



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-sixth session

Summary record of the 2330th meeting

Held at the Palais Wilson, Geneva, on Thursday, 30 April 2015, at 10 a.m.

Chairperson: Ms. Crickley

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The meeting was called to order at 10.05 a.m.

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

Combined fourteenth and fifteenth periodic reports of Guatemala (continued)
(CERD/C/GTM/14-15; CERD/C/GTM/Q/14-15)

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **Mr. Arenales** (Guatemala), responding to questions raised at the previous meeting, said that the State party's stance regarding whether genocide had been committed during the conflict in Guatemala was longstanding and supported by the opinion of the Working Group on Enforced or Involuntary Disappearances (A/HRC/4/41/Add.1, para. 9). The term had begun to be used during the negotiation of the 1996 peace accords in relation to the question of amnesty, the validity and scope of which were due to be addressed in the courts. However, Guatemala had never been accused of genocide by any international body. With regard to the Ríos Montt case, he objected to the questioning of the Constitutional Court's independence and the insinuations that the executive had influenced the outcome of the trial. The Court had overturned the conviction because of procedural errors, but General Ríos Montt would be retried.
3. Matters relating to indigenous property rights had to do only with the surface lands, as natural and subsurface resources were public property, and consultations regarding their use could therefore not be binding. Nevertheless, they were taken into consideration by the State, which sought to ensure that those living nearby benefited from the exploitation of such resources.
4. Problems of political representation were not limited to indigenous peoples. The electoral system lacked legitimacy and representativeness; the Government's proposed constitutional reforms, including adjustments to electoral districts and the provision of public funding, was intended to ensure balanced representation of indigenous and non-indigenous communities.
5. The body protecting human rights defenders and journalists, whose members included the Attorney General's Office, non-governmental organizations (NGOs) and the Office of the Human Rights Advocate, had established a mechanism and protocol aiming to provide a rapid response through appropriate security measures. The problems relating to community radio existed because frequencies were limited and controlled by private companies. The Presidential Human Rights Commission and the Special Rapporteur for Freedom of Expression of the Organization of American States had agreed to draft a bill reserving frequencies for indigenous peoples.
6. The constitutional reforms proposed in the Agreement on Identity and Rights of Indigenous People included recognition of the Mayan, Garifuna and Xinca peoples and languages and of traditional justice. Legislation had so far been adopted on languages and bilingual education and on access to justice through interpreters and translators. Criminal proceedings had been instituted in relation to the incident at Totonicapán, and the Government had already granted compensation to the families of those who had died and to the injured.
7. **Mr. Baquiax** (Guatemala) said that the Indigenous Affairs Unit had been tasked with devising a protocol for multicultural justice, providing culturally relevant guidelines on the legal process. State authorities were prohibited from interfering in the activities of judges, which were governed only by the Constitution, domestic legislation and the international human rights instruments ratified by Guatemala; the independence and

impartiality of the judiciary were thus guaranteed. Official interpreters provided interpretation for hearings in 12 Mayan languages; interpreters were hired on a temporary basis for hearings in other languages. Specialized courses were provided for interpreters and translators.

8. While the Constitution did not expressly recognize indigenous law, it did recognize the existence of indigenous legal systems. Judges and magistrates were required to consider the provisions of human rights instruments in order to ensure recognition of cultural diversity and access to justice and foster the harmonization of the national and indigenous legal systems. There were seminars on Mayan law for judges, magistrates, prosecutors and public defence lawyers. While consultations with indigenous peoples were not legally binding, the Constitutional Court had nevertheless recently ordered the Ministry of Energy and Mining to consult with ancestral authorities in the municipality of San Juan Cotzal, in accordance with applicable international standards.

9. Regarding application of the sanctions for discrimination contained in article 202 bis of the Criminal Code, between 2006 and 2014, the courts had dealt with 97 cases of discrimination, handing down 19 judgements, including 15 guilty verdicts. However, the law provided for alternative dispute-resolution measures, which could ensure redress for victims and also serve to highlight the negative societal impact of discrimination. The Indigenous Affairs Unit advised the Office of the President of the Judiciary on training and awareness-raising programmes, and courses on the rights of indigenous peoples had been provided for judges. Forums had also been created within the departmental capitals of Totonicapán and Sololá for analysis, discussion and proposals relating to coordination between the national and indigenous legal systems.

