



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

Distr.
GENERAL

CERD/C/SR.1739
2 March 2006

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1739th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 24 February 2006, at 3 p.m.

Chairman: Mr. de GOUTTES

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eighth to eleventh periodic reports of Guatemala

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.06-40644 (E) 280206 020306

The meeting was called to order at 3.20 p.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/469/Add.1; HRI/CORE/1/Add.47)

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) explained that the report had been drafted by the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA). The decision to establish the Commission had emerged from negotiations led by indigenous organizations, within the domestic context of the Peace Agreements, in particular the Agreement on Identity and Rights of Indigenous Peoples. It also represented an attempt to honour commitments Guatemala had entered into under the Durban Declaration and Programme of Action. In addressing the need to focus on the elimination of racial discrimination, his Government had invited five indigenous persons of recognized standing to spearhead the process of establishing the Commission. Those five persons implicitly represented 36 indigenous groups.
3. Through its work during the three years since its inception, the Commission had acquired much experience in compiling the information and studies necessary for preparing the present report. In examining the structural and historical origins of the phenomenon of racial discrimination in Guatemala, it had taken full account of the aspects of social and political life that had changed in the post-conflict period. The very existence of the Commission and the outcome of its work were the culmination of efforts to give a voice to the indigenous peoples of Guatemala and, above all, to secure indigenous representation at State level.
4. As stated in paragraph 15 of the report, the crisis of discrimination against the indigenous people of Guatemala involved not only a failure to observe civil and political rights, but also the continued violation of social, economic and cultural rights. However, the Government had exerted great efforts to remedy the situation, taking affirmative action such as the establishment of the Presidential Commission. Another milestone in Guatemala's emerging democracy was the creation of the well-endowed Guatemalan Academy of Mayan Languages, encompassing 22 linguistic entities throughout the country. The ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries had prompted Guatemala to establish mechanisms to incorporate the administration of indigenous justice, as practised by the Mayans, Xincas and Garifunas. Such measures were expected to offset their sense of exclusion from the State structure and justice system.
5. As a matter of priority, the Presidential Commission had vigorously pursued the development of a public policy against discrimination that had garnered the support of the international community, academia and indigenous leaders. He described the extensive research, collaboration and commitment that had been mobilized in the formulation of that policy, whose implementation would have a major impact on Guatemalan society as a whole.

6. His delegation had attempted to present the situation in Guatemala as realistically, honestly and comprehensively as possible. He drew special attention to section III of the report on the implementation of the Convention, describing minimum basic legislation adopted by the Government that offered new forms of coexistence with the indigenous population, and the forums and projects which the public authorities organized in their cooperative action to combat racial discrimination and in the establishment of a multicultural society. He mentioned a number of other effective measures, such as the amendment or repeal of discriminatory laws; the tasks of the Office of the Ombudsman for Indigenous Peoples in recording human rights violations; policy changes made by the National Civil Police; and the work of the Presidential Secretariat for Women.

7. The process of preventing and eliminating racial discrimination was, of necessity, a gradual one. But much progress had already been achieved, as was evident from the Government's acknowledgement of past atrocities, admission of continued discrimination and efforts to compensate victims of gross violations. A long-term approach was the only wise course to be taken towards the improvement of conditions and the dismantling of an inherently racist State. For the first time in Guatemala, public policy had been formulated collectively, with the full participation of civil society and due regard for the need to create a bridge between the executive branch and the indigenous organizations, as mandated under the Constitution.

8. In a manner of speaking, the report constituted an alternative report since it also described the shortcomings, processes and participation that formed the overall social context. The budget of the Presidential Commission had grown tenfold but was still low, considering the scope of its task of comprehensively addressing the improvement of rights for indigenous peoples, and more specifically, their women folk and young persons. The report was future-oriented, but its drafters could not ignore the pain of the past. They had personally endured the hardships and persecution of conflict and discrimination, and he took the opportunity to appeal to the Committee for its continued support in their pursuit of their objectives for Guatemalan society. He looked forward to learning the observations and recommendations that would arise from the discussions, and to incorporating them within a global strategy for securing progress in the elimination of racial discrimination in Guatemala.

