



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
18 August 2014

Original: English

Committee on the Elimination of Racial Discrimination Eighty-fifth session

Summary record of the 2297th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 12 August 2014, at 3 p.m.

Chairperson: Mr. Calí Tzay

Contents

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

Sixteenth and seventeenth periodic reports of El Salvador

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The meeting was called to order at 3.15 p.m.

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

Sixteenth and seventeenth periodic reports of El Salvador (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), introducing his country's sixteenth and seventeenth periodic reports, said that they had been compiled with assistance from more than 20 State institutions and contributions from indigenous peoples' organizations and the Office of the Human Rights Advocate.
3. While his country had made efforts to fulfil its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, it recognized that progress still had to be made, in particular in relation to the rights of indigenous peoples. Through its programme "El Salvador Adelante", the Government of El Salvador recognized the place of indigenous peoples in the national identity, their role in improving society, their potential and their cultural heritage. The Government's commitment was illustrated in newly established programmes that would recognize and celebrate indigenous peoples and their rights, teach national languages and support Nahuatl speakers. Indigenous peoples were included in existing land handover programmes and their rights would be further recognized under International Labour Organization (ILO) Convention No. 169, to which El Salvador was preparing to accede.
4. On 12 June 2014, the Legislative Assembly had approved the revision of article 63 of the Constitution of the Republic, which affirmed the recognition of indigenous peoples and the adoption of policies to maintain and develop their ethnic and cultural identity, world view, values and spirituality. The amended article would be used as the basis for reform of subsidiary legislation and the promotion of public policies, notably the Public Policy for the Indigenous Peoples of El Salvador, which had been drafted after consultation with national bodies, including those representing indigenous peoples. The policy, which was currently under review in the Office of the President, defined five strategies, that included social, economic, cultural and environmental development and State administration. The strategies on social and economic development aimed to improve the living conditions of indigenous communities, taking their viewpoint into account. The strategy on cultural development would recognize and promote the identity of indigenous peoples within the national cultural heritage. The environmental strategy focused on the sustainability of natural resources and the introduction of positive measures in response to climate change. The strategy concerning Government administration would aim to increase the representation of indigenous peoples within State institutions, raise the profile of related issues in State bodies and ensure that indigenous peoples appeared in censuses.
5. It was important to note that it was in recent years that progress had been made in the recognition and appreciation of indigenous peoples, through, for instance the municipal ordinances, which established the rights of indigenous communities in Nahuizalco and Izalco, and the recent proposals to include them, on an equal basis, in the public affairs of Cuisnabat, Panchimalco and Cacaopera. The Government had made further efforts to combat racial discrimination by introducing a charter in 2010 that guaranteed the right of all children to be registered with an indigenous name. The National Register of Natural Persons had embarked on a study, with the participation of indigenous peoples, on an amendment to the law on the issuance of a single identity document in order to accommodate the registration of indigenous names.

6. With regard to progress made to incorporate the definition of racial discrimination in national legislation, the Constitution stipulated that all international laws would form part of national legislation once they had been ratified. Therefore, any provision of an international convention could be cited in legal proceedings. Furthermore, the definition of racial discrimination in national legislation reflected the definition in the Convention.

7. El Salvador had recently passed a law on social development and protection, which aimed to guarantee the full economic, social and cultural rights of the population through social investment. The law was to be applied to all of the population, including indigenous peoples, and recognized the principle of cultural diversity. The law had been incorporated into public policies through a system of universal social protection that included urban and rural community programmes; uniforms and equipment for elementary education; school health and nutrition; the Glass of Milk programme; “Ciudad Mujer” (women’s city programme); agricultural packs; pensions and a temporary income support programme. Social expenditure in El Salvador had increased from US\$ 1,899.9 million in 2004 to US\$ 3,527.2 in 2012, and spending as a percentage of gross domestic product (GDP) had risen from 12 to 14.8 per cent.

