



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-seventh session

SUMMARY RECORD OF THE 1704th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 August 2005, at 10 a.m.

Chairman: Mr. YUTZIS

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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 (agenda item 4) (continued)

Fourteenth to eighteenth periodic reports of the Bolivarian Republic of Venezuela (continued) (CERD/C/476/Add.4; HRI/CORE/1/Add.3/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Venezuela resumed their places at the Committee table.
2. Mr. POCATERRA (Venezuela), drawing the Committee members' attention to the information projected on the screen which had been set up, said that the ethnic and racial origins of the Venezuelan population were: 67 per cent mestizo, 21 per cent white, 10 per cent African and 2 per cent indigenous. According to the 2001 census, the indigenous population had totalled 536,863. Of that number, 33 per cent were registered inhabitants of indigenous communities, and 66 per cent had classified themselves as indigenous. The 34 recognized indigenous languages fell into four main linguistic divisions: Arawak, Caribe, Chibcha and a group of independent languages.
3. Ms. POITEVIEN CABRAL (Venezuela) said that the Constitution contained a definition of racial discrimination, as did numerous other domestic laws. The Supreme Court had established criteria similar to those used by international human rights treaty bodies in order to determine whether the principle of non-discrimination had been contravened. Not all instances of unequal treatment were considered discriminatory, but the Constitution did prohibit unequal treatment in identical situations. Equality before the law did not exclude extending unequal treatment to a citizen or group of citizens in the following conditions: if the citizen or group of citizens were in objectively different situations; if there was a specific purpose for the unequal treatment; if that specific purpose was reasonable, i.e. in conformity with constitutional rights and principles; and if a proportionate relationship was maintained, i.e. if the judicial implications of the unequal treatment were not disproportionate to the actual circumstances and the purpose justifying the unequal treatment.
4. The chief human rights defence mechanism in Venezuela was the Office of the Ombudsman. However, owing to the general denial among the public of the existence of racial discrimination, few complaints had been submitted to the Office. Among the complaints that had been received were two specific cases of alleged racial discrimination. The first concerned a complaint against a television station for the transmission of a programme that the complainant considered to be offensive to persons of African descent. Although that action was ultimately not found to be discriminatory, the authorities had ordered the television station in future to review the content of its programmes so as to ensure that they were in conformity with the Constitution and did not send out discriminatory messages. The second case concerned a complaint against a State tourism agency for its failure to consider a job application by a person of African descent. Closer examination had revealed that the agency had been in the process of liquidation and had not been accepting applications at the time.

5. In 2001, the Ombudsman's Office had received a total of 41 complaints of alleged violations of the rights of indigenous peoples. Fifteen of those had concerned infringements of collective land ownership and 10 had concerned failure to inform and consult with indigenous communities concerning plans to exploit natural resources on their lands.
6. In 2002, there had been 39 cases of alleged violations of indigenous rights, of which 14 had concerned infringements of collective land ownership, and 12 had concerned violations of the right to engage in and promote indigenous economic practices.
7. Ms. DAH asked what type of redress was provided in those cases in which indigenous persons' rights had been violated.
8. Mr. ABOUL-NASR wished to know whether a date had been set for the consideration of applications for compensation from indigenous persons.
9. Ms. POITEVIEN CABRAL (Venezuela) said that although the Ombudsman's Office was competent to make recommendations for redress concerning complaints of alleged human rights violations, its recommendations were not binding. The rulings of the courts, on the other hand, were binding, and the right to redress and compensation was enshrined in the Constitution.
10. Ms. MONAGAS (Venezuela) said that the Ombudsman's Office was a preliminary instance for receiving complaints, as was the Office of the Public Prosecutor, which was charged, inter alia, with conducting criminal investigations. If the latter found sufficient evidence to bring a charge in cases of human rights violations, it transferred such cases to a competent court, which issued judgement and ordered compensation. There had been some cases in which complainants had sought redress for human rights violations through the international courts.
11. Ms. POITEVIEN CABRAL (Venezuela) said that when domestic remedies had been exhausted and victims had sought justice through the international courts, the State had responded positively and recognized its responsibilities by compensating the victims.
12. She outlined the situation with regard to the ratification of a number of international human rights treaties. They included: (a) the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, "Protocol of San Salvador", which had been approved by the National Assembly - ratification would be deposited in due course with the Organization of American States; (b) the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, which had not been ratified; (c) the Convention against Discrimination in Education, which had not been ratified; (d) the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, both of which had been ratified; and (e) the amendment to article 8 of the Convention (ICERD), which was under consideration but had not been ratified.
13. Mr. HERNÁNDEZ (Venezuela) said it was important to remember that his country was undergoing a period of transition, during which all domestic legislation was being brought in line with the Constitution. Article 23 of the Constitution provided that the international instruments Venezuela had ratified could be invoked directly before the courts. All domestic legislation was based on the principle of equality without discrimination of any kind. It followed that the law

provided positive protection of the rights of marginalized or vulnerable individuals or groups. While freedom of speech was protected under the law, individuals and groups had to take responsibility for the messages they conveyed.

