



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-fifth session

Summary record of the 2298th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 13 August 2014, at 10 a.m.

Chairperson: Mr. Calí Tzay

later: Mr. Avtonomov (Vice-Chairperson)

later: Mr. Calí Tzay

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The meeting was called to order at 10.20 a.m.

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

Combined sixteenth and seventeenth periodic reports of El Salvador (continued)
(CERD/C/SLV/16-17; CERD/C/SLV/Q/16-17; HRI/CORE/SLV/2011)

1. *At the invitation of the Chairperson, the delegation of El Salvador took places at the Committee table.*
2. **Mr. Rivas** (El Salvador) said that a new population census due to be conducted shortly would provide vital data for the Government to formulate a policy on indigenous peoples, given that the previous census in 2007 had left a number of issues unresolved, especially the matter of the exact location of indigenous settlements. Both indigenous peoples and Afrodescendants should play a leading role in formulating the census questions since, in 2007, many of them had been reluctant to identify as indigenous or Afrodescendant because of a lack of preparedness for responding to the census. The National Directorate for Indigenous Peoples and Cultural Diversity was responsible for raising public awareness regarding Afrodescendants, whose existence had long gone unrecognized and whose exact number remained unknown.
3. **Ms. Alvanés Amaya** (El Salvador) said that her country had recently adopted two laws — the Act on Equality, Fairness and the Elimination of Discrimination against Women and the Special Act on a Violence-Free Life for Women — which prohibited all forms of discrimination against women. Article 292 of the Criminal Code stipulated that public officials or employees, law enforcement officers or public authorities who, on grounds of race, denied a person any of the individual rights recognized under the Constitution were liable to 1 to 3 years' imprisonment and were disqualified from exercising their functions or holding their post during that time. Article 246 further stated that anyone who committed an act of serious discrimination in the workplace on the basis of race and who did not restore the situation of equality before the law in accordance with requirements or an administrative sanction and did not redress the financial harm caused by the act was liable to imprisonment for 6 months to 2 years. Although Salvadoran law did not explicitly tackle racial discrimination against indigenous peoples, the issue was covered in the Convention and, pursuant to the Constitution, international instruments to which El Salvador acceded became an integral part of national law upon their entry into force.
4. Regarding access to property, the Government strived to ensure that farmers enjoyed their legally recognized rights, which entailed identifying all persons concerned, including indigenous farmers, in order to transfer ownership of the lands to which they were entitled.
5. **Mr. Jiménez** (El Salvador) said that in 2009, in an effort to establish a representative and participatory democracy, the authorities had begun paying attention to previously ignored population groups, particularly indigenous peoples. Since the presidency of Mauricio Funes from 2009 to 2014, indigenous peoples had been among the priority focuses of Government action. The Ministry of Foreign Affairs had undertaken a consultation process with the various relevant government bodies with a view to ratifying the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). As part of the intercultural health policy currently being implemented, the Government was working towards legalizing alternative indigenous medicine, with the support of the Pan American Health Organization and the collaboration of indigenous organizations.
6. The National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict had been established in 2010, pursuant to the ruling of the Inter-American Court of Human Rights in the case of the El

Mozote massacre. Also in 2010, President Funes had apologized, on behalf of the State, for the massacres and the population's suffering during the armed conflict. Owing to budgetary considerations, the State had not yet been able to provide compensation to survivors, but it should be in a position to do so starting in 2015. Despite financial difficulties, the State was striving to create jobs, including for indigenous persons. The education system had been reformed to make primary and secondary education free for the entire population.

7. He acknowledged that some municipalities issued ordinances against street vendors, both Salvadoran and foreign, which were inconsistent with the national policy to fully uphold human rights. The delegation would be sure to bring the matter to the attention of the relevant authorities.

8. **Mr. Rivas** (El Salvador) said that the Government considered it essential to reinvigorate Nahuatl because language was a vital component of peoples' identity. In some schools, children learned to sing the national anthem in that language.