8. The National Directorate for Indigenous Peoples and Cultural Diversity, attached to the Cultural Secretariat of the Office of the President, was responsible for supporting indigenous peoples in seeking recognition for their rights, promoting the economic, social, cultural and environmental rights of indigenous peoples, mainstreaming issues concerning indigenous peoples into government policies, programmes and activities and promoting the cultural expression of indigenous peoples. A Multisectoral Forum of Indigenous Peoples had been established in 2011, in which 9 State bodies and 22 indigenous organizations met to find solutions to the different problems encountered by indigenous peoples. A working group had been established in the Ministry of the Environment and Natural Resources for programmes and projects that affected the environment in municipalities in which the majority of the inhabitants were indigenous peoples. In addition, the Multisectoral Forum had initiated efforts to cultivate cacao; produce an educational map and a dictionary in Nahuatl-Pipil; conduct an ethno-linguistic investigation which had identified 197 Nahuatl speakers of more than 60 years old who had all been allocated a benefit; and prepare a television programme that would disseminate indigenous peoples’ rights.

9. The Multisectoral Forum had coordinated with the Ministry of Health in the drafting of a national health policy for indigenous peoples. The focus on intercultural health issues would contribute to reducing the economic, geographical and cultural barriers that affected access to information, education and care within the health system.

10. In July 2012, with the assistance of a governmental delegation from Brazil and in coordination with the Ministry of Health and the National Directorate for Indigenous Peoples and Cultural Diversity, a project had been set up in order to improve health access through indigenous councils with a view to promoting an intercultural approach to health in El Salvador. Two pilot projects were currently being developed by the Ministry of Health at health centres in Izalco and Cacaopera. The results of the project would be evaluated in consultation with indigenous communities.

11. El Salvador had adopted a number of measures to improve the attainment of economic, cultural and social rights for indigenous peoples, in particular for women. All laws, policies and programmes that supported women’s human rights were intended to cover all women in the country without exception. Nevertheless, some measures had been put in place specifically for the benefit of indigenous women, such as those concerning land tenure: the President had announced on 22 July 2014 the introduction of programmes that would assist rural and indigenous women in raising their standard of living by improving opportunities for them to obtain land and enabling access to training and technical assistance. Work had begun on land transfer and a working group that included indigenous

women had been set up to ensure that the latter gained access to land. A forum had been established in January 2012 by the Deputy Minister for Housing and Urban Development in order to exchange perspectives with indigenous peoples on the right to housing and to promote social inclusion. The Deputy Minister had incorporated the Public Policy for the Indigenous Peoples of El Salvador into the project, which would examine access to housing and housing improvement projects, including improvement of indigenous dwellings, access to basic services in accordance with the world view of indigenous organizations and the recognition of housing in *comarcas* (indigenous regions) as an alternative model of development.

12. The Ministry of Education had made particular efforts to ensure that national educational programmes and initiatives were available in regions with indigenous populations. The Nahuatl language continued to be promoted and educational activities were designed to ensure that traditional art, music and plastic arts continued to be taught to new generations.

13. A centre for cultural development had been established in Izalco, where attempts had been made to revive and teach the Nahuatl language. The Ministry of Education had funded the printing of a Nahuatl-Pipil calendar, which had been distributed to all schools in indigenous regions. With the recognition that some indigenous languages had become extinct, efforts had been made to revive Nahuatl-Pipil through a programme established in Santo de Domingo de Guzmán with the assistance of Don Bosco University.

14. El Salvador was committed to the introduction of public policies that promoted the rights of indigenous peoples, and it recognized that such efforts should be undertaken in consultation with those peoples. His delegation hoped to engage in a frank and open dialogue and felt sure that the observations and recommendations arising from the examination of the current reports would provide a useful guide in helping El Salvador to fulfil its obligations under the Convention.

15. **Mr. Murillo Martínez** (Country Rapporteur) noted that between 10 and 12 per cent of the population of El Salvador was comprised of indigenous peoples, a significantly higher figure than that shown in the national census of 2007. He looked forward to the results of a new census to be held in 2017, which would undoubtedly provide more reliable figures with regard to the indigenous population and people of African descent. El Salvador had made great progress in deepening the democratic process throughout the country, as evidenced in recent democratic elections, although it was still suffering from the social and economic consequences of the armed conflict that had taken place between 1980 and 1992. Street violence and high levels of homicide were still present in the country and were a major cause of emigration to the United States of America: since the outbreak of the armed conflict, approximately one third of the population had left El Salvador. The country was also a destination for migrants from Honduras and Guatemala, who became victims of racism and xenophobia: they were accused by the municipal authorities of causing crime and social unrest and were subject to racial profiling by the police.

