



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2329th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 29 April 2015, at 3 p.m.

Chairperson: Mr. Amir (Vice-Chairperson)

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Combined fourteenth and fifteenth periodic reports of Guatemala

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The meeting was called to order at 3 p.m.

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

*Combined fourteenth and fifteenth periodic reports of Guatemala
(CERD/C/GTM/14-15 and CERD/C/GTM/Q/14-15)*

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **Mr. Martínez** (Guatemala) said that when Guatemala had gained its independence, a multi-ethnic, pluricultural and multilingual nation had been formed, albeit with a political and legal structure that served the interests of Creoles, or Guatemalans of Spanish descent, and excluded and discriminated against the indigenous population. Efforts to reform the system had been few and far between, and the reforms that had been carried out had merely reinforced existing disparities. The Cold War had turned Guatemala, like many other countries, into a battleground where foreign powers had fought, and involved Guatemala in their fight, for control of other States. Thirty-six years of internal armed conflict had ensued, eventually ending with the peace accords in 1996.
3. The accords, in particular the agreements on identity and rights of indigenous peoples and on socioeconomic and agrarian matters, had paved the way towards a democratic society in which all Guatemalans enjoyed civil, political, economic, social and cultural rights. However, while institutions and policies had legally prohibited discrimination and exclusion, constitutional and structural changes were needed to ensure full enjoyment of those rights. Efforts had been made to amend the Constitution so that the political and legal system reflected the multi-ethnic, pluricultural and multilingual reality of Guatemala, but they had been met with resistance, especially among conservative groups and urban populations. Another proposed amendment to the Constitution, which would officially recognize the identity and affirm the rights of indigenous peoples and change the electoral system to ensure more balanced representation, was currently before Congress. Also pending congressional approval was a comprehensive rural development policy that would address the structural causes hindering development in indigenous communities and enable the State party to meet its obligations under the Convention.
4. The shadow report and list of themes contained assertions that were based on misconceptions and led to erroneous conclusions. First, the Constitution did not recognize indigenous territories. Subsurface resources and other natural resources belonged to the State and could not be appropriated by individuals, communities or peoples. The Government granted concessions or licences for the exploitation of such resources only if it considered that their use would benefit the entire country, including the communities in which the resources were found. Such communities did not have property rights over natural resources and could not veto their exploitation. Land, on the other hand, could belong to individuals, peoples or communities, which admittedly had given rise to disputes over its ownership. Such disputes had been settled in various ways; in some cases, lands had been returned to indigenous communities, while in others communities had been given new lands.
5. Second, there had been no genocide in Guatemala: indigenous persons had died during the armed conflict because they had been insurgents or counterinsurgents, but they had not been killed because of their ethnicity. The Government nevertheless acknowledged that the indigenous population had been most affected by the conflict and that grave violations of human rights had taken place, and it had provided victims with appropriate compensation and assistance. Third, although legislation on consultation with local communities had not yet been adopted, the Government routinely consulted communities

with a view to ensuring that mining and hydroelectric projects would benefit both the populations concerned and the nation as a whole.

6. **Mr. Baquix** (Guatemala) said that the Government of Guatemala had formally recognized the right of indigenous peoples to cultural identity and was committed to preventing, punishing and eliminating all forms of discrimination against them. Guatemala had been built on the idea that there were superior and inferior races, and indigenous peoples had often been portrayed as backwards, stupid or savage. While they and other groups perceived as inferior — including women, the poor and lesbian, gay, bisexual, transgender and intersex persons — continued to suffer discrimination, the country was in transition from a racist, exclusive, centralized and monocultural State to a democratic, inclusive, decentralized and participatory State. Education was the key to bringing about the cultural change needed to accomplish that transition; criminalization of discrimination alone could not eliminate it.

7. **Ms. Gutiérrez** (Guatemala) said that the Constitution recognized ethnic diversity in Guatemala and the need to build a society that respected and promoted cultural diversity. While significant progress had been made since the peace accords, economic, legal, political, social and cultural inequalities persisted and were at the root of poverty and extreme poverty in indigenous communities.