10. **Mr. Balcárcel** (Guatemala) said that the transition from a monocultural to a pluricultural State in Guatemala could only occur through a non-violent process involving society as a whole. It was a mistake to examine the internal conflict from an ethnic perspective given that much of the fighting had taken place far from the lands of indigenous peoples. However, the cruelty suffered by them during the conflict could not be denied, nor could the inequality and discrimination that indigenous peoples continued to suffer.

11. The Constitutional Court had urged Congress to create a consultation mechanism, in keeping with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). To that end, a workshop had examined the matter and an inter-agency team had analysed existing consultation processes. Consultations had then been undertaken with indigenous organizations, and regulations proposed.

12. The consultations provided for in ILO Convention No. 169 were not binding; they were intended to facilitate the exchange of information between equal parties. Moreover, it was the Government, rather than social organizations or businesses, that was mandated to hold consultations; the 80 community consultations mentioned in one of the alternative reports therefore did not fall within the scope of ILO Convention No. 169. The Government recognized the social value of such consultations, however, and their potential for reducing conflict. Mindful of the high probability of conflict with regard to mining activities, it had proposed a two-year moratorium on metal mining while a new law was debated.

13. Allegations that the national dialogue system was used to investigate community leaders and favour businesses were untrue. The system had been successful, for example, in resolving cases involving indigenous communities in Jalapa and Chixoy. In the latter case, the Government had recognized the rights violations that had taken place and the community would soon receive compensation. The deaths of indigenous persons from Totonicapán had been perpetrated by citizen security forces, not the police. The President had nevertheless committed to ensuring compensation for those affected, independently of the ongoing criminal proceedings. The killings in San Juan Sacatepéquez had led

community leaders to engage in direct dialogue with the Government, resulting in a framework agreement for peace and development.

14. The Cabinet for Indigenous Peoples and Intercultural Affairs was a government agency, not a council or assembly of indigenous peoples. Its mission was to forge a pluralistic State, including by drawing up, in consultation with indigenous communities, a national policy for indigenous peoples and interculturalism.

15. **Mr. Narciso** (Guatemala) said that a survey carried out in 2011 by the National Institute of Statistics had revealed that almost 40 per cent of the population overall self-identified as indigenous, although the proportion was significantly higher in rural areas and in some departments. Given the lack of consensus among non-indigenous persons regarding their self-identification, a proposal had been made to group them under one category: mestizo/ladino.

16. **Ms. Gutiérrez** (Guatemala), explaining why Guatemala had not recognized the Committee's competence to receive communications, said that the Presidential Commission on Discrimination and Racism against Indigenous Peoples had attempted to engage with the Congress on the matter, but some political parties had blocked laws benefiting indigenous peoples. Although the Commission's budget had fallen in recent years, it had now begun to rise again. All government departments were required to allocate specific funding to indigenous matters.

17. The minimum wage had been increased by 5 per cent, and the minimum wage for the agricultural sector had been brought into line with that of other sectors, although in the maquila sector it remained lower. Working conditions were addressed by a round table for the banana sector in northern Guatemala and by the Ministry of Labour and Social Welfare, which carried out inspections to detect forced labour, particularly involving children. Adolescents who wished to enter paid employment were informed of their rights and responsibilities in the workplace, particularly in relation to discrimination and racism, and their details were registered in a database. There was also a private sector initiative to prevent school dropout by ensuring that adolescent workers were at least 16 years old.

18. Several measures had been adopted to safeguard ancestral knowledge, including an inter-agency agreement between the Commission and the Ministry of Economic Affairs, the organization of a national congress and the formulation of a policy on management of that knowledge. A round table involving government institutions and indigenous organizations provided advice on the matter. Another round table had been established to address issues relating to persons of African descent, including complaints of discrimination. It had so far received more than 10 complaints, including one against the State for the Constitution's failure to recognize Afro-descendants. Work was under way to determine how many persons of African descent lived in Guatemala, along with activities promoting their culture, ancestral knowledge and history.

19. While considerable progress had been made in extending bilingual education to all indigenous communities, there were still challenges to be overcome. Regrettably, insufficient budgetary resources had been allocated to introduce the full range of initiatives developed to that end. Children's learning materials were now available in all the languages officially recognized by the State but not in the dialects that had not been accorded official status.

20. Lastly, the Presidential Commission had signed an inter-agency agreement with the Supreme Electoral Tribunal to ensure that the rights of indigenous peoples were not violated during the upcoming elections.