16. The Committee had received information from a number of organizations that painted a different picture of the country from the one presented by the delegation. The decision of the Supreme Court in relation to the amnesty law would have a direct impact on truces reached since the end of the armed conflict. The Government had taken positive steps in its 2014 legislative reforms and in preparing to accede to ILO Convention No. 169 concerning indigenous and tribal peoples, although it would be important to implement those decisions in practice. He noted the openness of the country to international scrutiny since the universal periodic review of 2010, an approach that had been reaffirmed at the outset of the present dialogue.

17. El Salvador faced challenges in the protection of ethnic groups and the elimination of racial discrimination towards people of African descent, perhaps as a result of a lack of focus in special policies and programmes. The report was lacking in information on the outcomes of policies and the possibility for indigenous peoples and peoples of African descent to participate in the democratic process and in political decision-making with full equality and diversity. The situation of indigenous women was critical since they were subordinate to men and further disaggregated information was required in order to understand their circumstances. The forums that included indigenous peoples described by the delegation would go some way towards producing positive results.

18. Regarding the forthcoming national census to be held in 2017, the Committee wished to learn how it would be conducted and how representatives of civil society would be included in order to ensure active participation in the process. He wished to know more about the outcomes of the Multisectoral Forum and recommended that persons of African descent should be guaranteed participation.

19. He wished to learn more about the structure and budget of the National Directorate for Indigenous Peoples and Cultural Diversity. According to paragraph 7 of the State party's report, the purpose of the Directorate included bringing into relief the country's population of African descent: he wished to know what results it had achieved. It was not apparent that the Convention, and in particular the definition and criminalization of racial discrimination, had been fully incorporated into national laws. Furthermore, space should be found within the legal structure for customary indigenous law. He welcomed the measures taken by the State party in relation to health.

20. He sought information on the situation regarding safe drinking water in the country and the achievement of the Millennium Development Goals with respect to indigenous peoples and persons of African descent. He welcomed the progress made in restoring and promoting indigenous languages, even within small communities. The Committee would be interested to learn more about the results of the 1992 peace accord, especially in relation to indigenous persons, since a differentiated focus had not been incorporated at the time the accord had been signed.

21. He asked whether the State party had legislation that guaranteed indigenous peoples and Afro-descendants full participation in public life. The Committee would welcome additional information on the work of the National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict, in particular in regard to compensation granted to the victims of the 1981 massacre of El Mozote.

22. Supported by Mr. Vazquez, he asked what measures had been taken to address the situation of indigenous peoples in six cantons in southern Panchimalco, who reportedly lacked drinking water because the water of the area was being sent to residential colonies of the capital, San Salvador.

23. He invited the delegation to comment on reports that the peddling prohibition in the town of San Miguel discriminated against migrants.

24. **Mr. Avtonomov** said that without statistical data on the situation of indigenous peoples, Afro-descendants and migrants, it was difficult to assess the impact of the State party's many praiseworthy initiatives, programmes and policies. How did the State party envisage obtaining ethnically disaggregated data in future? He wished to know whether all indigenous groups were formally recognized, and whether the Government was aware of the specific situation and problems affecting each of those groups.

25. The reported absence of complaints of racial discrimination was not necessarily an indication that such discrimination did not exist. He invited the delegation to elaborate on

the possible reasons why victims of racial discrimination were reluctant to lodge complaints.

26. Efforts to strengthen the visibility of Afro-descendants in the State party should be sustained, especially on the eve of the International Decade for People of African Descent. Addressing the disproportionately high illiteracy rates among indigenous peoples and Afro-descendants, especially women, should also be made a priority. He asked how the victims of the El Mozote massacre and other human rights violations committed during the civil war could be afforded reparation and compensation, given that the 1993 General Amnesty Law for Consolidation of Peace remained in force.

27. **Mr. Yeung Sik Yuen** shared the doubts regarding the absence of racial discrimination complaints. Pursuant to article 246 of the Salvadorian Criminal Code, “serious discrimination occurring in the workplace” was a punishable offence and it would be useful to know who was responsible for deciding whether an act of discrimination was sufficiently “serious” to warrant court action. Considering that the survey of racial discrimination complaints was based on information collected from no more than 22 of the 322 Salvadoran magistrate courts, the findings might not be conclusive. A national prosecution service, should it exist, might be better placed to provide more comprehensive data.

