



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1740th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 27 February 2006, at 10 p.m.

Chairman: Mr. de GOUTTES

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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 (agenda item 6) (*continued*)

Eighth to eleventh periodic reports of Guatemala (CERD/C/4/169/Add.1)
(*continued*)

1. *At the invitation of the Chairman, the members of the delegation of Guatemala took places at the Committee table.*

2. Mr. CAJAS MEJÍA (Guatemala) said that the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) consisted of five members (three Maya representatives, one Garifuna, and one Xinca), who represented the three main indigenous peoples of the country. The Commission was entrusted with the following main functions: to provide assistance to State and private organizations in working effectively to combat discrimination and racism against indigenous peoples; to develop State programmes geared to combating racism and discrimination and provide guarantees of their application, particularly by private organizations; to maintain ties between organizations of indigenous peoples and the State authorities that are assigned to combat discrimination and racism; to record complaints of discrimination and pass them on to the competent authorities; to conduct public awareness campaigns regarding discrimination; and to prepare the reports that the authorities of Guatemala are obliged to submit in accordance with their international obligations. Thus, the report under consideration was drafted by CODISRA with technical and financial assistance from the Office of the High Commissioner for Human Rights. All the information and statistical data it contained were submitted by State authorities. Consultations were held at the regional level to take maximum account of the opinions of organizations of indigenous peoples.

3. The fact itself that indigenous peoples were entrusted with drafting the report under consideration and with heading the delegation was clear evidence of the political will of the government of Guatemala in terms of ensuring the participation of indigenous peoples at the very highest political level.

4. Mr. Cajas Mejía said that a number of deputies from among indigenous peoples had sponsored a draft law pertaining to racial discrimination, but at the request of several associations, the decision was made to include in the draft other forms of discrimination based on ethnic origin, language, religion, or economic status. The process of implementing the law would make it possible to ascertain the advisability of adopting a new, special law criminalizing racial discrimination.

5. He noted that, at present, the Congress of the Republic was considering a draft law at the second reading on recognizing the authority of the Committee to hear individual reports sent under Article 14 of the Convention. He stressed that all competent national institutions were in favor of Guatemala making that declaration.

6. Mr. BOYD welcomed the active participation of civil society in the drafting of the report and the efforts that were being exerted by the State party in combating racial discrimination. He expressed his gratitude for the candour with which the Guatemalan authorities pointed out the numerous obstacles faced and the various measures needed for overcoming them; but he also wanted to know what two or

three priority areas, in the opinion of the delegation, would merit special attention by the authorities in the next five years.

7. Mr. PILLAI raised the question of the violation of the land rights of the indigenous peoples and spoke of a number of incidents in which law-enforcement authorities used what may have been excessive force to expropriate land belonging to families from among indigenous peoples. It seemed that there were casualties among the indigenous peoples in those conflicts. He was interested in knowing how the State party had responded to those incidents and what it intended to do to ensure that law-enforcement authorities did not undermine the national process for the development and encouragement of indigenous peoples' rights.

8. Mr. KJAERUM was interested in having additional information on the means at the disposal of the Presidential Commission on Discrimination and Racism against Indigenous Peoples to monitor whether the recommendations prepared for Guatemala by international bodies were being followed.

9. Mr. AMIR was interested in knowing what role customary law played in the domestic judicial system, particularly in matters of land ownership.

10. Mr. CAJAS MEJÍA (Guatemala) said that, for the years to come, the Presidential Commission on Discrimination and Racism against Indigenous Peoples had defined the three top-priority areas as pertaining to the adoption of a comprehensive State policy for combating discrimination that takes into account the multidimensional problems of indigenous peoples (social inequality, poverty, inequitable distribution of land, their historical exclusion from policy-making bodies); the conduct of information campaigns and public awareness campaigns with regard to discrimination; and enhancement of the authority of indigenous peoples' institutions, such that the role assigned to them would not be of a mere token nature, but, on the contrary, would have definitive value in combating racial discrimination.

11. Mr. Cajas Mejía noted that the programme developed by CODISRA had a goal of implementing the principles and using the assets of indigenous peoples within the framework of the main areas of the socio-economic development of the country. The Commission had adopted a strategic plan of action in accordance with which plans called for eliminating discrimination and reversing the process of the rejection of indigenous peoples at the institutional level in the next 25 years.

