute a violation of their freedom of movement. Moreover, if, as stated in a report compiled by an association of indigenous women, 80 per cent of indigenous Panamanians lived in extreme poverty, the fact that, according to the delegation, there was no public policy for the inhabitants of the *comarcas* gave cause for concern.

38. He hoped that the State party would later answer his question about the remedies available to Somali asylum-seekers whose applications had been refused, and on the treatment meted out to Colombian refugees from the Chocò region.

39. **Mr. Navarro Brin** (Panama), welcoming the fruitful dialogue with the Committee, said that owing to the long interruption of the dialogue, Panama had missed out on several opportunities to benefit from relevant observations and precious advice. It had also lost out

on the opportunity to develop mentalities and fight against racial discrimination during those years.

40. **The Chairperson** said that the Committee had concluded the first part of its consideration of the fifteenth to twentieth periodic reports of Panama.

The meeting rose at 1 p.m.