

EMRIP Session

July 2021

Presentation

By Ms. Chinsung Chung, Member of CERD

15 July 2021

Dear Chair,

Dear colleagues,

I would like to thank you for the invitation and for the cooperation the EMRIP has extended to the CERD Committee. For obvious reasons, it is important to exchange on issues of common interest, in particular because the CERD Committee has been a pioneer in upholding the rights of indigenous peoples. Sharing information about our respective practices and jurisprudence is an effort to achieving the same goals, which is to protect the rights of indigenous peoples.

I will brief you on the recent practice of CERD covering the year of 2020 and part of 2021. Before that, I would like to note that the issues regarding the situation and the rights of indigenous peoples are covered and discussed in CERD mainly under the reporting procedure, meaning the dialogue with States parties and its outcome-CERD recommendations-, the Follow-up procedure and the Early warning and urgent action procedure. Most of the concluding observations adopted by CERD during the last five years address the situation of indigenous peoples spanning from the rights of indigenous peoples in the context of the development projects carried out by States or non-States actors, the discrimination against indigenous peoples in the enjoyment of their economic, social and cultural rights to the issue of violence against indigenous people communities and human rights defenders. Likewise, under its Early warning and urgent action procedure in the years 2020 and 2021 (101st, 102nd and 103rd sessions), the Committee has considered **19 situations globally, 13 of them addressed the rights of indigenous peoples.**

I would like to underline that, in 1997 already, CERD has adopted a General recommendation (No. 23) on the rights of indigenous peoples, which is a guiding tool that CERD has been consistently referring to in its work, and which has been complemented by the Committee's consecutive practice and jurisprudence. In this General recommendation, the CERD reaffirms that the provisions of the ICERD apply to indigenous peoples and recognises that they have been "discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized." The

General recommendation therefore calls upon States to take a number of measures to protect indigenous peoples as well as their cultural identity and their way of life. Importantly, the General recommendation calls upon States to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.

This latter issue is often the cause of situations that are brought to CERD under its Early warning and urgent action procedure.

Regarding the work of CERD in 2020 and 2021, I would like to focus on **three main points** to illustrate its practice.

1. The right to free, prior and informed consent of indigenous peoples and the right to consultation

As I have pointed out, CERD requires that States seek the free, prior and informed consent of indigenous peoples affected by development projects or measures that States parties intend to adopt and implement, and the right to a meaningful consultation regarding other measures such as laws or regulations. During the period of 2020 and 2021, CERD has again observed that States still fail to implement this right fully, regarding:

- a) Projects carried out and planned in indigenous territories that may affect their traditional way of life including in situation where communities depend on their environment for their livelihood and survival, with specific focus on the most vulnerable such as isolated indigenous communities;
- b) In relation to the preparation or the elaboration of domestic laws against discrimination or those relating to the situation of indigenous peoples in their territories or granting leases to private companies for activities in such territories, or concerning the regulation of bodies trusted to deal with indigenous matters;
- c) The lack of inclusive participation during consultations or negotiations with indigenous peoples for projects or the conclusion of internal agreements on matters that may affect them. It has come to the Committee that, in some situations, some States do not consult with all communities concerned but only part of them.

Some States have informed the Committee on their interpretation of the principle of the right of free, prior and informed consent as requiring only to conduct a meaningful consultation with the indigenous peoples concerned but not as a mere veto right given to indigenous peoples to obstacle any projects a State intends to carry out. While noting this interpretation, CERD has reaffirmed its

position according to which a free, prior and informed consent should be obtained prior to take any measure that may affect the rights of indigenous peoples in particular in cases where their rights over their territories, lands and resources may be jeopardized.

2. Violence against indigenous communities and human rights defenders: the fight against impunity

If this issue is not new, it has increased over years. CERD has observed that indigenous communities are more and more under violence, threat of violence, directed either against the communities as such or more often against indigenous human rights defenders, who advocate for the rights of their communities, in particular against projects of various nature envisaged or carried out in their lands and territories, that they haven't agreed to. This violence includes killings, harassment, intimidations by State agents or non-state actors. In a situation, an indigenous NGO organisation has been forced to cease its activities by a State party as a measure of reprisals. This increase in violence is worrying, in particular as the perpetrators are not always punished, thus conveying a sentiment of impunity, and leaving indigenous peoples communities that are victims with no hope for adequate redress. Also worrying because of the vulnerability of indigenous peoples. This violence has been in some cases preceded or accompanied by racist hate speech.

CERD has urged the States concerned to fully, thoroughly and impartially investigate into such acts in view to hold those responsible accountable, to punish them with appropriate penalties, and to offer protection and reparation to the victims.

3. Effects of the COVID-19 pandemic on indigenous peoples

The pandemic has worsened the situation of minorities and indigenous peoples who paid the high price in terms of deaths or health situation, including isolated indigenous peoples. CERD called on States to address the health and economic challenges of the pandemic and its adverse impact in the exercise and the enjoyment of their rights, and to elaborate concrete measures that take into account the specific needs of indigenous peoples and in consultation with them, to ensure their access without discrimination to health care services that are culturally appropriate as well as to testing. CERD further called on States to address the specific needs of indigenous women including access to adequate employment, education and health care services including sexual and reproductive rights- which is an evolution in the jurisprudence of the Committee. Moreover, CERD called on the collection of data and reliable information on the impact of the pandemic on indigenous peoples in order to assess their situation, elaborate and implement specific policies and plans for them.

To note that CERD has adopted two statements relating to the COVID-19 pandemic, one regarding the impact the pandemic has had on indigenous peoples in a State party, and another on the general obligations of States under the ICERD.

Dear Chair,

Dear colleagues, I will stop here and I look forward to our exchanges.

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