21. **Ms. Laynez** (Guatemala) said that the Government had formulated and adopted a number of legal instruments aimed at combating food shortages and malnutrition among

indigenous communities, including the Food and Nutritional Security System Act, which enshrined the right of all persons to adequate food. The Zero Hunger Programme aimed to reduce malnutrition and to alleviate poverty and promote development with a view to eradicating hunger in the worst affected areas of the country. Government Order No. 235-2012 provided for a package of interventions aimed at promoting good nutritional practices, with a special focus on the nutritional needs of pregnant women and young children.

22. The use of traditional medicine was promoted under the Traditional and Alternative Medicine Programme. The Ministry of Public Health and Social Assistance also organized multisectoral meetings on traditional and alternative medicine as part of its efforts to strengthen health-care services and ensure that they were culturally appropriate. The Ministry was also framing a policy to raise the profile of and strengthen the work carried out by midwives at the community level. The Office for the Defence of Indigenous Women was participating in the consultations on the new policy.

23. The Office for Women's Affairs was overseen by the Vice-President of Guatemala and was responsible for strengthening the machinery for the advancement of women. All government ministries and secretariats were required to set up gender units that would report to the Office. The Office for the Defence of Indigenous Women had also adopted a strategy to prevent violence against indigenous women and to encourage their participation in the life of their community and in decision-making processes. The overall aim of the strategy was to empower indigenous women to exercise their rights by providing them with essential information on gender equality, women's rights, the current legislation concerning indigenous peoples, complaints mechanisms and the different manifestations of gender-based violence. In 2011, the Supreme Electoral Tribunal had organized a series of activities aimed at increasing the participation of women in elections and in the political life of the country. Women occupied decision-making posts in all branches of government in the business and academic sectors. Moreover, indigenous women played an active role in the work of the Office for Women's Affairs.

24. **Ms. Villatoro** (Guatemala) said that a special division responsible for the protection of vulnerable persons had been set up under the aegis of the Ministry of the Interior and the National Police. The division provided protection to human rights defenders and to other officials who had been threatened or physically attacked. Five human rights defenders were currently benefiting from personal protection.

25. With regard to training for law enforcement officials, the Act governing the National Police provided that all police officers should remain neutral and impartial in the performance of their duties and that they should not engage in conduct that could be perceived as discriminatory. Training on discrimination issues and rights of indigenous peoples was provided to all cadets attending the national police academy. The Multiculturalism and Crime Prevention Unit sought to raise the awareness within the National Police of issues relating to ethnic diversity and provided ongoing training to police officers on topics such as ethnic identity, indigenous rights and ILO Convention No. 169.

26. **Ms. Ayuso** (Guatemala) said that the Constitution of Guatemala provided that lands which had historically belonged to and been administered by indigenous communities enjoyed special protection from the State. Under the peace accords of 1996, the Government had created institutions responsible for land registration and for dealing with conflicts relating to land ownership. A number of legal instruments had been adopted for that purpose, including the Land Registry Act. The regulations on communal lands, which had been formulated in 2009, laid down the procedure for declaring the existence of communal lands when they were located in areas that were already registered or in the process of being registered. Moreover, a special unit had been set up within the Land Registry to deal with issues relating to communal lands. To date, 16 requests for designation of communal lands had been submitted; the first three had been approved in

2014. The State also recognized and upheld the right of individuals to own private property. There was a mechanism that allowed any individual who had been in possession of land for over 30 years to acquire legal ownership of it, provided that all the relevant requirements were met.

27. **Mr. Diaconu** said that it was regrettable that the State party had made so little progress in giving effect to the Committee's previous recommendations. Many bills had been pending for years, and there was still legal uncertainty over the ownership of ancestral lands, which caused conflicts and could curtail the rights and freedoms of certain indigenous groups. He recommended that the Government should look at other countries in the region that had successfully resolved such issues and identify best practices. Noting that Guatemala had ratified ILO Convention No. 169, he underscored the importance of systematically consulting indigenous groups and obtaining their free and informed consent for projects affecting them or their lands. Consultations with indigenous groups should serve to identify their needs, which should be taken into account when carrying out such projects.

28. The continued absence of a law prohibiting incitement to racial violence explained, at least in part, the vulnerability of human rights defenders to attacks and the prevalence of racially motivated violence in the State party. It should take action without delay to remedy that situation. The Government should also do its utmost to increase the participation of indigenous communities in the 2015 general election and their representation in elected bodies.

