



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2744th meeting

Held at the Palais des Nations, Geneva, on Thursday, 8 August 2019, at 10 a.m.

Chair: Mr. Amir

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The meeting was called to order at 10.10 a.m.

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

Combined eighteenth and nineteenth periodic reports of El Salvador (CERD/C/SLV/18-19 and CERD/C/SLV/Q/18-19) (continued)

1. *At the invitation of the Chair, the delegation of El Salvador took places at the Committee table.*
2. **Mr. López Doradea** (El Salvador) said that the population of El Salvador was just over 6.5 million, rather than 8 million, as the Committee had suggested. He would like to know the source of that population figure. He wished to highlight that, as a result of awareness-raising activities in the indigenous community of Cacaopera, 90 per cent of respondents to a census of that community had self-identified as indigenous.
3. Regarding the definition of racial discrimination, article 3 of the Constitution provided for the equality of all persons before the law without any restrictions on the basis of nationality, race, sex or religion. Article 63 of the Constitution recognized indigenous peoples with a view to preserving and developing their ethnic and cultural identity, world view and spiritual values. His Government had not made any reservations to the Convention and, under article 144 of the Constitution, the content of the Convention prevailed over national legislation. Consequently, it was not necessary for a definition of racial discrimination to be included in national legislation. Public policies and municipal ordinances were in place to supplement the provisions of the Constitution. His Government recognized human rights as the cornerstone of public policy and had demonstrated its commitment to those rights through the ratification of a wide range of international instruments.
4. The Office of the Human Rights Advocate was an entirely independent body, the operation of which was provided for in peace agreements and article 191 of the Constitution. While representatives of the Office were not in attendance at the meeting, they had participated in the drafting of the report. The Human Rights Advocate was responsible for implementing human rights action plans and the legal framework to combat racial discrimination. Other relevant public bodies were also involved in the implementation of that legal framework, with the input of indigenous communities and their civil society organizations.
5. The Government would establish awareness raising activities for the relevant public bodies on the content of International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169) and would maintain a dialogue with the legislature in that regard. ILO Convention No. 169 was being reviewed by the Legislative Assembly with a view to its adoption and ratification.
6. The Constitutional Division of the Supreme Court had declared the Amnesty Act unconstitutional in July 2016. The Supreme Court had held a public hearing to monitor the implementation of that decision in 2018. At the hearing, the Constitutional Division had reaffirmed the obligation of the Legislative Assembly to mandate the Attorney General to conduct investigations into human rights violations committed during the armed conflict and guarantee the accessibility of the necessary information. The Office of the Attorney General had established a special unit to investigate cases related to the internal armed conflict, with the support of the regional office of the Office of the High Commissioner for Human Rights. As of 2017, a total of USD 10 million had been paid in reparations to victims of that conflict in order to comply with the decisions of the Inter-American human rights system. In addition, a register of victims had been established with a view to assisting both direct and indirect victims. The Ministry of Culture had undertaken various remembrance activities. Since 2013, the Salvadoran Institute for the Advancement of Women had organized several remembrance sessions and meetings for women survivors of armed conflict.
7. With regard to cases of racial discrimination heard by the courts, in January 2019, a group of citizens supported by the Ministry of Culture had presented to the Supreme Court

a request for habeas corpus in relation to the forced disappearance of an indigenous leader and his two sons in 1932. In March 2019, the Court had declared the request to be inadmissible, but admitted it as an *amparo* remedy and ruled in favour of the plaintiffs. That was the first time that a case involving the genocide of 1932 had been brought before the courts. The ruling of the Supreme Court in that case would facilitate access to justice and reparations for the genocide.

8. Articles 90 and 92 of the Act on Foreigners governed acquisition of Salvadoran nationality, which was further regulated by the Special Act on Migration and Aliens of July 2019. In order to ensure non-discrimination in migration, provisions were included that enabled persons benefitting from international protections to request special migration status.

9. Article 28 of the Culture Act provided that the Government should adopt public policies for the recognition and visibility of indigenous peoples. As a result, the Public Policy for Indigenous Peoples had been adopted. Between 2015 and 2017, three municipal ordinances had been drafted providing a legal and institutional framework for the participation of indigenous peoples in decision-making processes at the municipal level. The municipal ordinances recognized the territories of indigenous people with a view to establishing programmes in those territories. Various departments of the central Government were active in indigenous territories as a consequence of the municipal ordinances.

10. The Salvadoran Agrarian Reform Institute had implemented a land transfer programme from 2009 to 2017, through which 73,613 writs of land ownership had been granted to campesinos, of whom 30,419 were women. Following a 2014 amendment to the Act establishing special rules for land owned by cooperative, communal and community campesino associations and beneficiaries of agrarian reform, writs of land ownership were provided as a family asset.