9. Mr. ELLINGTON LAMBE (Guatemala) said that several institutions had been created over the past 10 years to promote and ensure the enjoyment of indigenous peoples' rights. However, structural discrimination persisted and the shortage of resources hampered progress. The efforts made by the Presidential Commission (CODISRA) focused on developing a national policy against discrimination to address the problem through extensive awareness campaigns, educational programmes, and efforts to promote the prosecution of acts of discrimination.

10. The prohibition of racial discrimination was enshrined in Guatemalan legislation; current action centred around ensuring strict compliance with the relevant provisions. The Office of the Public Prosecutor had jurisdiction to investigate offences involving discrimination or racism and had prepared a report on relevant cases nationwide. Thus far, 75 cases had been investigated and sentences had been handed down in 2 cases.

11. Resources had been made available to decentralize CODISRA by creating five regional offices. A recent independent study revealed that the vast majority of citizens were aware of the existence of racial discrimination in Guatemala, which confirmed the success of earlier public

awareness campaigns. The support of international organizations, indigenous peoples' organizations and other sectors of society was crucial. CODISRA's unrelenting efforts to promote formal recognition of the competence of the Committee on the Elimination of Racial Discrimination had led to the formulation of relevant draft legislation, which was currently before Congress.

12. Mr. RAMIRO MARTÍNEZ (Guatemala) endorsed the statements made by the previous speakers and reiterated his Government's unwavering commitment to maintaining a constructive dialogue and implementing the Committee's recommendations.

13. Mr. AVTONOMOV, Country Rapporteur, said that the State party's efforts to eliminate discrimination in legislation were commendable. Guatemala had ratified most international human rights instruments, including ILO Convention No. 169, and domestic legislation contained a series of provisions safeguarding the rights of indigenous peoples. In that connection, he enquired whether the Government intended to ratify the amendment to article 8 and make a declaration under article 14 of the Convention.

14. However, progress with anti-discrimination legislation had not necessarily yielded tangible benefits for the populations affected. Guatemala's economy was the largest in Central America, yet poverty continued to be widespread and programmes introduced to address the problem had thus far proved ineffective. The manifestly unequal distribution of wealth was exacerbated by structural discrimination. Unequal access to education translated into disproportionately high adult literacy rates among indigenous peoples; an estimated 500,000 indigenous children were not enrolled in schools.

15. Discrimination also precluded equal access to land, and lack of resources made it impossible for the institutions established to resolve land disputes to carry out their mandate. However, the adoption of legislation defining the use and management of natural resources on indigenous lands was a positive step. Indigenous peoples' access to resources was crucial to overcoming structural discrimination. The formal recognition of indigenous systems of justice was equally important.

16. He commended the State party for its efforts to disseminate indigenous culture and create a favourable environment for the development of a multicultural society. In that regard, the adoption of legislation enshrining the right to wear traditional dress at school, measures to promote bilingual education, and training for public servants and civil society representatives in issues relating to multiculturalism were particularly noteworthy.

17. On the other hand, the Agreement on Identity and Rights of Indigenous Peoples was not implemented in practice; indigenous forms of social organization, indigenous systems of justice, communal land tenure, and indigenous spirituality were not widely recognized. Institutional capacity-building was crucial to overcoming linguistic impediments to indigenous peoples' access to justice, health care and education.

18. He expressed concern over draft legislation on public consultation, whose provisions, if adopted, would violate indigenous peoples' right to be consulted, as set forth in ILO Convention No. 169 and other pertinent international instruments.