12. Mr. ELLINGTON LAMBE (Guatemala) said that the national policy for combating discrimination was the main priority of the government. He elaborated, saying that most of the problems that arose in connection with the property rights to land were in a context in which the measures that were taken by the government to settle land disputes did not always conform to earlier court decisions.

13. Mr. Ellington Lambe also noted that a number of statistical indicators had been prepared to assess the effectiveness of the implementation of programmes to combat discrimination and that the Constitution of Guatemala recognized the customary law of indigenous communities.

14. Mr. ABOUL-NASR was interested in knowing whether any agencies for combating discrimination existed, and, if so, he was interested in having information on their mandate and the scope of their authority. He asked the delegation of Guatemala what measures were taken by the government in the interests of indigenous individuals who had been stripped of their land, and he was interested in

knowing specifically if they had been compensated or if the lands had been returned to them.

15. Mr. ELLINGTON LAMBE (Guatemala) noted that the Land Fund had been created in the country (paragraph 96) to resolve the land rights of indigenous peoples within the framework of special procedures based on dialogue and negotiation and that the Fund functioned as a market for the purchase and sale of agricultural lands. However, based on the numerous reports of violations, specifically reports of the overvaluation of estates being put up for sale, the Fund programme was being adjusted at the moment.

16. He explained that many of the problems associated with the land rights of indigenous peoples were also due, in large part, to armed conflicts that, for decades, had been the cause of large-scale displacements of the populace. The people who fled the regions in which there were hostilities were forced to abandon their lands, which were then occupied and worked by other individuals. At present, there was no established land registry, and because of that, the ownership rights to certain land plots were, in a number of cases, being disputed by five or even 10 individuals. The Joint National Land Commission (paragraph 97), which consisted of representatives of indigenous peoples and agricultural workers, the government, and landowners, was charged with developing a draft law on a national land registry. That law was adopted by parliament in 2005. The government recognized that this was a high-priority issue, since the alienation of land from agricultural workers and indigenous peoples plunged them into poverty and destitution and had an adverse effect on the development of communities. In that connection, he felt that the settlement of the land-rights issue was vitally important to the eradication of poverty, discrimination, and the marginalization of those communities in social and political terms.

17. Mr. KJAERUM supported the strategy adopted by Guatemala to combat discrimination and racism against indigenous peoples and regarded as fundamentally important the criteria and specific indicators that made it possible to assess the strategy's effectiveness. Those socio-economic indicators were immensely important, but the conclusions and recommendations of the Committee could also be quite useful to the authorities as qualitative indicators.

18. Mr. YUTZIS felt that the strategy adopted for the next 25 years to combat discrimination and racism seemed to correspond to the positive political objectives of the Guatemalan government; but, unfortunately, it did not address the day-to-day problems of the indigenous communities. Moreover, the programme developed by the Land Fund could result in further impoverishment of the indigenous communities of Guatemala and the expropriation of their lands, because, according to information from some sources, the programme was setting up reserves, and concessions were being granted for mining and logging without having first consulted with the people living in those reserves. Mr. Yutzis was interested in hearing the Guatemalan delegation's point of view of those assertions and in receiving information on the government's criteria that would make it possible to say that the programme to combat discrimination against indigenous people was moving in the right direction.

19. Mr. EWOMSAN was very impressed by the candour and self-critical nature of the periodic report under consideration. He was interested in knowing whether cultural and spiritual values were the main reason for the attachment of the Guatemalan indigenous peoples to the land or whether they also felt that the land had market value.

20. Mr. ELLINGTON LAMBE (Guatemala), in responding to the remarks of Mr. Kjaerum and Mr. Yutzis, said that the recommendations of the Committee had been taken into consideration in the determination of the statistical indicators and that they were the basis for assessing the effectiveness of the struggle against discrimination against indigenous communities.

21. Mr. YUTZIS was interested in ascertaining, in connection with the revision of the land registry, in whose interests that process was being implemented and whom it was harming. Statistical data were particularly valuable for that work.