11. The legislation on abortion in his country was directly linked to article 1 of the Constitution, which recognized human beings as the central focus of all State activities. Human beings were recognized as such from the moment of conception. While abortion was criminalized in El Salvador, a 2007 ruling of the Constitutional Division of the Supreme Court had paved the way for a new debate on the scope of the criminal punishment for abortion under certain legal conditions. In February 2017, the Constitutional Division of the Supreme Court had found articles 72 and 75 of the Civil Code to be unconstitutional because they recognized the rights of a human being from the moment of birth, rather than the moment of conception, thus running counter to article 1 (2) of the Constitution.

12. The Attorney General of the Republic had 19 decentralized offices throughout the country. The Attorney General also acted as the Minister for Justice and was an elected member of Parliament. The role of the Attorney General was set out in article 193 of the Constitution. The Attorney General was appointed by the legislative assembly and was entirely independent.

13. Indigenous women could marry freely indigenous or non-indigenous persons.

14. Freedom of association and religious freedom were guaranteed under articles 4 and 25 of the Constitution, respectively. While there was no specific legislation enshrining the right to collective property, public policy promoted collective land ownership and mechanisms to facilitate access to land. Indigenous peoples were able to access holy sites that were owned by the Government upon obtaining authorization from the Ministry of Culture.

15. Consultation with civil society and indigenous people on the drafting of the report had taken place through a workshop. Further information in that regard could be found in annex 4 to the country report.

16. The Government was committed to improving access to potable water and reducing poverty for the benefit of the indigenous population. The Culture Act and the municipal ordinances were among the tools used by the Government to that end. The Public Policy for Indigenous Peoples included a section on access to potable water. The Ministry of Health,

in collaboration with other government departments, was implementing water security plans in rural areas with a view to ensuring continuous access to high quality potable water. Workshops had been held imparting good practices to ensure water quality. The Government had established round-table discussions with indigenous leaders focusing on the drafting of a national environmental strategy. Indigenous leaders from different areas of the country had participated in the discussions, which had facilitated an ongoing dialogue and collaboration between the Government and indigenous organizations.

17. Migration had many causes and should be addressed using a comprehensive strategy. Return and labour reinsertion programmes had been established in collaboration with other Governments. Programmes to address the needs of migrants had also been implemented. Furthermore, in 2018, El Salvador had signed the Global Compact for Safe, Orderly and Regular Migration. A plan was being developed with other countries in the region to address the most pressing issues resulting from migratory flows. A bilateral agreement had been signed with Mexico with a view to reducing migration. The Government had strengthened its consular network in order to ensure protection for Salvadoran migrants.

18. Nahuatl was the only indigenous language spoken in El Salvador, and all speakers of Nahuatl also spoke Spanish. Consequently, health care was provided in Spanish. Nevertheless, educational programmes given exclusively in Nahuatl were available. It should be noted that other indigenous languages had fallen out of use. The Government would continue to make efforts to protect the Nahuatl language and encourage the use of other indigenous languages.

19. Gender units were tasked with ensuring the inclusion of a gender perspective in public policy and the daily workings of State institutions. That political action contributed to gender equality. The staff of the gender units received training on the rights of the population of African descent and indigenous women.

20. The Public Policy and National Action Plan for Indigenous Peoples had been launched in 2018. As a result, over 90 teachers had received training in the Nahuatl language and educational materials had been developed to facilitate the teaching of that language. The curriculum would be reformed to that end, with a focus on multicultural education. Academic research had been carried out in indigenous communities. Students of indigenous descent were encouraged to engage in and publish such research in order to facilitate a more widespread understanding of their communities. Lectures, workshops and training sessions on the Nahuatl language had been organized by several universities in the country.

21. A health policy for indigenous peoples had been launched in 2018 and the Government would soon begin to develop an action plan for its implementation. To that end, consultations had been carried out with indigenous communities. In 2007, the Ministry of Health and the Ministry of Culture had provided training on intercultural health to health care providers. The Ministry of Health was developing a database using family registers in order to better identify the indigenous population and the population of African descent by means of the health system. Interministerial efforts had been undertaken to detect geriatric conditions in indigenous communities. As a result, nutrition was being provided to elderly people in those communities to combat conditions related to malnutrition. The Government planned to attach more importance to ancestral medicinal knowledge, including traditional childbirth methods.

