



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 1982nd meeting

Held at the Palais Wilson, Geneva, on Monday, 22 February 2010, at 10 a.m.

Chairperson: Mr. Kemal

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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)*

Twelfth and thirteenth periodic reports of Guatemala (continued) (CERD/C/GTM/12-13; CERD/C/GTM/Q/12-13; written replies to the list of issues, document without a symbol distributed in the meeting room in Spanish only)

1. *At the invitation of the Chairperson, the members of the delegation of Guatemala took places at the Committee table.*
2. **Mr. Bolvito** (Guatemala) said that the Mayan world view was based on a complex astronomy-based calendar, a cultural and artistic production that included dress, a specific education system and an entire set of principles and values. To put it simply, there was a solar or agricultural calendar, in which the first day of the current year fell on 22 February, and there was also a lunar or sacred calendar. Twenty-day cycles each corresponded to a type of energy, either weak or strong, called a “nawal”. Every Maya must learn to live with those various energies in order to fully benefit from them.
3. In order to preserve its people’s traditional knowledge, Guatemala had adopted Act No. 19-2003, which established the Mayan, Xinca and Garífuna languages as national languages. The State was required not only to authorize the use of indigenous languages, but also to recognize, respect and promote them. A commission for the recognition of indigenous languages had been put in charge of a linguistic cartography project for preparing a national linguistic atlas. The Government had set up a commission to identify sacred sites, and the Ministry of Culture and Sport had issued a decree regulating access to archaeological sites, complexes, monuments and places considered to be sacred. The same Ministry had created the Directorate-General for Cultural Development and the Strengthening of Cultures, which was responsible for promoting the inclusion of cultural issues in public policies and strengthening the participation of civil society and linguistic communities in order to ensure that development plans and policies were viable while still recognizing cultural diversity.
4. The National Council on Protected Areas included the Department of Indigenous Peoples and civil society which helped the Government better to respond to the demands of the indigenous Mayan, Xinca and Garífuna peoples regarding management of biological diversity and the Guatemalan system of protected areas. That Department had consolidated the collective knowledge of the Poqomochi’, Achi, Kaqchikel and Mam Mayan linguistic communities in several areas (agriculture, forest management, cuisine, medicine, sacred sites, dances and rituals) in a publication entitled “Guatemala and biodiversity”.
5. The term “sacred sites” referred to physical locations that the Maya believed to be charged with positive energy and were thus recognized and worshipped. Those locations or places could be mountains, hills, caves, rivers, lakes, rocks or stones that, because of their positive energy, ensured the well-being of the community and each of its members.
6. The Guatemalan Constitution recognized the right of individuals and communities to their own cultural identity, values, language and customs, along with the right of each individual to practise the religion of his or her choice. Guatemala also recognized the practice of Mayan spirituality. It had acceded to the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
7. The Ministry of Culture and Sport had set up a sacred sites unit and the Institute of Anthropology and History had listed 2,257 archaeological sites in a register of sacred sites.

8. The bill on sacred sites, currently under review by a parliamentary commission, aimed to improve the implementation of articles 13 to 16 of ILO Convention No. 169, which made specific reference to land issues. The objective was to respect the exercise of the right to be consulted, while making it easier for indigenous people to exercise their property rights and thus avoid the unlawful appropriation of their ancestral lands. Guatemala would provide information at a later date on the measures taken to ensure respect for the connection between the indigenous peoples and the land.

9. As part of the preparation of the State party's report, in May, June and July 2008 the Government had organized consultations among indigenous and civil society organizations and regional State institutions, as well as consultations among all the relevant ministries. Those consultations had taken the form of thematic workshops and regional meetings in eight departments.