14. Mr. ABOUL-NASR said that the reporting State should be more specific about whether perpetrators of violations of the Convention were sanctioned and, if so, what punishments they received.

15. Mr. HERNÁNDEZ (Venezuela) said the draft criminal code provided that perpetrators of any act of racial discrimination against individuals or groups were punishable by prison sentences of between 6 and 15 years, plus fines. The Bolivarian Constitution had been written from a republican perspective, implying a positive approach to rights and freedoms. While not all the provisions of the Convention had been enshrined in domestic legislation, that process was under way. Article 13 (5) of the American Convention on Human Rights prohibited the acts proscribed in article 4 of ICERD. Other draft legislation prohibited discrimination on any grounds in areas such as employment and sport.

16. Ms. ARRATIA (Venezuela) said that, while the Government did not currently compile disaggregated statistics on the population of African descent, it did promote recognition of that community. Afro-Venezuelan associations had begun working with the Government to provide data and social indicators that took African descent into account. National Afro-Venezuelan day had been declared on 10 May 2005, in recognition of the anti-slavery fight that had been led by Afro-Venezuelans. The declaration of that day aimed to promote recognition of the value, culture and history of Venezuelans of African descent. There were no gypsy communities or communities composed solely of people who had been freed from slavery.

17. Mr. LINDGREN ALVES asked whether the Government had made a conscious decision not to disaggregate statistics by race. If not, it would be interesting to know whether in future, the mestizo categorization would disappear and people would necessarily be classified as black or indigenous.

18. Ms. ARRATIA (Venezuela) said that no conscious decision had been taken not to disaggregate population statistics by racial background. Discussions had been taking place between the National Institute of Statistics and groups of African descent that were calling for the collection of data on the number of people of African descent living in Venezuela.

19. Mr. POCATERRA (Venezuela) added that the Constitution was based on the notion of a multi-ethnic, multicultural society, and on unity in diversity without any form of ethnic or racial discrimination.

20. Mr. ABOUL-NASR commended the reporting State for its celebration of Afro-Venezuelan day, and asked whether there was also a day celebrating indigenous Venezuelan peoples.

21. Mr. POCATERRA (Venezuela) said that until 2002, 12 October had been celebrated as the Day of Discovery of the Americas. Thereafter, the focus had shifted and it had become known as the Day of Indigenous Resistance, in recognition of the country's cultural identity and diversity.

22. Mr. SHAHI requested additional information about the number of different ethnic groups that made up the 2.5 per cent of the population classified as indigenous peoples. He wished to know how many languages were spoken by those peoples, and whether there was solidarity between the various ethnic groups.
23. Mr. POCATERRA (Venezuela) said that there were 34 indigenous communities with different cultures and languages in his country. Those groups had strong intercultural relations, based mainly on their work on the National Indian Council of Venezuela and the National Council on Indigenous Education, Culture and Languages. Most of the indigenous languages had been classified, and resources such as textbooks and dictionaries had been produced to facilitate teaching of those languages in schools and universities. His Government had been working to promote the use of those languages as a means of protecting the national cultural heritage and the rights of all indigenous peoples. Its policy of bilingual, intercultural education had been designed to encourage links between the indigenous and non-indigenous communities.
24. Mr. CALI TZAY requested additional information on the Government's bilingual, intercultural education policy and asked which sectors of the population had access to such education.
25. Mr. POCATERRA (Venezuela) said that his Government made an effort to preserve indigenous culture and to disseminate information about it. A special programme was in place to encourage indigenous people to learn their own language. Indigenous language and cultural studies were currently being incorporated into high school curricula. Teaching materials and important documents were translated into indigenous languages. In addition, steps were being made to promote cultural exchange with the rest of society.
26. Mr. VALENCIA RODRÍGUEZ asked whether indigenous people who did not speak Spanish could use their language when contacting administrative authorities or appearing in court.
27. Mr. AVTONOMOV (Country Rapporteur) asked whether civil servants who did not belong to an indigenous group but worked with indigenous communities received incentives to study their languages.
28. Mr. CALI TZAY asked whether indigenous people were given incentives to learn Spanish.
29. Mr. POCATERRA (Venezuela) said that the Government took steps to find out which languages were being spoken by particular indigenous groups and used that information to draw up educational programmes. The Ministry of Education provided grants to teachers who could teach in both Spanish and an indigenous language. Efforts were also made to encourage indigenous people to learn Spanish.
30. Indigenous people had the right to speak and write in their language, to make public statements and to give evidence in court through either an interpreter or an indigenous lawyer who could speak their language and Spanish. To encourage people who were not members of an indigenous group to learn indigenous languages, audio-visual and written educational materials

were made available in universities, and special workshops and courses offered. A national commission of indigenous linguists was in place and helped the Ministry of Education develop training programmes for teachers.