8. Public institutions had taken a number of steps to promote equality among all population groups and ensure compliance with international human rights agreements. In the political realm, two indigenous women had been candidates for president and vice-president in the 2011 presidential elections. Moreover, 22 out of 158 members of Congress were indigenous and 1 of the 13 Supreme Court justices was of indigenous descent. Indigenous peoples also participated in government at the local level. The Cabinet for Indigenous Peoples and Intercultural Affairs had been established to draft proposals for political, administrative and legal reforms focusing on the comprehensive development of indigenous peoples. Moreover, mechanisms had been set up to monitor the media and support human rights defenders who were at risk of attack. The delegation looked forward to providing additional information on the actions the Government was taking to achieve a Guatemala free of racial discrimination.

9. **Mr. Lahiri** (Country Rapporteur) said that he was rather at a loss for words, as the content of the delegation's statement had differed considerably from the subject matter generally covered in such introductions. The statement had, in a sense, turned history on its head and, while he respected the Government's views, he was perplexed by the direction the delegation had taken in its opening statement. He would nevertheless try to discuss the situation in Guatemala in a factual and neutral way, without engaging in polemics.

10. Guatemala had struggled to overcome a history of internal armed conflict that had lasted more than three decades and had entailed gross human rights abuses against indigenous persons, particularly women. The peace accords of 1996 had acknowledged that the conflict had its roots in the political and economic exclusion of large portions of the Guatemalan population, a situation clearly linked to racial discrimination against the indigenous population. Over the past decade, Guatemala had continued to suffer insecurity and violence as a result of a surge in drug-related crime that had threatened political stability. While it no longer saw extrajudicial killings on the scale of those that had taken place prior to 1996, deaths attributable to excessive use of force by security personnel still occurred, and members of indigenous communities were often the victims.

11. Attacks on human rights defenders remained a major concern. In some cases, they had been killed in connection with conflicts over natural resources, conflicts that often pitted indigenous groups against the State. In 2010, there had been 135 attacks against 204 human rights activists, including death threats, illegal searches and assault.

12. The Government had, however, taken a number of steps to combat discrimination. It had established a Human Rights Directorate that monitored compliance with international treaties, with a section devoted to the rights of indigenous peoples. It was providing public officials with training on issues related to racism and discrimination and had issued guidelines to combat racist stereotypes found in the media. Complaints of racism and discrimination were being registered, legal action was being taken and some convictions had been secured. More than 800 families, 84 per cent of whom were indigenous, had received land through the Land Access Programme, and agrarian dialogue boards helped to settle land disputes.

13. At the same time, the Presidential Commission on Discrimination and Racism against Indigenous People in Guatemala (CODISRA) was underfunded and continued to suffer cutbacks. Proposed amendments to bring existing legislation into line with international conventions were still pending adoption in Congress, and the competence of the Committee on the Elimination of Racial Discrimination to receive communications from individuals in Guatemala had not been recognized.

14. Limited educational opportunities were behind many of the inequalities in indigenous communities. Dropout rates in such communities were particularly high, most likely due to the absence of bilingual education after kindergarten. The Committee urged Guatemala to expand bilingual education, especially at the primary level, in the areas with the highest dropout rates.

15. Transparency was key to the country's process of reconciliation, yet the Government had not made military archives relating to the armed conflict public on the grounds of national security. National security grounds for refusing to disclose information should be clearly defined by law so that at least some materials could be made public. As to the monitoring of the media, it would be helpful if the Government issued an annual report documenting the kinds of racist speech in circulation and the media organizations most at fault. It should also institute a means of taking into account input from indigenous groups living on lands being considered for megaprojects, which were currently going forward without consultation of those most likely to be affected.

16. He hoped that the State party would be willing to engage with the Committee in an objective examination of facts, without becoming embroiled in polemics; if not, he feared the discussion would quickly arrive at an impasse.

17. **Mr. Murillo Martínez** welcomed the diverse Guatemalan delegation but expressed regret that it did not include any Afro-descendent members. Guatemala was to be commended for nominating the chairperson of the Committee, Mr. Calí Tzay, the only indigenous member of a United Nations treaty body. Guatemala had also made a very important contribution to the development of international instruments and mechanisms on indigenous peoples. At the national level, the State party had made important progress in a number of areas but continued to face major challenges, particularly in relation to the acknowledged link between poverty and racism.