10. One of the primary objectives of the Peace Agreements was for Guatemala to become a multi-ethnic, multicultural and multilingual nation. To that end, a comprehensive set of concrete measures had been taken to strengthen the implementation of the Agreement on the Identity and Rights of Indigenous Peoples. Those measures included incorporating the ethnic variable into State institutions' budgets, drafting a bill to establish the Mayan University, passing a rural development Act, adopting a comprehensive rural development policy, and implementing a land inventory project in some departments. The National Fund for Peace had invested more than \$1,000,000 in productive projects (training and technical assistance, silo construction, equipment for agriculture and cottage industry, etc.) to benefit 35,994 people in 83 communities. In 2009, the Pro Rural programme had made it possible to undertake a wide variety of agricultural projects that had benefited 945,155 people in six departments.

11. As part of its programme to include Mayan, Garífuna and Xinca women, the Office for the Defence of Indigenous Women's Rights had played an important role, in collaboration with important key State actors such as mayors, justices of the peace and departmental commissions. A round table on women's economic emancipation had been organized in order to develop a national economic programme to promote gender equity in the economic sector. The following concrete measures had also been adopted by the Guatemalan Government: implementation of the Special Programme for the Protection of Domestic Workers (PRECAPI), which included maternity and family allowances for domestic workers; creation of a health service for indigenous peoples and a multiculturalism service within the Ministry of Public Health and Social Assistance; creation of an office to coordinate issues regarding parity and Maya, Garífuna, Xinca and Ladino peoples within the National Statistical Institute; establishment of a calendar for the implementation of the Peace Agreements from 2008 to 2012. Measures had also been taken to promote indigenous fabrics and traditional dress in order to encourage the revival of indigenous cultures and the local economy, and art schools had been set up by the Ministry of Culture and Sport.

12. A national campaign to promote cultural diversity and harmony had been launched to raise awareness of the need for tougher action against discrimination and racism in Guatemala. Information on those issues had been disseminated in various indigenous languages via national and community media channels. Community magistrates' courts had been set up to improve access to justice in municipalities where no justice structures had previously existed. The Office for the Defence of Indigenous Women's Rights had organized training and counselling sessions for various indigenous leaders who were members of the development boards, in order to improve the representation of indigenous women on those boards. Between 2008 and 2009, 10,118 cases involving victims of the internal armed conflict had been submitted to the public prosecutor's department in order to establish the truth. A number of bills had been submitted to Congress, including the sacred

sites bill, the bill for a general act on the rights of indigenous peoples in Guatemala, the Act on consultations with indigenous peoples, the bill on community communications media, the initiative for a framework law on rural development and the bill on a comprehensive national rural development system. In 2009, the Government had created the Mi Comunidad Produce programme, which would be implemented in 185 of the country's poorest municipalities and would consist primarily of granting some 45,000 microcredit loans to women. As part of the Mi Familia Progresá programme, the Government would grant a monthly allocation of \$37.50 to families on condition that their children went to school and received medical care. Families who received money from abroad and people who owned decent housing were excluded from the programme. The Open Schools programme launched in July 2008 provided artistic, cultural and sports-related activities at weekends for youth at risk of delinquency. As of the end of October 2009, there were 185 open schools in the country serving more than 180,000 young people.

13. Guatemala had adopted the United Nations Declaration on the Rights of Indigenous Peoples and fully subscribed to articles 3 and 4 of that Declaration, whereby indigenous peoples had the right to self-determination, which meant that they freely determined their political status and freely pursued their economic, social and cultural development. In exercising their right to self-determination, they had the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means of financing their autonomous functions.

14. Guatemala had undertaken to reduce illiteracy through its National Literacy Commission. In 1986, the illiteracy rate among the over-15 had been 52 per cent, or roughly 2.6 million people, the vast majority of them (77 per cent) living in rural areas. At that time, 44 per cent of illiterate people had been men and 56 per cent women. The fight against illiteracy had been fruitful, given that in 2009 the illiteracy rate had been 21.05 per cent in total (18.29 per cent of men and 23.53 per cent of women).