19. Mr. VALENCIA RODRÍGUEZ said that, while considerable efforts had been made to reduce the disproportionately high illiteracy rates among indigenous peoples, especially women, additional technical, financial and human resources were required to address the problem effectively. Racist and discriminatory attitudes made indigenous peoples particularly vulnerable to economic exclusion, and the measures taken to combat the problem had met with limited success. More needed to be done and international support was crucial.
20. Access to indigenous systems of justice was one of the key prerequisites for indigenous peoples' enjoyment of their rights. The lack of competent judges and interpreters had hampered progress in that regard, and action to remedy shortcomings must be taken as a matter of urgency.
21. Land disputes and landlessness drove thousands of workers from their homes in search of economic opportunities abroad. Furthermore, the conflict resulting from the Government's efforts to reduce the number of small holdings (minifundios) and large agricultural estates (latifundios) caused socio-economic instability, violence and poverty. The work of the office designated by the Executive branch to resolve land disputes (CONTIERRA) and the National Land Fund (FONTIERRA) was therefore paramount, and he would welcome information on any measures taken in that regard. It was imperative that indigenous populations were consulted about or duly informed of mining licences affecting their territory.
22. Political parties had reportedly failed to incorporate indigenous leaders within their ranks and proportional representation of indigenous peoples was a distant goal; additional efforts were required in that area. He requested detailed information on the amendments to the legislation governing elections and political parties mentioned in paragraph 92 of the report.
23. A range of legislative and administrative measures had been taken to ensure compliance with article 4 of the Convention. In its next report, the State party should provide additional information on their effectiveness.
24. He requested further details on the status, functions and achievements of the Office for the Defence of Indigenous Women's Rights and CODISRA. The delegation should describe the action taken in response to the 28 complaints mentioned in paragraph 80 of the report, the outcome of the case concerning Ms. Rigoberta Menchú, and the action taken by the special prosecutor's office in investigating matters relating to illegal groups and clandestine security forces mentioned in paragraph 91. He enquired about the results achieved through legal and administrative measures to ensure compliance with articles 1 to 3 of the Convention and requested specific information on measures to implement the provisions of article 5. With regard to article 6, the delegation should describe the procedures for obtaining redress and provide detailed information on cases brought to trial. In relation to article 7, additional efforts must be made to ensure effective bilingual multicultural education.
25. Mr. PILLAI said that the most important constraints in implementing the Convention in Guatemala were societal attitudes, resistance from powerful groups and resource limitations. Major attitudinal change among the people and structural changes in governance were needed if the problem of discrimination in Guatemala was to improve. He requested information on the size of the indigenous population, the extent of the exclusion of indigenous peoples, and a clear description of the State structure and the justice system.

26. According to the report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Guatemala (E/CN.4/2005/18/Add.2), there was no intellectual and ethical strategy to combat racism and discrimination, and no efforts had been made to analyse the origins or expressions of racism in the country. The system of dominant values in Guatemalan society tended to marginalize the traditional, cultural and spiritual values of indigenous peoples and people of African descent. In a report on his mission to Guatemala (E/CN.4/2003/90/Add.2), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had noted that, although public investment in education had grown since the signing of the Peace Agreements, the figures for school enrolment in predominantly indigenous rural areas were well below those for regions with non-indigenous populations. He asked whether schools in non-indigenous areas incorporated the teaching of tolerance and racial harmony in their curricula.

27. One of the most damaging consequences of the conquest of Guatemala had been the fact that the indigenous peoples had been deprived of land. In a report on his mission to Guatemala (E/CN.4/2006/44/Add.1), the United Nations Special Rapporteur on Food noted that Guatemala was one of the countries with the most inequitable distribution of resources in the world. Its long history of exclusionary development had left indigenous peoples without land or labour rights and subject to pervasive racial discrimination. According to information received by the Committee, less than 3 per cent of the biggest farms in the country accounted for nearly two thirds of the country's farmland, while 54 per cent of farms represented only 4 per cent of total farmland. As a result, land disputes had been a common feature of Guatemala's history. It was worrying that, despite attempts to settle such disputes, the situation had deteriorated, resulting in frequent evictions that left mainly indigenous farmers destitute.