29. **Mr. Murillo Martínez** requested more detailed information on how the country's jurisprudence relating to indigenous peoples had evolved and on the special arrangements in place for indigenous persons involved in court proceedings. He also wished to know more about legislative progress towards recognizing and protecting the intellectual property rights of indigenous peoples over their traditional knowledge; the steps being taken to encourage participation by indigenous communities in decision-making processes and in the life of the country in general, including in the next census; efforts by the State party to protect human rights defenders; and the role played by civil society in preparing the State party's periodic report.

30. **Mr. Vázquez** said that there were still many obstacles preventing the full participation of indigenous groups in the country's political life. It was a particular cause for concern that proposed legislation to improve the situation of indigenous peoples in Guatemala seldom passed.

31. The Historical Clarification Commission, which had been created to elucidate human rights violations related to the 36-year internal conflict, had found that agents of the State had committed acts of genocide against groups of Mayan people. Why, then, did the delegation maintain that genocide had not occurred during that time and why had no one been convicted of that crime? He would be interested to know whether the Government of Guatemala agreed with the findings of the Historical Clarification Commission. He also requested an update on the retrial of General Ríos Montt.

32. Noting that lawyers, judges and prosecutors were also vulnerable to threats or attacks when handling court cases relating to human rights violations, he said that the protection accorded to human rights defenders should be extended to those individuals.

33. **Mr. Arenales** (Guatemala) said that the Government of Guatemala did not deny that a large number of people from indigenous groups had perished as a result of the counterinsurgency operations carried out between 1981 and 1983, but maintained that the acts committed by State agents did not constitute genocide as defined under the Convention on the Prevention and Punishment of the Crime of Genocide. The Government of Guatemala was fully prepared to assume its responsibilities under international law,

including the payment of compensation, and was confident that the courts would bring those who had committed crimes to justice. The peace accords had been signed through a process involving the guerrilla fighters, the Government of Guatemala, the governments of six other countries and the United Nations, and the compensation programme set up pursuant to those accords remained in force. To date, more than 40,000 persons had received compensation through the programme.

34. **Mr. Baquix** (Guatemala) said that the country's multicultural and multi-ethnic nature was viewed as an asset in the judicial sphere. Since the introduction of the new Code of Criminal Procedure in 1994, all parties in court cases had the right to participate in the proceedings in their native language through an interpreter. Both indigenous and ladino judges recognized indigenous law and customs, which helped to strengthen the rule of law. Five community courts established in 1998 heard cases in the parties' own language, with due regard for their customs and traditions. Hence, indigenous people did have access to justice, and there were plans to further strengthen the indigenous legal system in 2015 and 2016.

35. **Ms. Gutiérrez** (Guatemala) said that the bill criminalizing racial discrimination was awaiting debate in Congress. Unfortunately, the current Congress had not given much priority to bills on indigenous matters. She believed that the situation would change, however, when elections were held in seven months' time. A network had been established to combat discrimination and racism, in which representatives of the Maya, Garifuna, Xinca and mestizo populations all participated.

36. **Mr. Narciso** (Guatemala) said that the population census scheduled for 2010 had not yet been conducted, but pilot censuses would be conducted in 10 municipalities in 2015 to assess and improve the methodology being used. A fully digitized mapping exercise would also provide important input for the census. Administrative information relating to the population was being gathered, and, since 2014, self-identified ethnicity was being included in registries and on identity documents.

37. **Ms. Ayuso** (Guatemala) said that legislation had been enacted to recognize communal lands and that a special office had been established to deal with communal land issues. The Registry of Cadastral Information had conducted workshops and training sessions on the issue for various stakeholders and was working in coordination with a number of government bodies involved in land and indigenous issues. The task was complex, but the Government was committed to finding solutions to the various land-related problems in the country.

38. **Mr. Martínez** (Guatemala) said that an intergovernmental round table had been set up to promote actions to protect the environment, natural resources and cultural biodiversity. Its members included representatives of various indigenous associations. Structural problems must be resolved in order to achieve the full political representation and participation of indigenous persons. Many of the legal initiatives put forward required a high level of consensus in order to be adopted into law.

39. **Ms. Hohoueto** said that the Committee required further clarification about access to justice for indigenous persons, which could be hindered by both geographic and economic impediments. In her view, the 15 offices established for the defence of indigenous people were insufficient to meet the needs of all indigenous persons, and the number of rulings handed down in response to complaints filed seemed rather low in a country where violence was so widespread. She asked the State party to include in its next periodic report information about the human resources and jurisdictional scope of judicial institutions.