15. The 1996 Peace Agreements, and in particular the Agreement on the Identity and Rights of Indigenous Peoples, emphasized the need to begin reform of the national education system and defined the guidelines of that reform with regard to bilingualism and interculturalism. The reform's aims were to provide multicultural and intercultural education for all, strengthen the identity of each people and linguistic community, promote unity in diversity and foster multilingualism through the learning of indigenous or foreign languages. The Government agreement aimed at universal bilingual, multicultural and intercultural education included various strategies to enforce compulsory education and the practice of multiculturalism and interculturalism in the public and private sectors. A bilingual intercultural education model had been created to serve as a starting point for education programmes for the various indigenous peoples in the country. The linguistic policy in the national primary education programme required students to learn three languages: their mother tongue, Spanish and English.

16. The Ministry of Education had launched a national intercultural plan that took into consideration the various educational communities and allowed for the development of intercultural practices with a view to building unity in diversity. A number of school materials had been published in 16 indigenous languages and in bilingual form (in Spanish and indigenous languages). Bilingual and intercultural teachers were being trained in 22 teacher training colleges. The national education system included 6,500 bilingual teachers in 2004 and 5,500 more in 2007. The Government had also launched the "Good for Bilingualism" programme in 2007, paying 16,446 teachers a salary supplement in order to improve their language skills and qualify them to provide bilingual education.

17. The National Languages Act stipulated that the official language of Guatemala was Spanish and that the State recognized, encouraged and respected the Maya, Garífuna and Xinka languages. Since the State ensured that public services were provided with respect

for the languages of the various linguistic communities in the public and private sectors, in terms of language the Act aimed to facilitate, access for all members of the various linguistic communities to health, education, justice and security services, so as progressively to expand that provision to include other services. The purpose of the Act was for the various linguistic communities to use national languages unrestrictedly in the public and private sectors in the education, academic, social, economic, political and cultural fields.

18. With regard to mining licences, the Ministry of Energy and Mines had established administrative procedures to guarantee respect for the provisions on the exploitation of natural resources. Since 1996 the Ministry had granted 169 mining licences, 54 of them in municipalities with a majority indigenous population, and only three projects had involved metal ore extraction.

19. Several consultations, generally organized by the municipalities themselves, had been held without internal legal support, in conformity with the instructions of the Congressional Commission on Transparency in the absence of an established procedure, with a view to respecting the spirit of ILO Convention No. 169 and protecting the populations' customs and interests. The communities concerned must be able to make free and informed decisions.

20. The Guatemalan State had initiated talks on the exploitation of natural resources with the departmental, municipal and community authorities. Regarding the metal ore extraction project, an information system had been developed with the participation of community leaders. The mining company and the Guatemalan State had addressed the concerns expressed by the communities living in the vicinity of the project. Field surveys had been carried out to shed light on the complaints and inform the communities of the outcome. More generally, the Government had created a forum for dialogue with the various sectors, as part of the "Governing with the People" initiative. The purpose of the talks was to arrive at a compromise among the various parties; they covered various topics such as environment, education, health and infrastructure. Within that framework, the President of Guatemala had heard the wishes of the population groups that were opposed to certain mining projects on their lands and he had taken their views into consideration.

21. The moratorium on mining licences was linked to the controversy that had erupted in several indigenous communities concerned about large-scale mining projects. The administrative mining licensing procedures were under review so as to respect environmental and social responsibility standards and citizen participation. Since July 2008, as no request for a licence had satisfied the criteria, the procedures remained under review.

22. The Guatemalan State was studying a mining bill that took into account international experience in observance of environmental, social and economic standards and focused on national interests, economic development and respect for communities affected by mining projects. The bill's four main target areas were the environment, the economy, social aspects and institution building. In terms of social aspects, the bill provided for popular consultation procedures prior to the issuance of permits. In terms of institution building, it set stricter taxation and State monitoring conditions and provided for the creation of a mining policy council with the participation of the local authorities involved in mining projects.