28. There was a link between land and the cultural rights of indigenous peoples. The above-mentioned report (E/CN.4/2003/90/Add.2) referred to the disbandment of a commission to discuss the proposed reform of article 66 of the Constitution and regulations for the protection of ceremonial centres in archaeological sites. Although some progress had been made regarding tolerance of indigenous rituals, a number of obstacles and threats still remained. Some members of the ecclesiastical leadership had reportedly prevented the use of traditional ceremonial centres in the immediate vicinity of Catholic and Protestant churches, while private owners of agricultural land impeded access to sacred places located within their boundaries. It was disturbing that conflicts arising from those disputes were treated by judicial officials as criminal matters, frequently leading to violent clashes. The delegation should comment.

29. Ms. DAH welcomed the forthright attitude displayed in the eleventh periodic report regarding the various measures that had been taken following the civil war, which had been responsible for the nine-year delay in the submission of the report. She wished to know which groups had participated in preparing the report. She asked whether the 2002 census had been based on self-identification and asked for the official statistics on the ethnic composition of the population.

30. She sought clarification as to whether a definition of racial discrimination had been included in the Criminal Code. If not, such a definition should be reflected in Guatemala's next periodic report. She welcomed the progress that had been made in providing legal redress in

cases involving alleged violations of people's rights to equality and non-discrimination. In its next report, the delegation should include information on the outcomes of those cases, including compensation awarded to victims.

31. She requested information on a law enacted in 2005 concerning the land registry and its management. She wondered whether indigenous peoples had been consulted during the drafting of that legislation, which bodies were responsible for the land registry, and to what extent indigenous people were active in managing it. It was worrying that literacy and school enrolment rates were lowest among indigenous peoples, and that indigenous women suffered double discrimination in the areas of education, employment and health.

32. She asked whether any laws or regulations had been formulated in order to ensure the access of Mayan spiritual guides or priests to ceremonial centres. She wished to know what measures the Government planned to take in order to correct the lack of representation of women and the flagrant underrepresentation of indigenous persons in Congress. Indigenous persons were also underrepresented in local government, where, logically, they should have greater representation, given that they made up a large share of the population. The participation of indigenous people in decision-making bodies affecting their interests should be a component of the sectoral policies being developed by the Government.

33. Mr. THORNBERRY commended the self-critical nature of Guatemala's eleventh periodic report, noting that it was a first step towards addressing the issues involved. In the wake of the long civil war, it was important for Guatemala to undertake a process of reconciliation that included the punishment of the perpetrators of major crimes and the rehabilitation of victims. Those efforts would contribute to the construction of a new and healthier outlook for Guatemala.

34. He wondered how Guatemala's recent history was represented in school curricula, and whether such curricula took into account the viewpoints of the various segments of society, including the indigenous populations. He asked who was responsible for framing the national syllabus on history and to what extent the various categories of the population were given a chance to contribute to its content.

35. He requested information on the effects in Guatemala of the ratification of ILO Convention No. 169 and on any difficulties that had been experienced in its implementation. The Committee's general recommendation XXIII on indigenous peoples contained useful guidance and should be taken into consideration by the Government in conjunction with ILO Convention No. 169.

36. He asked whether there was a public register that identified indigenous communal landholdings. He enquired to what extent indigenous customary law was recognized in the justice system and in the system of land tenure. He pointed out that paragraphs 5, 16, 30 and 36 of the Committee's general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system were particularly pertinent to the situation of Guatemala. He requested additional information on the Garifuna people of Guatemala, and wondered whether their history and culture were reflected in school curricula.

37. The delegation should clarify the information given in paragraph 82 of the eleventh periodic report, which seemed erroneous. He noted that there had been many positive

developments in Guatemala in terms of new legislation, projects and programmes, but pointed out that the key to true progress in combating racial discrimination was the efficient implementation of those instruments, and of the Convention.