28. Referring to the right to freedom of expression, he asked which acts of freedom of expression constituted punishable offences in the State party. With regard to non-discrimination on the basis of religion, he noted that under the Salvadoran Migration Act, catholic clerics were granted permanent residence status. Did such preferential treatment not amount to discrimination against other faiths?

29. **Ms. Dah** commended the State party on its efforts to recover its cultural heritage and rise to the challenge of building an ethnically diverse society. Still, in the absence of disaggregated data no conclusions could be drawn regarding the impact of the relevant policies and programmes. She asked whether the State party had already started to prepare for the 2017 census, whether indigenous peoples and Afro-descendant communities would be involved in drafting the questionnaires, and whether the State party had sufficient resources to conduct the census. The involvement of different segments of society at all stages of the census operations was crucial to a satisfactory outcome. Otherwise, participants might, for example, refrain from self-identifying as members of a given minority group for fear of stigmatization.

30. She commended the State party’s efforts to adopt an intercultural approach to education and health and requested information on the way in which such an approach would be implemented in practice.

31. **Mr. Diaconu** asked whether all the indigenous groups living in the State party had actually been identified. He wished to know whether the Convention prevailed over conflicting national legislation. If not, its provisions should be incorporated into national law. With regard to the prohibition of discrimination on grounds of nationality, he asked whether “nationality” referred to “citizenship” or “ethnic origin”.

32. The principle of non-discrimination alone did not prevent racial segregation. An explicit prohibition of racial segregation should be incorporated into national legislation. He asked whether the projects and programmes intended for indigenous peoples were being developed and implemented in consultation with the groups concerned. He encouraged the State party to adopt specific provisions relating to article 4 of the Convention.

33. Municipal ordinances reportedly discriminated against migrants. He failed to understand how local laws could contradict the Constitution. Was it true that children of

migrants had no access to public schools? If so, remedial measures should be taken, since all children must be granted access to public schools, regardless of their migration status.

34. In the area of education, he commended the State party's efforts to revitalize the Nahuatl language. School textbooks should be revised to remove any stereotyping of groups covered under the Convention. He commended the steps taken towards ratification of International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

35. **Mr. Vazquez** also requested clarification on the hierarchical place of international law in the Salvadoran domestic legal system and asked whether the delegation could provide examples of cases where international instruments had prevailed over national or local laws.

36. He wished to know what the State party had done to give effect to the Inter-American Court of Human Rights ruling on the massacre at El Mozote, in particular whether victims would receive individual compensation in addition to the collective reparative actions described in the report.

37. According to the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/24/41/Add.2), the National Directorate for Indigenous Peoples and Cultural Diversity had insufficient staff and funds to function efficiently. Civil society representatives had suggested that the resources allocated to the institution were spent elsewhere. He asked whether the State party was aware of those shortcomings and what would be done to remedy the situation?

38. **Ms. Crickley** said that the fact that El Salvador had officially recognized indigenous peoples and intended to adopt policies to preserve and develop their identity was a positive development. Recalling that indigenous peoples should be full and active participants in any decision-making processes affecting them, she asked how the Government planned to take their views into account when making such decisions in the future. Noting that the following census was scheduled to take place in 2017, she asked whether the Government had sought assistance from external collaborators in developing it; what it had done to improve the methodology of the census so as to ensure a higher degree of self-identification within indigenous groups; what steps it had taken to ensure the direct participation of indigenous groups in formulating questions for the census; and which State institution would be in charge. She also wished to know whether the Government was currently in a position to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169); and whether it had taken steps to incorporate a comprehensive definition of racial discrimination into Salvadoran law. Noting that there was often a disparity between the education received by indigenous peoples and that received by the majority population, she asked whether the Government had taken any special measures to remedy that disparity. She requested additional information on the initiatives undertaken by the Government to ensure that indigenous women and women from minority groups could participate in public life and access leadership roles. Lastly, she asked what mechanisms had been introduced to guarantee indigenous women and women from minority groups access to health care.