23. Regarding the mining project in San Juan Sacatepéquez, in 2006 a public limited company had submitted a request to the Directorate-General of Mining to extract various ores in that municipality, and in 2007 the Ministry of Energy had granted the company a mining concession once it had fulfilled the criteria established by law. The project would cover a 900-hectare area, including the municipality of San Juan Sacatepéquez, but would

not exploit the entire area and would preserve the forests within it. The processing facility and extraction zone would occupy only 64 hectares.

24. As part of the dialogue and information-gathering process currently under way, the company had conducted a study among the affected communities on the economic, social and cultural effects of the extraction activities, as requested by the Ministry of the Environment and Natural Resources. At those communities' request, the company's environmental impact study had been reviewed by a panel of international experts, which had validated the technical and environmental sections of the study but had found omissions at the social level that needed to be addressed.

25. The San Juan Sacatepéquez municipal council had validated the order to convene the indigenous communities living near the project to participate in the consultations on the issuance of the mining licences, stipulating that the participation of at least 20 per cent of the inhabitants of the municipality was required. On that basis, the municipal council had subsequently cancelled the consultation on the ground that the legal criteria had not been met. However, a group of inhabitants had held talks with 8,000 people opposed to the project. The commission appointed by Congress to study the case had found no proof that all the participants in the consultation had been over 18 years of age, which by law was a required legal condition. The Constitutional Court had then asked Congress to adopt regulations without delay on that concession. The Government was therefore currently engaged in talks with the communities on the Constitutional Court decision and the recommendations of the Congressional Commission.

26. In the legal proceedings on the 2008 Sacatepéquez conflicts, a distinction was made between acts of violence such as group lynching that had been committed in certain municipalities and peaceful resistance to the decisions of the public authorities. The Transparency Commission, which was investigating the allegations of violence, had determined that illegal armed groups had probably been involved. In 2008, proceedings had been initiated against persons suspected of planting a bomb that had partially destroyed a bridge in San Juan Sacatepéquez, and one suspect had been arrested. Many inhabitants had then protested, demanding the suspect's release, obliging the authorities to mobilize hundreds of police officers to disperse the protesters, leading to 17 arrests. The prime defendant had subsequently been fined and released.

27. The Federal Government had not yet organized consultations prior to the issuance of mining licences. Those organized by municipal authorities or convened by communities had respected the norms established in ILO Convention No. 169. Nine licences had been refused in localities where the municipalities had organized consultations and where the community had rejected the projects. Those granted licences after the ratification of ILO Convention No. 169 had refrained from mineral prospecting so as not to provoke conflicts and had left the exploration areas inactive.

28. The law currently in force provided for an environmental impact study before any mining project could be undertaken. Such a study was required for authorization and to ensure implementation of the administrative procedure.

29. As for the non-binding nature of the consultations, there were several Constitutional Court rulings on that subject. In a ruling from 2005, the Court had established that popular consultations were an important means of popular expression and allowed the people to exercise their constitutional rights, but that those consultative procedures must take place within a clearly defined legal framework. The authorities in charge of organizing consultations needed to ensure that they were non-binding. In a ruling from 2009, the Court had reaffirmed its 2005 opinion on the *amparo* request from several representatives of the San Juan Sacatepéquez communities and had decided that consultations were compulsory.

30. The Court had also referred to the position of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who had drawn up the list of criteria for consultations. Consultations needed to be held beforehand and in good faith in order to instil trust, involve institutions representing indigenous people, and be systematic, transparent and non-binding. The Court had also declared that if there was opposition from indigenous communities to a mining initiative, the right to be consulted did not entail the right to veto government decisions, since the Government was bound to respect the people's fundamental rights. In the Guatemalan legal order, the Constitutional Court was the supreme authority on the interpretation and implementation of the law.