9. **Mr. Avtonomov** said he wished that El Salvador, which showed a clear political will to repair past injustices suffered by indigenous peoples, would give itself the practical means to fulfil all the obligations it had freely undertaken when ratifying the Convention. In that connection, he invited the State party to ratify the amendment to article 8.

10. **Mr. Jiménez** (El Salvador) said that the delegation would broach the matter of the amendment to article 8 with the Ministry of Foreign Affairs upon its return.

11. **Mr. Lindgren Alves** said he believed that the State party was doing its best to guarantee equality among all the country's ethnic groups, but that it should not introduce differences in the treatment of some Salvadorans in relation to others. The State party should categorically reject any such recommendation that the Committee might put forward.

12. **Mr. Rivas** (El Salvador) stressed that the country's indigenous people were, and were conscious of being, full-fledged Salvadorans. The Government did not distinguish among them and was committed to forging a society based on dialogue and respect for all its constituent groups.

13. **Mr. Murillo Martínez** (Country Rapporteur) asked who the Government's official contacts were among the indigenous peoples and how the Committee's recommendations were being disseminated and brought to public attention. He called upon the State party to make the declaration under article 14 so that Salvadorans who believed their rights under the Convention to have been violated could bring their case to the Committee, once they had exhausted all domestic remedies. He was concerned that Salvadoran criminal law did not uphold the spirit or letter of article 4 of the Convention and said that the Government should take all necessary steps to swiftly adopt legislation that was fully in line with the provisions of that article. He invited the delegation to describe the impact on the country's indigenous peoples of the Inter-American Court of Human Rights ruling of 25 October 2012 in the case of the El Mozote massacre and to indicate whether the Government had fully implemented it.

14. **Ms. Alvanés Amaya** (El Salvador) reaffirmed that the Government was determined to remove all obstacles to equality, fairness and justice and that it intended to review all secondary laws in order to bridge the legislative gaps pointed out by the Committee and hence punish perpetrators of acts of racism and racial discrimination more systematically. It was possible that there had been isolated cases of racism that had not been reported to the authorities, but the Government would ensure that there was no recurrence and that all perpetrators of racist or discriminatory acts were duly punished.

15. **Mr. Jiménez** (El Salvador) said that the Inter-American Court of Human Rights, in its ruling on the El Mozote massacre, had ordered El Salvador to compensate all the victims, a task that had been entrusted to the National Commission on Reparations for the Victims

of Human Rights Violations in the context of the Internal Armed Conflict. Unfortunately, the country's income was insufficient to ensure full compensation for all the victims, but the President had given clear instructions that budgetary provision should be made for compensation.

16. **Mr. Vázquez** observed that the lack of complaints of racial or ethnic discrimination was not necessarily a sign that such discrimination did not occur and could be symptomatic of the population's mistrust of the police or justice system or its lack of awareness of its rights and the mechanisms in place for reporting prohibited acts. He asked what measures the Government had taken to inform the public of its rights and to provide reparation to victims of discriminatory acts. He invited the delegation to clearly explain whether ratified treaties took precedence over national laws and whether municipal ordinances could contain provisions in conflict with instruments to which El Salvador was a party.

17. *Mr. Avtonomov, Vice-Chairperson, took the Chair.*

18. **Mr. Diaconu**, in response to Mr. Lindgren Alves's statement, said that the Committee always tried to engage in frank dialogue with States parties and to adopt concluding observations that reflected both that dialogue and local realities. The Committee's emphasis on the differences in treatment of various population groups in a given country did not mean that it encouraged the introduction of such differences; rather, they should be identified and taken into account in order to deal with them appropriately. Too many countries had ignored such differences, which had eventually become so great as to provoke ethnic conflicts with devastating consequences. It was much easier to ignore the Committee's recommendations than to draw the necessary lessons from them.

19. **Ms. Alvanés Amaya** (El Salvador) said that under the hierarchy of norms, the Constitution prevailed over all other laws and could not conflict with ratified international instruments. Municipal ordinances were no exception. The sole purpose of granting mayors the autonomy to issue ordinances was to give them a measure of flexibility in exercising their jurisdiction. The Government strived to inform Salvadorans of their rights and obligations, including the right to lodge a complaint with the police and to obtain reparation for any harm. However, much remained to be done in order to change attitudes, as Salvadorans had been reluctant in the past to complain to the authorities for fear of reprisals.