18. With regard to the State party's efforts to meet its obligations under the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), he noted that, despite 11 Constitutional Court rulings on the issue, there continued to be serious difficulties in the implementation of prior consultation. The absence of regulations on prior consultation need not be an obstacle to implementing it in practice. He would welcome information on projects and activities, especially mining projects, that were under way in the State party and on plans to overcome the obstacles to prior consultation and improve relations between the authorities and indigenous communities. He also asked for information on the progress of bills pending before Congress, including those on prior consultation, the reform of the mining law, bilingual education and the criminalization of

racial discrimination, and on steps being taken to guarantee more effective access for indigenous peoples to the ordinary courts. In addition, he wished to know the legal status of the special indigenous courts.

19. Referring to the emblematic conviction of former dictator Efraín Ríos Montt for genocide and the subsequent decision by the Constitutional Court to overturn the verdict and order the reopening of the case, he said that the international community was closely following the case, which was at the centre of the justice and reparation process in Guatemala. Noting that the Guatemalan conflict had had a disproportionate impact on indigenous communities, he requested information on the progress being made in that regard.

20. Although the indigenous population of Guatemala was officially estimated at some 43 per cent, according to other sources it was closer to 60 per cent. Nevertheless, indigenous peoples were grossly underrepresented in political life, and there did not seem to be any indication that Guatemala might, like Bolivia, for example, be ready to elect an indigenous president. On the other hand, indigenous peoples had the highest rates of poverty and malnutrition in the country. He wished to know what policies the State party was introducing to address those disparities and to meet development goals.

21. Expressing concern about employment conditions in the agroindustry sector, which particularly affected indigenous peoples, he asked what was being done to empower the Ministry of Labour to take action to ensure that productivity requirements were not in violation of workers' human rights and to impose sanctions on employers. Lastly, he wondered what activities the State party had planned to mark the Decade for People of African Descent.

22. **Mr. Avtonomov** said that, although the State party had made progress in many areas of the Convention, the Committee had some concerns. While numerous draft laws were pending before Congress, there were still no legislative provisions in line with the concept of racial discrimination set out in the Convention, nor any provisions criminalizing various manifestations of racial discrimination. He noted that consideration of a bill recognizing the competence of the Committee to consider individual communications under article 14 of the Convention had been suspended and asked the delegation to comment on the State party's position in that regard. He also recalled that the State party had yet to ratify the amendment to article 8 of the Convention.

23. Regardless of the constitutional regime applicable to ancestral lands of indigenous peoples, the issue of prior consultation and the regularization of relations between the State, indigenous communities and mining companies needed to be resolved in order to ensure that the rights and interests of indigenous peoples were protected. An independent mechanism should be established to resolve disputes between the Government and indigenous peoples on those issues. It was important to take into account that many of those lands contained sacred sites and cemeteries, and that the indigenous peoples residing there could not simply be relocated. The Committee stressed the importance of ensuring that indigenous peoples had the opportunity to give their free, prior and informed consent. In that regard, he would welcome an update on what had happened in relation to the serious incident in Totonicapán in 2012, in which eight indigenous persons had been killed during a peaceful protest. Drawing attention to the recommendations of the former Special Rapporteur on the rights of indigenous peoples regarding their rights in relation to extractive industries (A/HRC/18/35/Add.3), he emphasized the need to develop appropriate procedures for dealing with protests in order to prevent future tragedies. He also sought information on why in some cases the Constitutional Court had ruled that the prior consultations carried out with indigenous communities were not considered binding.

24. He shared Mr. Murillo Martínez's concerns with regard to the widespread use of unreasonable productivity quotas in the agroindustry sector, which constituted forced labour. Lastly, he would welcome information on Afro-descendent Guatemalans other than the Garifuna.

25. **Mr. Vázquez** said that, as the State party had acknowledged, there was a significant discrepancy between indigenous and Afro-descendant persons and the rest of the population in the enjoyment of rights. It was clear that special measures were needed, and he would welcome information on whether any such measures were envisaged. Noting that Guatemala had the highest chronic child malnutrition rate in the region, he asked for an update on the case in Zacapa in which a children's court judge had recognized the responsibility of the State by omission, finding violations of the right to food among Ch'orti' Maya children with chronic malnutrition. The judge had ordered the Secretariat for Food and Nutritional Security to draft and implement a protocol for the exercise of the human right to food to avoid future violations; he would be interested to know the status of that protocol.