31. In 2009, the Congressional Committee on Indigenous Communities had drafted a bill on consultation with indigenous peoples, which had been reviewed by several indigenous bodies. Following those consultations, the Commission had issued a favourable ruling on the bill in October 2009. The bill's objective was to regulate the exercise of the right to be consulted and to establish the compulsory nature of that right. An indigenous consultations council had been set up to ensure the implementation of the future law. That council was an autonomous body composed of community representatives and would serve as an intermediary between the State and indigenous peoples on consultation issues and would be responsible for determining which administrative and legal measures should be subject to consultation, advising the communities and carrying out studies or drafting reports on potential projects.

32. Pursuant to the bill on consultation with indigenous peoples, it was for the State to organize such consultations and to indicate beforehand the issues to be discussed. Because the bill called for the creation of an autonomous indigenous consultations council, it needed to be approved by two thirds of Congress.

33. The Iomb'e k'amalb'e of human rights had worked on a voluntary basis with the Human Rights Procurator to promote and defend the human rights of indigenous peoples. They had helped resolve conflicts involving indigenous peoples and had intervened in cases of violations of indigenous people's rights. The posts had been created in 2005, but they had ceased their activity in mid-2007 due to lack of resources.

34. The Ministry of Labour and Social Welfare was implementing several projects under its programme to promote and monitor implementation of workers' rights to health, safety and social assistance, including assistance to indigenous peoples. He referred Committee members to paragraphs 205 to 209 of the State party's report (CERD/C/GTM/12-13) for further information on the issue and on working conditions and the measures taken to deal with labour rights violations in the maquiladoras in the country. Committee members could also refer to paragraph 218 ff. with regard to the mandate and composition of the General Inspectorate of Labour of the Ministry of Labour and Social Welfare.

35. The role of the community justices of the peace was to guarantee access for indigenous peoples to judges who were sensitive to their culture. Those courts, which had been established in municipalities where no other courts existed, were presided over by three members normally appointed by the community and approved by the Supreme Court and possessing legal knowledge but, above all, familiar with local customs. Those judges generally took the middle ground between written law and customary law. They were competent to preside over conciliation sessions and approve resulting agreements, receive the initial statement from an accused person, impose coercive measures and order the removal of a body in the absence of a representative from the Regional Public Prosecutor's Office.

36. Due to a lack of resources and intercultural training, Guatemala had been unable to guarantee equal access to justice for all population groups, despite the establishment of

justice centres employing bilingual personnel in the regions inhabited primarily by indigenous peoples.

37. While also acknowledging that racism and racial discrimination had not been classified as criminal offences, he maintained that Guatemala was committed to combating discrimination in general, as attested to by article 202 bis of the Criminal Code, which defined discrimination as any distinction, exclusion, restriction or preference on the basis of sex, race, ethnic origin, language, religion, economic status, illness, disability, civil status or other grounds which hindered the exercise of a legal right by a person or group of persons. Anyone who violated that article — deliberately or not — was subject to a sentence of 1 to 3 years' imprisonment and a fine of 1,500 to 3,000 quetzales. In the event that the discrimination was based on language, culture or ethnic origin, if the perpetrator advocated discriminatory ideas and participated in their dissemination, or if the act was committed by a public official in the exercise of his or her duties, an aggravating circumstance was applied to the sentence.

38. Article 14 bis of the Labour Code prohibited discrimination on the basis of race, religion, political opinion or economic status in access to social, educational or cultural services for workers, whether in the private or the public sector. It also stipulates that access to such services must not depend on the worker's level of remuneration or responsibility within the company.

39. Article 89 of the same Code established the equal pay for equal work principle. Also, if an employee filed a complaint of wage discrimination on the basis of sex, it was then for the employer to prove that the remuneration corresponded to the complainant's responsibilities.

40. Article 1 of the Educational Campaign against Discrimination Act stated that Government ministries must promote respect and tolerance among the various segments of the Guatemalan nation, which was pluricultural, multilingual and multi-ethnic.

41. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) was currently preparing a draft bill on the prevention and elimination of discrimination and racism in Guatemala and was determining the penalties for such acts.