22. A rural development programme had been implemented that provided agricultural resources to indigenous communities. Legislation for the promotion and development of handicraft activities had been approved. That legislation focused on indigenous artisans and a census of such artisans would be conducted. The Ministry of Culture had organized forums and workshops to raise awareness of the rights of indigenous peoples, including women. The Culture Act included a chapter on the rights of indigenous peoples. Safeguards were in place to protect traditional knowledge, traditional artefacts and the Nahuatl language. The Ministry of Culture worked closely with indigenous communities in order to promote their representation in the Government. Work had also been undertaken to ensure that the staff of the Ministry of Justice and Public Security was aware of the specific needs

of those communities, especially with regard to security issues. The Government would monitor progress in that regard. The Ministry of Culture was implementing an initiative known as “The Carriers of the Nahuatl” that involved awareness raising and the establishment of councils for indigenous women.

23. The term “culturally appropriate housing” referred to dwellings that were in harmony with the environment and thus sustainable. That housing would include buildings in which harvested crops and seeds could be stored as well as areas in which agricultural activities could be undertaken.

24. **Mr. Calí Tzay**, thanking the delegation for their replies, said that he would appreciate receiving further information regarding the status of international human rights instruments in national legislation. He would like to know, for instance, in which article it was stipulated that international instruments took precedence over national legislation, whether victims of racial discrimination could directly quote the Convention in their legal procedures, and, if not, which law afforded protection to victims of racial discrimination.

25. He wondered whether the Government had considered implementing a training programme on the content of the Convention for members of the security forces, public officials, judges, magistrates and the public. While the content of the Convention might be clearly set out in legislation, members of the security forces, and even judges, were often unaware of international human rights instruments.

26. While he welcomed the granting of lands to campesinos, it was important to note that not all campesinos were indigenous people and vice versa. He would therefore appreciate information regarding the percentage of those campesinos who were indigenous.

27. In light of reports that gang violence was having a negative impact on indigenous communities living on communal lands, especially women who relied on the collection of water as their main source of income, he would like to know how the Government planned to protect indigenous women and communal lands from criminal gangs.

28. The delegation should provide further information regarding the number of indigenous women who had undergone an abortion.

29. The consultations undertaken with indigenous communities regarding the drafting of the report were insufficient. The Government should implement more comprehensive and protracted consultation processes. He would like to gain a better understanding of the institutions and mechanisms that received complaints of racial discrimination.

30. Given that the proportion of non-indigenous people who owned land was much higher than for indigenous people, he would like to know whether initiatives were being developed to promote land ownership among the indigenous population. He would also appreciate statistics on land ownership by persons of African descent.

31. He wondered whether the Government had conducted any research into the reasons why the life expectancy among the indigenous community was six years shorter than that of the general population.

32. **Mr. Murillo Martínez** said that he would like to know more about the Government’s approach to migration and its view on the link between migration, poverty and discrimination, in particular given the high level of emigration from El Salvador and the fact that several countries in the region, including El Salvador, had previously prohibited members of certain ethnicities and cultures from entering their territories. He asked what percentage of prisoners were from ethnic minorities, whether abortion was legal under any circumstances and whether the Government had any specific experience of holding prior consultations with ethnic groups, especially indigenous groups.

33. **Mr. Avtonomov** said that he too would appreciate data on the indigenous population and asked whether the Government planned to ratify the Amendment to article 8 of the Convention.

34. **Mr. Diaby** said that he wished to know whether any complaints of human rights violations had been brought before the national human rights institute and, if so, what the follow-up to those cases had been. He asked whether the bill on the regularization of

migration of people of Central American origin had been enacted and, if so, whether there had been any obstacles to its implementation. He would appreciate information on the proportion of the population that were indigenous or of African descent and on their level of representation within the police force, the Government and the parliament.

35. **Mr. Calí Tzay** said that he welcomed the clarification provided regarding the population size of El Salvador. He also asked what the budget was for implementing the Public Policy for the Indigenous Peoples.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

36. **Mr. Maza Martelli** (El Salvador) said that migration in El Salvador was driven by numerous factors, both internal and external. As well as being a country of origin for migration, El Salvador was a country of destination and transit, which complicated development efforts. The Government was attempting to promote domestic development in order to reduce emigration. It also sought to ensure that emigration was orderly and provided benefits for the country. Although Salvadorans had emigrated to numerous countries around the world, the Government did not possess statistics on the precise number.

37. Although previous legislation had placed limitations on the grounds of race and nationality on who could enter the country, the Constitution provided that all persons could enter Salvadoran territory unless forbidden by the law. The Government was working to protect the rights of migrants, in particular vulnerable groups such as unaccompanied child migrants. It was also working with neighbouring countries and international organizations to manage migration, including through repatriation.