26. With regard to the long list of draft legislation of relevance to indigenous peoples that was still pending before the Congress, he asked the delegation to comment on the reasons for the impasse. Although a law criminalizing discrimination on the grounds, *inter alia*, of gender and ethnicity had been adopted, it appeared to have major shortcomings. It was very difficult, for example, to obtain the evidence necessary to secure a conviction for racial discrimination and, although the penalty was a 3-year prison sentence, it seemed that in Guatemala prison sentences of fewer than 5 years could be avoided simply by paying a fine. He invited the delegation to comment on whether that was indeed the case.

27. One solution to the current legislative impasse would be to ensure greater representation of indigenous peoples in Congress. However, it appeared that little progress was being made in that area, and the reform of the electoral law was also still pending. It seemed that indigenous peoples faced problems in creating political parties or running as candidates within the existing parties, often because of the high cost of mounting an electoral campaign. He wondered whether there were any strategies in place, in addition to the planned reform of the electoral process, to improve the political representation of indigenous people, which was surprisingly low given that they made up the majority of the country's population.

28. He would welcome information on specific cases in which human rights defenders and leaders of indigenous groups had been attacked or prosecuted for involvement in protests. In order to have a greater chance at success in the electoral process, it was important that indigenous and Afro-descendent communities had the opportunity to properly organize themselves, which was difficult to do if the leaders of such groups were punished for defending the interests of their peoples. Additionally, he would be interested to know how the State party reconciled the lack of constitutional recognition of traditional indigenous lands with its obligations under ILO Convention No. 169, particularly article 7.

29. He invited the delegation to elaborate on its statement that no genocide had taken place in Guatemala. Given that legal proceedings were still ongoing in relation to the alleged genocide, particularly in the Ríos Montt case, he was concerned that such a statement could be seen as interfering in the judicial process. As the State party had previously recognized that genocide had occurred, he wondered what had prompted the change in position. For example, had new information come to light to indicate that the previous position had been mistaken or was the new position due to a change in government?

30. **Mr. Diaconu** said that the State party's report listed many positive developments, including the Intellectual Property Registry's discussions on traditional knowledge, genetic

resources and folkloric expressions; special measures to ensure access to housing for indigenous peoples; measures for the protection of the environment of indigenous peoples; and food security measures for rural communities, in which indigenous peoples made up the majority of the population. Nonetheless, it was clear that Guatemalan society was in transition and that there were still profound inequalities in many areas.

31. Measures were needed to facilitate and promote political participation and adequate representation of indigenous peoples. There was no legislation or mechanism guaranteeing the collective rights of indigenous communities to their lands, and there continued to be forced evictions. He wondered what proportion of land in the State party had been recognized as the ancestral land of indigenous peoples and made available to them. The right of indigenous peoples to be consulted on decisions concerning the exploitation of resources was still not recognized and mining licences continued to be awarded without prior consultation of the affected indigenous communities. He expressed surprise that prior consultation of indigenous communities was not considered necessary for projects involving subsurface and mineral deposits because they were State property. Indigenous peoples living on or using the land above such deposits should be consulted on their use.

32. He would be interested to know more about efforts to integrate customary law into the national legal system. With regard to attacks against indigenous human rights defenders, measures were needed to protect them and ensure that justice was done. He would welcome further information on initiatives to improve access to education and provide bilingual education at all levels for indigenous peoples. He would also like information on indigenous radio stations. With regard to the transition to a multicultural and inclusive society, it was necessary to promote national dialogue with the effective participation of indigenous peoples and to examine the best ways of guaranteeing their rights. Achieving real equality meant taking account of the interests and collective rights of indigenous peoples.

33. **Ms. Crickley**, affirming that Guatemala was a society in transition, said that real progress, and the requisite political will, was needed on pending constitutional reform. She asked what progress had been made with regard to training on the Convention for judges and law enforcement agencies, how that training was carried out and how its impact was measured. The scant political representation of indigenous peoples was cause for concern. The Committee had received reports that the activities of indigenous leaders had been criminalized, and she would like to know what steps were being taken to prevent such repression and ensure that indigenous leaders could play an open and participatory role in society. She asked the delegation to comment on information before the Committee alleging that, in some cases in which representatives had previously been elected from a pool of names put forward by indigenous peoples, they were now appointed by the State. She would also like to know what policies had been introduced to prevent the politicization of development council elections and to promote the election of women.