42. A recently established unit for the alternative settlement of disputes through mediation offered the population a free, quick and informal way of resolving disputes in the civil, criminal, commercial, family and labour sectors. The unit's mandate was to encourage social peace, ensure that justice was quick and efficient and accessible to all, including indigenous peoples, and ease the pressure on the courts. Some of the designated mediators were indigenous and were therefore familiar with indigenous principles and values and traditional ways of settling disputes.

43. A new population census would be held in 2012. In order to compare the results with those of previous censuses, the National Statistical Institute (INE) would retain many of the questions previously asked, but would consult representatives of indigenous peoples — Maya, Garífuna, Xinca and Ladino in particular — to determine which issues should be the subject of specific questions.

44. The differences between the statistics on the indigenous population contained in the report under consideration (CERD/C/GTM/12-13) and those in the State party's previous periodic report were explained by the fact that the statistics in the previous report were based on the 1994 census, at which time the indigenous population had represented 42.38 per cent of the population, while the latest report used statistics gathered in 2002, when the indigenous population had represented 39.45 per cent of the population. A more accurate measurement of that population would emerge from the 2012 census.

45. In order reliably and objectively to evaluate the effects of policies on indigenous peoples, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala had undertaken to measure the primary indicators used in Latin America, such as population, birth rate/death rate, territorial distribution and internal migration, formal education, culture and language, socio-economic characteristics, basic housing and sanitation and, finally, family.

46. The departments where indigenous peoples represented 35 per cent or more of the population (Chimaltenango, Sololá, Quetzaltenango, San Marcos, Huehuetenango) had benefited from an increase in public investment. Also, a rural economic development programme had been set up to improve access to credit, and the development of infrastructure and means of production while strengthening regional and departmental governance and encouraging the implementation of agreements between the public and private sectors.

47. Guatemala was currently conducting an extensive campaign of incentive measures to encourage parents to send their children to school, including scholarships. Another government measure was to promote greater participation of the population in political life at all levels, pursuant to the Urban and Rural Development Council Act.

48. Statistics were not available on land held by indigenous peoples. The Land Fund, the Secretariat for Agrarian Affairs and the Cadastral Information Registry kept statistics on land ownership, but they dealt only with lands held by peasants. Those statistics would nevertheless be submitted to the Committee.

49. The State Inter-Institutional Coordination Unit on Indigenous Issues was a political coordination and consultation body made up of representatives of State institutions, mostly from the executive branch. Its mandate concerned indigenous peoples, though its members need not be indigenous.

50. In order to combat racial hatred, campaigns were under way to promote peaceful coexistence among the peoples at the root of the country's cultural diversity, and training programmes were available to press and television personnel. Also, the Ministry of Education had issued directives calling on public officials from that Ministry to refrain from using racist or discriminatory language.

51. Members of the Alliance against Racism, which included representatives of State, academia, and civil society, had created the Observatory on Racism in the Media with a view to creating an inclusive public space.

52. On 14 January 2008, President Álvaro Colom had announced the initiation of a national dialogue through which the Government would gather information, hold consultations and reach agreements with national personalities so that Guatemalans could themselves decide the future of their country. The Presidential Commission established to coordinate those measures comprised a prosecutors' unit, a policy unit and a unit on Government-peasant relations. Other offices concentrated on territorial development, relations and consultations with indigenous peoples, democratic governance of the country, or goals to be set for 2010.

53. Meanwhile, Congress had invited parliamentary group leaders to reflect on the legislative aspects of the 2010 priorities, and public institutions and civil society organizations had been invited to participate in thematic debates on a number of laws on comprehensive rural development, sacred sites and consultation with indigenous peoples and the media. The positive results of those new discussion forums included approval of the public policy on comprehensive rural development, the drafting of a bill on the civil service and the implementation of a programme to create 80,000 jobs in rural areas.