38. The Government collected only general statistics on indigenous peoples and people of African descent, through the national census. It would appreciate advice from the Committee on how to collect more detailed data, in order to better guide its development plans.

39. **Mr. López Doradea** (El Salvador) said that, in accordance with the Constitution, all international treaties signed by the State had become domestic law and could not be amended or superseded by domestic laws. The Government was committed to implementing all treaties signed by El Salvador.

40. The Office of the Human Rights Advocate was an independent organization that had been established as part of the 1992 peace accords. The Constitution set out the functions of the Human Rights Advocate, which included monitoring the treatment of persons in deprivation of liberty, promoting human rights reforms and recommendations, supporting access to legal remedies and investigating complaints, including those made by indigenous persons or persons of African descent. According to the law, the Office of the Human Rights Advocate must be independent and free from coercion by any other authority. All organs of the State were obliged to cooperate with the Office upon its request. The Office had published alternative reports on racial discrimination, although none had been submitted to the Committee on that occasion.

41. The Government was implementing the third phase of its land intervention strategy to combat the security problem posed by youth gangs, which had divided the territory of El Salvador and had restricted movement. As part of the strategy, the national civil police and the armed forces were involved in recovering lands and returning them to their communities. The plan was currently being implemented in all departmental capitals, but would later be extended to rural areas. The Government was also developing an intervention plan to provide assistance to indigenous communities, including in the areas of health, education, housing and food. Before that plan could be executed, however, the security of the regions in which those populations lived needed to be assured.

42. The Ministry of Culture had been assigned to act as the intermediary for implementing the Public Policy for the Indigenous Peoples, which had been developed in consultation with representatives of indigenous communities. The Ministry would coordinate with various other ministries to implement different aspects of the policy and ensure that a suitable budget was allocated for such activities.

43. The Government had recently opened a school to provide training to employees of public institutions regarding the rights of indigenous peoples and people of African descent. Representatives of indigenous communities were involved in developing the training courses. In addition, human rights were an essential component of the training programmes run by the National Public Security Academy for newly recruited police officers and for serving officers at all ranks. There was also a legal training school in El Salvador, which provided training for prosecutors, judges and law enforcement officers on the importance of human rights, justice and peace as fundamental values.

44. According to the Constitution, Salvadoran nationality was granted to all persons who were either born within the territory, who were born abroad to Salvadoran nationals or who were nationals of another State of the former Federal Republic of Central America, were resident in El Salvador and had applied to become citizens. In the latter case, they were not obliged to renounce their other nationality.

45. **Mr. Murillo Martínez** said that it would be useful if the delegation could include in its additional replies, to be submitted within 48 hours, more information about the role that indigenous peoples played in national and international debates, particularly in the context of the current climate change crisis. He wondered how the views of indigenous people were being sought and integrated in efforts to comply with the Sustainable Development Goals and the 2030 Agenda for Sustainable Development.

46. **Ms. Dah** said that indigenous peoples were failing to achieve their full potential in the State party, while those of African descent had also failed to prosper. It was vital that the State party devised and implemented policies that would allow minorities to flourish. In order to self-identify as part of a group, people had to be proud of their origins, which entailed feeling safe and at ease. She hoped that the State party's next periodic report would include not only details of new legislation, but also information about how the problems identified during the dialogue had been tackled. With the right political will, she was confident that the State party could overcome the obstacles and achieve the successful integration of disadvantaged groups.

47. **Mr. Avtonomov** said that the Committee looked forward to receiving more information about how the State party was participating in the International Decade for People of African Descent, particularly in the light of the Committee's general recommendation No. 34 on racial discrimination against people of African descent. The State party must remain mindful that needs varied according to whether communities were situated in rural or urban areas.

48. **Mr. Calí Tzay** said that he was unclear regarding the current status of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) in the State party's legislation. As a Central American and a Maya, he wished to point out that there was a fine line between a good law and a paternalistic law when it came to protecting indigenous peoples' rights. He implored the delegation to ensure that El Salvador did not come down on the wrong side of that line.

49. **The Chair** said that "justice" and "freedom" had emerged as key terms from the delegation's replies. The Government was the architect of the future that the State party wished to build. He hoped that, together, the State party and the Committee could lay a solid foundation for a country free from racial discrimination.

50. **Mr. López Doradea** said that he was grateful to the Committee for having impressed upon the delegation the importance of acting responsibly for all indigenous peoples and people of African descent in El Salvador. The Government was committed to being open and available to the Committee, to submitting its reports on time, and to listening attentively to communities that had been overlooked for far too long. The Committee's recommendations would be conveyed to the highest authorities in El Salvador and implemented accordingly.

The meeting rose at 12.50 p.m.