40. **Mr. Amir** said that conflict over indigenous lands was a problem faced by many countries, including Guatemala, and it was important to recognize who held historical responsibility for such problems. He fully supported Mr. Arenales' position regarding the

use of the word “genocide” in reference to the situation in Guatemala. The term was used by some to refer to the events of the past, which were labelled “civil war” by others. What was important was that those who had caused countless indigenous persons to suffer and die were prosecuted and punished.

41. **Mr. Avtonomov** said that the Committee did not wish to challenge the integrity of the State of Guatemala. Nevertheless, a State’s strength depended on the happiness of all its citizens. It was therefore important for the Government to ensure that all Guatemalans were happy, which would be the case only if they were all able to live according to their traditional customs and laws.

42. While subsurface resources were the property of the State, the infrastructure required to extract them sat above the ground and affected the lives of the local inhabitants. He urged the Government to adopt the bill on consultations with indigenous peoples as soon as possible, so that persons affected by development projects would be able to express their views. He also asked the State party to include in its next periodic report further information on the indigenous legal system.

43. **Ms. Dah** said that she was concerned by the low number of women holding elected office and asked whether the Government would consider introducing quotas for women, particularly indigenous women and women of African descent, as a way to bridge the gender gap. With regard to the census, she did not understand how consolidating into a single category all persons who self-identified as white, creole or mestizo would help to preserve ethnic and cultural diversity in the country.

44. **Mr. Ixchíu** (Guatemala) said that indigenous law was highly structured and predated the State of Guatemala. The indigenous legal system dealt not only with misdemeanours but also with more serious matters. Much work had been done to ensure compliance with Mayan laws in specific cases. For example, a compilation of those laws had been created as a reference tool for judges in the official legal system, so as to encourage greater coordination between the two systems. The 15 offices for the defence of indigenous people had been established in areas that were affected by poverty and internal armed conflict where indigenous peoples made up the majority of the population. While there were indeed cultural and geographical impediments hindering access to justice, efforts were being made to bring the courts closer to the population, improve the quality of the services provided and ensure that judicial officials understood the indigenous legal system. In addition to interpreting services, there was a need for bicultural judges who understood indigenous traditions.

45. **Mr. Yeung Sik Yuen**, expressing concern about the lengthy delay in the passing of bills by Congress, asked how often the Congress met and how many laws it adopted annually. In order to assess whether the indigenous legal system was compliant with human rights standards, he wished to know whether persons without legal training could dispense justice under that system.

46. **Mr. Khalaf** asked whether the body responsible for analysing protection for human rights defenders was an independent body or a government agency. He also asked what was being done to encourage civil society organizations to work with the Government while still maintaining their autonomy. Lastly, he expressed the hope that the land registry system being established would provide indigenous persons with a legal means by which they could acquire title to their land.

47. **Mr. Lindgren Alves** said that the terms “mestizo” and “ladino” were not universally accepted and could lead to confusion. It might be preferable to refer to “those resulting from a mixing of cultures”, following the example in the Committee’s reporting guidelines (CERD/C/2007/1, para. 10).

48. **Ms. Dah** said that she was concerned not by the definition of those terms but rather by the Government's intention to group persons of different origins in a single category, which seemed an oversimplification of the situation.

49. **Mr. Arenales** (Guatemala) said that the Office of the Human Rights Advocate and the Office of the United Nations High Commissioner for Human Rights had been instrumental in designing the protection mechanism for human rights defenders that was soon to be adopted, which would, *inter alia*, receive complaints from human rights defenders and conduct risk assessments.

50. **Ms. Gutiérrez** (Guatemala) thanked the Committee for the opportunity to participate in the dialogue and said that her Government had implemented a number of the Committee's previous recommendations and remained determined to combat racial discrimination.

51. **Mr. Lahiri** said that there were a number of issues to raise in the concluding observations but that those observations should be fairly straightforward, provided the Committee did not delve into the issue of historical responsibility or other complex issues, such as the distinction between "ladino" and "mestizo". He thanked the delegation for its comprehensive replies and emphasized that he had on no account meant to accuse the Government of failing to be objective.

52. **Mr. Arenales** (Guatemala) said that his delegation was very pleased with the way the dialogue had been conducted and would reply in writing to any questions that had not yet been answered.

The meeting rose at 1 p.m.