54. **Mr. de Gouttes** asked what measures the State party planned to take to combat derogatory stereotypes of indigenous populations. He also wished to know the current status of the proposal to amend the Mining Act and whether that Act guaranteed that consultations with indigenous communities prior to the start of any mining project would be binding. He wished to know the composition of the community courts, in what areas they held jurisdiction, and whether they guaranteed that the indigenous justice system and the normal justice system would complement each other. Did the Government have any plans to re-establish the post of *Iomb'e k'amalb'e* of human rights?

55. **Mr. Thornberry** pointed out that many laws and policies had been awaiting approval for several years, such as the law on consultation with indigenous peoples and the proposed amendment of the Mining Act. He wished to know how soon those laws and policies could be adopted and what obstacles there might be to their adoption.

56. He would like to know whether the Government had received any technical assistance in drafting the Consultation with Indigenous Peoples Act, particularly from international organizations with experience in such matters.

57. According to a report of February 2009 by the Office of the United Nations High Commissioner for Human Rights, the human rights situation appeared to be critical and the leaders of indigenous rights organizations were subjected to very serious acts of violence. He would therefore like to know the contents of the programme the Government was currently drawing up to prevent violence and protect indigenous peoples.

58. **Ms. Dah** said she was sure that the 2012 census would show that indigenous peoples made up a large majority in Guatemala, which would put an end to the disputes over the relevant figures. Convinced that the value of a population census depended on the preparation that went into it, she wished to know how Guatemala was preparing for the census and to have an idea of the questions that would be asked of the population during the census. The issue was even more important now that Guatemala had adopted the principle of self-identification. The questions to be asked on that subject should be both relevant and sufficiently diverse to allow each person to identify themselves in the right category.

59. She would appreciate clarification on the policy on interculturalism that the Guatemalan delegation had mentioned in its oral presentation and, more specifically, on how that policy was transposed to the field of education. In that regard, she wished to know whether all Guatemalans could choose to attend bilingual classes, particularly in the Mayan language, and whether the non-Maya could enrol their children in a school that taught the Mayan language and culture.

60. With regard to history, she wondered how the Spanish conquest was presented and explained in textbooks and whether the same history curriculum was taught in regular and bilingual schools. Were nuances introduced to reflect the culture to which the students belonged?

61. She hoped that the law on consultation with indigenous peoples (CERD/C/GTM/12-13, para. 166) would not only be implemented in the mining sector alone, but would cover all sectors of the economy. She was concerned by certain comments from the delegation that suggested that economic development requirements sometimes justified overriding the prior consent of indigenous communities in the issuance of mining licences and the exploitation of natural resources, and that the authorities could use their veto right to authorize development projects opposed by indigenous communities. While economic development might be a forceful argument in developing countries, that goal should not be an excuse for the State to ignore the legitimate rights and interests of indigenous peoples living in areas affected by development projects. She agreed with Mr. Thornberry that the national interest was, above all, the interest of all and not that of a select few.

62. **Mr. Diaconu** said it was a pity that, apart from the reference to article 202 bis of the Criminal Code (*ibid.*, paras. 144 and 145) that classified discrimination as an offence, the State party's report contained no information on laws criminalizing the dissemination of ideas based on notions of superiority or racial hatred and incitement to racial discrimination, pursuant to article 4 of the Convention. Guatemala should also immediately address the problem of continuous postponement and deferral in the adoption of bills that were very important in terms of the Convention.

63. The conflict between a State's right to development and the rights of indigenous peoples was a recurring problem in developing countries and it was up to the authorities to find a proper balance between the national interest and the interest of the peoples living in areas affected by development projects. The interests of indigenous peoples could not be sacrificed to a so-called "general interest" defined in abstract terms by anonymous public officials in ministries. Development projects should only be carried out once the interests of the indigenous communities living in the affected areas had been duly taken into account; if a project compromised a population's existence or living conditions, then other options and compensations must be offered them so that their new living conditions were similar to those they had enjoyed before.