34. The issue of free, informed, prior consent of indigenous peoples with regard to activity on their lands was another serious concern. She wondered what steps the State party was taking to ensure that provision for such consent was included in the country's development framework and that the rights of indigenous peoples were respected. She also asked the delegation to provide a timeline for the adoption of the enhanced legal instrument addressing racial discrimination, Draft Act No. 4539 on the adoption of amendments to Congress Decree No. 17-73, Criminal Code.

35. **Mr. Kemal** said that, although the State party had many relevant institutions and good human rights machinery, the Convention had not been fully implemented. In recent years, many bills to address inequality had failed to pass through Congress and indigenous peoples had been denied fair participation in projects taking place on their lands, a situation that could lead to radicalization among oppressed groups. He wondered why the large

number of organizations established to help indigenous peoples were not having an adequate impact and whether they had sufficient budgetary resources to implement their activities, including those that were unpopular with those in power.

36. He noted that one body appeared to be responsible both for investigating crimes against human rights defenders and for prosecuting persons, including from indigenous communities, who were considered subversive, and asked how the State party was addressing that conflict of interest. He would also appreciate information on how the State party planned to implement its agenda on indigenous peoples in order to make real progress before presenting its next periodic report to the Committee.

37. **Mr. Lindgren Alves** expressed surprise at the introductory remarks made by the delegation of Guatemala, in particular a statement that questioning with regard to certain issues of sovereignty would not be accepted. He pointed out that, since the World Conference on Human Rights of 1993, it had been acknowledged that the expression of concerns about human rights in the context of the international human rights system did not violate the sovereignty of States. Recalling a question he had raised during the consideration of the State party's previous periodic report (CERD/C/SR.1982, para. 67), he sought clarification as to whether the recognition of cultural plurality implied a negation of the principle of a Guatemalan nation.

38. Although the report contained statistical data on the indigenous peoples of Guatemala, no information was provided on the total percentage of the population who were indigenous or on how citizens who were not purely indigenous identified themselves. He observed that a situation of reverse discrimination could potentially arise if persons felt compelled by social pressures not to identify themselves as mestizos.

39. **Mr. Khalaf** asked how the State party ensured that different population groups participated in public life and whether there were specific mechanisms to improve the participation and representation of indigenous peoples. He expressed concern at the delegation's affirmation of absolute State sovereignty over land, apparently without regard for international agreements that gave priority to indigenous peoples, such as ILO Convention No. 169. In that connection, he would like to hear the delegation's thoughts on the legal principle of usucapion, or adverse possession, which provided land rights for persons who had continuously exploited and occupied land for a period of more than 30 years and was part of many democratic systems.

40. He would also like further information on the Office for Analysis of Attacks on Human Rights Defenders, in particular whether it was independent and whether it acted in place of the justice system in cases of attacks against human rights defenders. Additional information on training provided to civil society on the Convention would also be welcome.

41. **Ms. Dah**, noting women, especially indigenous women, were poorly represented in the legislative, administrative, judicial and diplomatic fields, enquired how the State party intended to further women's advancement. She would particularly like information on initiatives in the areas of women's education, health and employment and on how women were being helped to raise their children in dignity. She was also curious about how the State party included traditional medicine in the provision of health care. Emphasizing the value of such traditional knowledge, she expressed the hope that Guatemala was fully aware of the richness of its cultural diversity.

42. **Mr. Vázquez** said that, given the discrepancy between official figures from 2002 and more recent information from alternative sources, he would like to know whether the delegation acknowledged that indigenous peoples comprised the majority of the population in Guatemala. He suggested that recognizing and authorizing community radio would help to reduce the high cost of mounting electoral campaigns, which was a barrier to indigenous political representation. He asked why adoption of the bill authorizing community radio had

been delayed and whether, until such time as the bill passed, the Government could refrain from prosecuting community radio operators. Lastly, he sought information on how the State party intended to remedy the lack of access to polling stations, and the wider problem of lack of access to services in general, in rural areas.

The meeting rose at 5.55 p.m.