22. Mr. CAJAS MEJÍA (Guatemala), in responding to a question posed at the preceding meeting, said that the monitoring of the compliance with the Committee recommendations was done by numerous State institutions that were properly instructing the relevant police authorities and State offices. He explained that the laws adopted pursuant to the Peace Agreements took full account of the interests of the indigenous population. The aim of the land-registry information recording act (Legislative Decree No. 41-2005, of 15 June 2005) was to ascertain the actual state of affairs with regard to land rights and land use and the provision of legal guarantees for land tenure. The framework act adopted on the basis of the Peace Agreements framed those agreements as State commitments. Those two acts provided for the creation of bodies to implement the agreements, and the indigenous peoples were to be represented in those bodies. Furthermore, pursuant to the provisions of the section of the Agreement pertaining to agriculture, the president of the Republic set in motion the reform of the judicial system with an eye to facilitating the settlement of agrarian disputes.

23. Mr. Cajas Mejía added that the property registry was a general registry and that there was no special registry for immovable property belonging to the indigenous population. Article 66 of the Constitution recognized the special nature of the social organization of indigenous communities. That principle was used by judges in the decision of a number of cases, which made it possible to speak of the gradual formation of case law. In addition, indigenous organizations and certain magistrates were encouraging the use of case law for indigenous peoples. On 25 February 2005, the Supreme Court recognized that process as fully conforming to the policy for the formation of the judicial system.

24. CODISRA received 75 complaints in December 2005, plus an additional 15 between December and February 2006. The increase in the number of complaints of discrimination was due to the policy of making information widely available on the mechanism itself and on the policy against discrimination. The complaints could be passed on to the prosecutor's office or, in some cases, on to administrative authorities for the purpose of applying administrative penalties. In some cases, a dialogue was conducted for the purpose of settling the problem via consultation. Most of those complaints at present were being reviewed. In addition, two court proceedings had been held for that purpose.

25. The National Institute of Statistics was aware of the shortcomings of the statistical system with regard to the indigenous population and was taking specific measures to train experts working in that agency to develop indicators that pertained directly to the indigenous population.

26. The absence of a strategy to combat discrimination was one of reasons for creation of CODISRA, which, in cooperation with the indigenous population, had

been working for two years now on the generation of a strategy whose implementation would officially get under way in August 2006.

27. A commission for the compensation of victims of the internal conflict in Guatemala had been created to help individuals affected by the conflict. It paid out monetary compensation and funded psychological rehabilitation programmes, as well as programmes for the support of economic projects. In addition, the government had decided to create 300 high-level positions for specialists and instructors from indigenous communities. The hiring process for those positions was to begin in June 2006.

28. In education, a project had been put in place to implement intercultural, bilingual education, and it was geared to reform school programmes so as to take a fuller accounting of the culture, language, spirituality, and other forms of expression of the cultural identity of indigenous peoples. A presidential commission had begun the implementation of a programme to more vigorously integrate rural women into the political, economic, and social life of the country.

29. With regard to the "four fundamental things for which no concessions were being made to indigenous peoples" (paragraph 82 of the report), Mr. Cajas Mejía explained that that sentence had been poorly worded. The compilers of the report had simply wanted to say that the rights to preserve their spiritual traditions, to use their own language in public places, to wear indigenous dress, and to hold State posts were the four areas in which discrimination against indigenous peoples was strongest.

30. Mr. Cajas Mejía also informed the Committee members that the granting of concessions and licenses for mining had been suspended by a decision of the president of the Republic until the expiration of the permits issued by previous governments.

31. Mr. YUTZIS noted with interest the measures pertaining to mining operations, which measures, in his opinion, had resulted in a freeze of the process of the alienation of land for the granting of the concessions. Acknowledging that those measures were making it possible to better protect the indigenous peoples, Mr. Yutzis said that, two years from now, he would like to see the State party submit to the Committee, in advance of the next periodic report, data verifying that those measures had made an effective contribution to the protection of the interests of the indigenous peoples.

32. Mr. Yutzis had information to the effect that, in the context of the current restrictions, indigenous communities could acquire low-frequency radio transmitters only, whose operating range was limited to one kilometer, which created problems in terms of communicating with other communities. He was interested in having an explanation of that question.