64. **Mr. Amir** said that a State's choice between renovation and restoration when it came to urbanization and development policy was always a delicate matter. Populations living on lands affected by economic development projects often had no choice but to leave the area, which eventually led to the extinction of their culture and changes in their way of life and ancestral practices, as those practice were often closely intertwined with the land on which they lived. The Guatemalan authorities should therefore reflect deeply on what urban and rural sociology policy could best address those concerns.

65. **Ms. Crickley** asked how the rights of indigenous peoples would effectively be respected under the Consultation with Indigenous Peoples Act. She was impressed by the list of bills currently before Parliament and wondered how the authorities planned to measure the actual impact those laws would have once they had been adopted and what criteria would be used.

66. She welcomed the Guatemalan delegation's announcement of the introduction of the principle of self-identification in the 2012 population census and the authorities' determination to make good use of the statistics, disaggregated by ethnicity, that would be gathered during the census in order to create social policies that were better adapted to the needs of the country's various ethnic and social groups. Given that the Guatemalan authorities had recognized that, throughout their country's history, inequalities and racist practices and attitudes had helped to create ethnic and social discrimination, she asked for clarification on the Government's plans to ensure that members of indigenous communities would know that they could identify themselves as such during the 2012 census without fear of prejudice.

67. **Mr. Lindgren-Alves** asked the delegation whether the Maya, particularly those who did not speak Spanish, considered themselves to be Guatemalans. Citing the first paragraph of the introduction to the State party's report, according to which transforming the still homogenous national State into one that represented and reflected the country's multicultural and multinational character was an essential component of the process of political, economic and cultural transformation in which the State had been involved since the signing of the Peace Agreements, he wished to know exactly what was meant by a "multinational nation" and whether that implied abandoning the principle of a "Guatemalan nation".

68. **Ms. Soberanis** (Guatemala) said that while her country's periodic report and the alternative report from non-governmental organizations (NGOs) might seem to differ, they

were actually complementary. As noted by the Country Rapporteur and NGOs, changes needed to be made at the normative and sociocultural levels. The Government was fully aware of that fact and of the gaps in the implementation of public policies and laws within the State party.

69. Many bills were currently being considered by Congress, including the draft Consultation with Indigenous Peoples Act and the bill on the consultation of indigenous peoples/communities for granting mining licences (ibid., para. 275). The former stated that mineral prospecting and mining licences could be granted only if the communities living on the lands where the project was to be carried out had been duly consulted, particularly with regard to the relevance and importance of the projects under consideration and their possible negative impact on the communities living in the affected areas. That provision had been drafted specifically by the Vice-President's Office.

70. Congress was currently reviewing bills concerning the mining sector to ensure that their provisions were in line with the provisions of ILO Convention No. 169 and to speed up their approval by both chambers of Parliament.

71. **Mr. Bolvito** (Guatemala) said that his country would provide the Committee with written replies to the questions that the delegation had not had the chance to answer during the present meeting. He reaffirmed that Guatemala was aware of its responsibilities to establish internal mechanisms to combat racism and would respect its commitments as a State party to the Convention.

72. **Mr. Murillo Martínez**, Country Rapporteur, welcomed the spirit of openness and dialogue shown by the Guatemalan delegation. He emphasized, however, that there were still concerns about respect for the rights of indigenous peoples living in the State party, especially in light of information of the murder of 24 indigenous chiefs in 2008. He welcomed the many measures taken by the authorities to improve the situation of indigenous peoples and to show more respect for their rights, as well as nationwide efforts to ensure that they were better integrated in the social fabric of Guatemala. In the future, the Committee would certainly like to hear about the legislative measures to give legal force to those measures, and would like to receive information on the constitutional amendment to institutionalize intercultural dialogue. The principle of prior consultation of indigenous peoples on all development projects affecting them was essential, as the interests of those communities were also the interests of the country as a whole.

73. **The Chairperson**, thanking the Guatemalan delegation for the high quality of its dialogue with Committee members, announced that the first part of the Committee's consideration of the twelfth and thirteenth periodic reports of Guatemala had been completed.

The meeting rose at 1.05 p.m.