38. Mr. AMIR said that it was difficult to understand how Guatemala had managed to create such widespread poverty among its people, and particularly the indigenous population and persons of African descent, who were still living in slavery-like conditions and being subjected to racism. The expropriation of the land of smallholders, most of whom were indigenous people, could ultimately be seen as a lack of recognition of those people. In order to avert a social revolution and war, dialogue and negotiation were essential in order to overcome those injustices. Rather than discussing specific areas in which Guatemala had failed to implement the Convention, he preferred to remind it of the overarching importance of article 1 of the Convention.

39. Mr. KJAERUM asked to what degree the Government had participated in preparing the report. It would be interesting to learn whether the self-critical approach reflected throughout the report was also adopted in State institutions, or was rather an indication of the attitude prevalent in the CODISRA. Given that government ministries and institutions would be responsible for implementing the Committee's recommendations, the delegation should indicate what procedures would be used to communicate the Committee's concluding observations to those bodies and to ensure that they were put into practice.

40. He wished to know whether the State party had taken steps to implement the suggestions made in the Durban Programme of Action on raising public awareness about discrimination and shifting to a culture of non-discrimination and increased respect for equality. If not, had other strategies with similar aims been implemented?

41. The reporting State should consult the Committee's general recommendation XXV on gender-related dimensions of racial discrimination, and should indicate whether a long-term strategy was in place to address the double discrimination faced by indigenous women.

42. The meaning of the term "alternative measures" in paragraph 85 of the report was unclear.

43. Mr. TANG Chengyuan asked whether the existing legislation criminalizing racial discrimination in the media was sufficient, and whether that legislation was effectively implemented. Further details should be provided on how the competent authorities had handled the 28 complaints of racial discrimination that had been referred to them for criminal prosecution.

44. Mr. SHAHI asked to what extent the State party had complied with the provision of the Convention on dissemination of its content, since public awareness of the instrument appeared to be extremely low.

45. It was difficult to understand why the authorities allegedly held the Mayan people's system of conflict resolution in such contempt, particularly given that there was no policy in place to ensure that indigenous people had access to justice. In that respect, the judiciary should take measures to train interpreters in areas where large numbers of indigenous people lived.

46. The State party had reportedly violated ILO Convention No. 169, particularly by denying the validity of the referendum conducted in the municipality of Sipacapa which had expressed opposition to the mining activities of the Montana Exploradora company. It would be useful to learn what measures the Government planned to take in that respect.

47. The State party should take steps to ensure that the rights of indigenous peoples, especially women, were respected. In particular, the Government should guarantee their right to life, food and work. The rights of indigenous peoples to express dissent, to organize and to demonstrate should also be upheld; the reporting State should exercise restraint in criminalizing social struggles. An autonomous body should be created with the capacity to adopt a strategy for action on the priority issues facing indigenous peoples.

48. Budget allocations to bodies combating racism should be reviewed and a policy developed to ensure that all the relevant bodies adopted a coherent, coordinated strategy. The State party should also promote affirmative action in public and private spaces to ensure that the struggle against racism and discrimination permeated all sectors of society. Intercultural bilingual education should be reintroduced so that indigenous children's education was not interrupted after the fourth grade.

49. Mr. YUTZIS asked why the outcome of the 1999 referendum on the package of 50 constitutional amendments had been negative. He failed to understand why existing legislation had not been extended to cover racial and ethnic discrimination, particularly against indigenous people. It would be useful to have a full account of the obstacles to such legislative reform.

50. He wished to know what percentage of gross domestic product had been allocated to combating poverty among the most vulnerable sectors of society.

51. Mr. LINDGREN ALVES commended the delegation for the report and its willingness to recognize the problems of racial discrimination currently faced by many people in Guatemala. However, it was difficult to see a solution to the problems faced by many communities in developing countries without tackling the current system of capitalism that had been imposed on almost the entire world.

52. Mr. CAJAS MEJÍA (Guatemala) said that the report had been prepared in conjunction with the Government and been widely disseminated in his country. While the CODISRA was a permanent body, the mandate of its members was four years.

The meeting rose at 6 p.m.