33. Mr. PILLAI was interested in receiving further clarification of the nature of the 300 State positions that were planned to be reserved for representatives of the indigenous peoples. In addition, given the inadequate representation of indigenous communities and other communities that find themselves in adverse economic and social conditions, he was also interested in obtaining information on the position of the Guatemalan government on the affirmative-action measures called for by Article 2(2) of the Convention, as well as information on measures that the government planned on that score to strengthen the guarantees given to the affected population for the exercise of its economic, social, and cultural rights.

34. Ms. JANUARY-BARDILL, in connection with the activities of CODISRA, posed a question about whether that institution, which had no real autonomy or political power, was in a position to tackle such a difficult task as combating racism in the country. She asked the Guatemalan delegation to comment on possible structural deficiencies of that institution.

35. Mr. CAJAS MEJÍA (Guatemala), in responding to Mr. Yutzis, said that the problem of the radio transmitters have been under review for several years already. The initial categorical objections of private radio broadcasting companies to the issuance of permits to operate community radio transmitters had gradually changed to a more conciliatory position. Although that problem had yet to be fully resolved, recent years had seen an increase in the number of transmitters, as well as a dramatic increase in the number of community radio stations.

36. Mr. Cajas Mejía explained to Mr. Pillai that the creation of the 300 high-level State positions for representatives of the indigenous peoples was being written into the framework of the policy adopted by the government in the interests of that category of the population. After Hurricane Stan, it was acknowledged that indigenous communities suffered the most from it; the reason for that was not so much the natural disaster in and of itself as it was the discrimination in terms of access to State services and the fact that those people were living in an at-risk zone. The decision to name 300 representatives of indigenous peoples to high posts within the framework of the government's social policy being pursued in the interests of that group of the populace was made by the president of the Republic himself. The selection committee, which included such prominent leaders as Nobel Peace Prize winner Rigoberta Menchú, was assigned to identify those posts before June 2006.

37. Mr. ELLINGTON LAMBE (Guatemala) said that CODISRA enjoyed genuine functional autonomy in the context of its activities, despite its status as a presidential commission. In the three years of its existence, there had not been a single instance of interference in its activities by either the current government or the one before it. Its budget had also been expanded, which was a sure sign of the effectiveness of the work it was doing to carry out the tasks facing it. The fact itself that the commission consisted of representatives of civil society was creating a precedent in the interactions between indigenous peoples and the government and was opening possibilities for frequent contact with civil society, which had already produced positive results.

38. Mr. AMIR expressed his gratitude for the documents submitted, which had been disseminated among the Committee members by the Guatemalan delegation (documents without reference distributed in the meeting in Spanish only), and noted that they portrayed in full measure the State party's endeavor to wage a definitive struggle against racial discrimination. Specifically, the strategic plan adopted by CODISRA for 2005–2025, which was addressed in one of the documents distributed, was confirmation of the course taken to wage that long-term struggle. At the same time, since that plan existed only in Spanish, Mr. Amir asked how it was being made accessible to the primary parties concerned, namely, the indigenous peoples, and whether the students of primary and secondary schools knew of it.

39. Moreover, given that indigenous peoples more often than other peoples were victims of earthquakes, because they often built their homes in at-risk zones, Mr. Amir was interested in knowing whether seismological observations were being

conducted in Guatemala and, if so, whether the data of seismological predictions were being taken into account during the reconstruction of housing.

40. Mr. LINDGREN ALVES, recalling the pessimistic comments he had made at the preceding meeting, said that the responses provided by the Guatemalan delegation at the current meeting were prompting him to completely rethink his conclusions. In that connection, he regarded as very encouraging the fact that several racial-discrimination cases had occasioned the commencement of investigations, that a considerable number of posts in the State administrative system had been allocated to indigenous peoples, and that important measures had been taken in education.

41. Mr. THORNBERRY, noting that, as indicated by the responses of the delegation, no separate land registry for land plots belonging to indigenous peoples was maintained in Guatemala, was interested in knowing whether a distinction was made in the general land registry between individuals who held land rights and communities who held land rights. Furthermore, he was also interested in learning whether market relations extended to land plots belonging to indigenous communities as they did to other types of land holdings. In that connection, recalling that the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples specified the obligation of States parties to respect the special spiritual relationship between indigenous people and the land, Mr. Thornberry suggested that Guatemala take measures to formulate special land rules that would enable indigenous communities to protect their rights.