39. **Mr. Amir** said that the use of the adjective "comparable" in the last sentence of paragraph 35 of the French version of the State party report appeared to be erroneous. He requested clarification on the meaning of that sentence. He recalled that States parties to the Convention undertook to prevent, prohibit and eradicate practices of that nature. The lack of statistics in the report prevented the Committee from assessing the implementation of the Convention by the State party. Noting that indigenous peoples had only recently been recognized in El Salvador, despite the fact that they had been the victims of discriminatory practices for many years, he asked whether the State party had taken measures to ensure

that those peoples received adequate reparation. He also wished to know whether the Government possessed statistical data on the number of indigenous persons suffering from mental illnesses.

40. **Mr. Lahiri** said that if the Government had not amended article 63 of the Constitution to recognize the indigenous peoples of El Salvador, he would not have considered discrimination against those peoples to be a major issue. He was of the view that the indigenous peoples of El Salvador had been dragged into the Committee's discussion unnecessarily. Noting that the indigenous population of El Salvador had grown considerably over the past decade, he enquired where the statistics attesting that growth had come from. The Committee also needed to know which indigenous group those persons belonged to and where they were located. In the absence of such essential information, it seemed rather premature to discuss special measures. It would be better to discuss such measures when the 2017 census was completed.

41. **Mr. Bossuyt**, noting that the General Amnesty (Consolidation of Peace) Act remained in force, and that the Supreme Court had ruled that, while the Act was constitutional, judges could decide not to apply it when ruling on specific cases, he asked whether it would not be better to simply repeal the Act in question. He also wished to know why the victims of the El Mozote massacre had still not received compensation or reparation more than 30 years after the event.

42. **Ms. Hohoueto** said that the fact that the Constitution had been amended to recognize indigenous peoples was a great step forward. Noting that indigenous peoples often lived in abject poverty, she asked what measures the Government had taken to guarantee them access to justice, including free legal aid. She also wished to know about the measures already taken or envisaged to ensure their effective participation in the management of public affairs and to guarantee their right to accommodation. She asked how the Government dealt with situations in which indigenous peoples had been removed from their land in the public interest; how concessions were granted to multinational companies; and what measures the Government took to preserve the local environment of indigenous peoples removed from their land.

43. Without disaggregated data, it would be difficult for the Committee to determine whether the policies and programmes aimed at improving the situation of indigenous women in El Salvador had met their targets. It was hoped that the 2017 census would provide the additional information necessary for the Committee to assess the effectiveness of the measures taken by the State party in respect of indigenous peoples and other minority groups.

44. **Mr. Lindgren Alves** said the fact that the Government now officially recognized indigenous peoples was a welcome development. He understood that the Salvadoran civil war had been a conflict between rival political groups and not between indigenous groups and the majority population. Therefore, he did see the relevance of the El Mozote massacre to the current discussion. However, the fact that the victims of the massacre had still not received compensation or reparation more than 30 years after the event in question was indeed unacceptable. Questions should be included in the census irrespective of whether or not they might be considered divisive, as to omit them could prevent certain forms of discrimination from being exposed. Moreover, it could prove difficult to identify persons belonging to indigenous groups if no question was asked about their ethnicity. He invited the delegation to clarify the meaning of paragraph 186 of the State party's report, which stated that the Government planned to revitalize the Nahuatl language "not only in indigenous areas". He was against the adoption of measures that could undermine the unity of Salvadoran society.

45. Noting that many indigenous women were the victims of double discrimination in El Salvador, he asked whether they suffered such discrimination at the hands of the majority population or at the hands of indigenous groups. If those women suffered such discrimination at the hands of indigenous groups, could the Government intervene in such cases?

46. **The Chairperson** said that the amendment to article 63 of the Constitution was a significant achievement and demonstrated great political will. In view of the progress made by the State party in that area, the Committee hoped it would consider making the declaration to the effect that it recognized the competence of the Committee to receive and consider communications. He asked whether the Government had considered setting up a national commission to re-examine the events of 1932, which had led to the negation of the identity of indigenous peoples in El Salvador.

47. The Committee had received reports that some municipal authorities explicitly prohibited the sale of goods from local markets to Nicaraguan and Honduran immigrants and, in some cases, denied them access to such local markets. Furthermore, the Committee had learned that the central Government could not intervene in such cases, as the municipal authorities in question enjoyed a high level of autonomy. Such a practice was clearly discriminatory and ran counter to the Salvadoran Constitution. He invited the delegation to comment on those reports. He lastly invited the delegation of El Salvador to respond to the Committee's questions and comments at the next meeting.

The meeting rose at 6 p.m.