20. **Mr. Amir** asked what the policy was regarding the health of indigenous peoples, especially their mental health.

21. **Mr. Jiménez** (El Salvador) said that the discrimination and violence suffered by indigenous peoples for centuries since the arrival of Spanish settlers and the internal conflicts that had made their mark on the country's history had had undeniable effects on the mental health of indigenous peoples. The Ministry of Health had set up mental health programmes, but they were not geared specifically to indigenous persons suffering from psychiatric disorders. Government policy in that regard was to guarantee that all minorities enjoyed their economic, social and cultural rights, the rationale being that people were in better mental health if their fundamental needs were met. Targeted mental health programmes for indigenous people should nonetheless be developed.

22. *Mr. Calí Tzay, Chairperson, resumed the Chair.*

23. **Mr. Yeung Sik Yuen**, referring to the land distribution schemes, asked whether steps had been taken to ensure that plots were allocated only to those who really needed them and planned to farm them and whether safeguards had been put in place to prevent the system from being abused. He invited the delegation to specify whether the land ownership rights were individual or collective and whether title holders were authorized to sell their land or whether they could only farm it and exploit the natural resources found on it.

24. **Ms. Alvanés Amaya** (El Salvador) said that the law on the establishment of the Salvadoran Institute of Agrarian Reform explicitly stated that public land could be distributed only to landless farmers. However, in 2009, three former heads of the Institute had been tried and convicted for allocating some 540 plots to public servants. As a result, procedures had since been modified and strict checks had been introduced to ensure that recipients of title transfers were not already landowners. Moreover, plots were now allocated as a “family asset” (*bien de familia*); in other words, titles were held by several members of the same family in order to prevent the land being resold to third parties. In addition, as part of an agricultural development programme launched in 2009, farming families to whom a plot was allocated also received seeds from the State and technical assistance from biologists and agronomists. The measures were designed to guarantee the recipient families’ food security and ensure that ancestral lands remained the property of indigenous communities.

25. **The Chairperson** welcomed the fact that, despite persecution and repressive policies aimed at denying indigenous identity, some communities, particularly in the department of Santa Ana, had led a silent protest by covertly preserving their culture. Noting that a mere 10 per cent of the population currently identified as indigenous, he said he hoped that more people would identify as such in the 2017 census.

26. **Mr. Rivas** (El Salvador) requested the Committee’s authorization for the representative of a Salvadoran NGO to make a brief statement.

27. **The Chairperson** said that that was a novel situation as the Committee was not in the habit of involving NGOs in the dialogue with States parties. However, since the request had come from the delegation and the Committee members did not appear to oppose the idea, he invited the NGO representative to take the floor.

28. **Ms. Pérez** (Salvadoran National Indigenous Coordinating Council) said that she belonged to the Nahuatl people and represented an NGO that defended the rights of indigenous peoples and worked to preserve the language and health of indigenous communities. Since a left-wing President had come to power in 2009, indigenous peoples across the country had gained a new sense of self-awareness and the number of indigenous organizations had risen significantly. Constitutional reforms had been adopted in June 2014, but the Government’s proposals had run up against strong opposition from right-wing parliamentarians, who were opposed to the recognition of indigenous peoples and their rights over their ancestral lands. She hoped that the Government elected in June 2014 would carry on its predecessor’s policies and that a coordination mechanism would be set up to design a road map in collaboration with indigenous peoples’ organization.

29. **Mr. Murillo Martínez** noted that significant progress had been made in El Salvador, in particular with regard to the recognition of indigenous land rights, but that further efforts were needed in a number of areas, including the adoption of targeted programmes for minorities, the collection of disaggregated data, the criminalization of racist behaviour, the eradication of discrimination against migrants and the implementation of plans and policies to enhance the socioeconomic situation of indigenous persons, especially women.

The meeting rose at 5.55 p.m.