42. Mr. ELLINGTON LAMBE (Guatemala), responding to the question of warnings of natural disasters, said that, in fact, a research committee had been created for that purpose in Guatemala at the Institute for Seismology, Vulcanology, Meteorology, and Hydrology (INSIVUMEH); but given the country's natural vulnerability, the earthquakes that occurred there were difficult to predict. Moreover, in the context of the process under way to rebuild housing, earthquakes were being taken into account, and new buildings were designed with those risks in mind.

43. Mr. Ellington Lambe explained that some land plots of indigenous peoples were entered to the general land registry in the name of the indigenous community, but they had the status of collective land holdings belonging to several members of the community, since the question of the legal person status of indigenous communities is still in dispute in Guatemala. At the same time, the effect of market relations on the land holdings of indigenous peoples was indisputable: it was not unusual for indigenous persons who were in debt to be forced to sell their land to repay debts to their creditors. In connection with an analysis of those problems that was under way within the framework of the reassessment of the role of the Land Fund, Mr. Ellington Lambe expressed the hope that they would be settled in accordance with Article 7 of the Convention and the provisions of the ILO Convention No. 169.

44. Mr. EWOMSAN, touching on the question of how accessible official documents published in Spanish were to indigenous peoples in their own languages, asked the delegation what the level of literacy was among the Guatemalan populace.

45. Mr. YUTZIS was interested in knowing who was making the decisions with regard to the radio stations and, in particular, whether there was any competent authority in that field. In addition, stressing that most of the measures that had to be taken to combat racial discrimination depended on State authorities, i.e., on the

entire aggregate of the numerous State structures, he expressed regret that the delegation did not include representatives of relevant ministries and expressed the wish that, for the consideration of the twelfth periodic report, the Guatemalan delegation include some State officials who dealt with matters of the application of the Convention. And finally, he was interested in knowing how the institutional entities that played a role in combating racial discrimination coordinated their activities in the State party.

46. Mr. CAJAS MEJÍA (Guatemala) noted that the question of indigenous languages in his country was handled by specialized institutions, among them the Academy of Mayan Languages, which, inter alia, translated documents from Spanish to the four main languages of the indigenous peoples of the country. The documents distributed at the Committee meeting had been given to that institution for translation, as well as to all ministries, but even now their content was being recounted in radio broadcasts. In that connection, he also noted that the entity authorized to distribute radio frequencies was the Telecommunications Authority (*Superintendencia de Telecomunicaciones*).

47. As to the makeup of the Guatemalan delegation, Mr. Cajas Mejía acknowledged the advisability of including representatives of the legislative and judicial branches as members, but he stressed that even though those branches were inadequately represented in the delegation, the delegation did speak on behalf of the State and did not represent just CODISRA and the indigenous peoples.

48. Mr. AVTONOMOV (Rapporteur on Guatemala) applauded the open, candid, and fruitful dialogue between the Guatemalan delegation and the members of the Committee and noted with satisfaction that the State party had strengthened the mechanisms for access to due process in order to combat discrimination and to protect the fundamental rights of victims of racism. At the same time, he stressed that due process alone was not enough to guarantee the exercise of those rights and that legal standards had to be adopted to strengthen the protection of the land rights of indigenous peoples. In addition, the Rapporteur expressed the wish that the State party in its twelfth periodic report respond to all the questions listed. And finally, he applauded the will of the government of Guatemala to honour the commitments stemming from the international treaties to which Guatemala was a party and to build life in that country on the basis of adherence to the principles of polyethnicity and the existence of multiple cultures.

49. Mr. RAMIRO MARTINEZ (Guatemala) said that the government of Guatemala sought to continue a candid dialogue with all treaty bodies and other bodies of the United Nations and that it was prepared to arrange the travel of Committee members and special rapporteurs who might wish to get a first-hand idea of the situation, which remained complex and could not be thoroughly grasped in so brief a discussion. Despite all the gaps identified, the struggle against discrimination was gradually unfolding in Guatemala in the context of a long-term process, a positive example of which consisted of the activities of CODISRA.

50. The CHAIRPERSON declared that the Committee had completed consideration of the eighth to eleventh periodic reports of Guatemala.

51. *The delegation of Guatemala withdrew.*

The meeting rose at 1.05 p.m.