31. Ms. ARRATIA (Venezuela) said that her Government, in cooperation with NGOs, had taken steps to raise public awareness of the Afro-Venezuelan culture. Special television and radio programmes were broadcast and events organized to promote a dialogue on the subject. As a result, people of African origin were increasingly recognizing their cultural background and identity.

32. Ms. POITEVIEN CABRAL (Venezuela) said that the introduction of the new Constitution in 1999 and the restructuring of the Government had made the National Human Rights Commission obsolete. The Ombudsman's Office had taken over all of the Commission's main functions. In future, the Commission might be re-established as an advisory body.

33. The rights of indigenous peoples were protected by the judiciary. For example, the amparo remedy ensured efficient exercise of all constitutional rights, including the right to personal freedom, health, access to medicine for persons with HIV, and the right of pregnant women to continue working. There had been several civil and criminal cases in which indigenous people had successfully used that remedy. In one case, an indigenous community had requested that the construction of an electric power plant be stopped until an environmental and cultural impact assessment of the project had been carried out. The court had ruled that, although such an assessment had already been carried out, its recommendations had not been implemented. As a result, an ombudsman had been appointed to ensure that the recommendations would be implemented. The Government believed that protecting the right of indigenous people to own land and to practise their customs was the best way to repair the damage they had suffered over previous centuries. The Constitution had been amended to ensure that indigenous people retained control over the natural resources on their lands.

34. Mr. KJAERUM asked whether the Government had considered carrying out human rights impact assessments to ensure that the rights of indigenous peoples were protected.

35. Mr. de GOUTTES, referring to paragraph 222 of the report, asked the delegation to provide more information on the jurisdiction of indigenous tribunals.

36. Ms. POITEVIEN CABRAL (Venezuela) said that the environmental assessment carried out in the above-mentioned case had not been limited to environmental issues, but had covered all questions raised by the indigenous community. Environmental impact assessments were required by law and, in cases where development projects affected indigenous communities, the assessments also took account of the impact on their way of life. Measures had been taken to implement the recommendations contained in the study.

37. Ms. MONAGA (Venezuela) said that all companies wishing to undertake development projects with potential environmental repercussions were required to obtain special permits from the Ministry of Labour, the Environment, Production and Trade.

38. Ms. POITEVIEN CABRAL (Venezuela) said that conflicts arising within indigenous communities were generally resolved through the indigenous justice system. The Constitution provided for indigenous community justice and contained clear rules on the resolution of intra-cultural conflicts. Conversely, transgressions of the law involving indigenous and non-indigenous persons fell under the jurisdiction of regular courts. A draft bill governing the resolution of intercultural conflicts was currently under consideration, but no agreement had been reached thus far. Despite the absence of relevant legislation at present, judges dealing with such cases generally took account of socio-ethnic considerations affecting the indigenous person(s) involved. All indigenous suspects were guaranteed access to an interpreter.

39. Since 1990, the Public Prosecutor's Office had trained provincial criminal prosecutors in adjudicating cases involving indigenous persons. As a rule, each state had a prosecutor specializing in such cases who was familiar with the customs of the local indigenous population. The competent judges were generally familiar with indigenous law or were themselves members of indigenous communities. The administration of justice concerning indigenous communities was based on the principles contained in International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples, to which Venezuela was a party.

40. Ms. FERNÁNDEZ LARA (Venezuela) said that, in conformity with ILO Convention No. 169, the economic, social and cultural characteristics of indigenous populations were taken into account when imposing criminal sanctions. Nevertheless, all citizens were equal before the law and criminal legislation applied to indigenous and non-indigenous persons alike. The Bolivarian Constitution guaranteed a prison system that ensured the rehabilitation of prisoners and respected their rights. Preference was given to an open regime, a system of prison farms or non-custodial sentences. The Government had introduced humanization policies covering the whole prison system, with the primary objective of ensuring the rehabilitation and social reintegration of prisoners. Accordingly, all prisons had been equipped with educational, cultural, sports and recreational facilities. The situation of each inmate was studied carefully, from both a social-criminological and a legal standpoint, with a view to facilitating his or her release and reintegration into society. Since preference was given to the imposition of non-custodial sentences such as protection orders, house arrest, placement under supervision or release on bail, the number of indigenous persons in custody was relatively low. All persons placed in detention had the right to appeal against their sentences or request a judicial review. There were no separate prison facilities for indigenous peoples.

41. Mr. THORNBERRY said that it might be useful to apply the principle of retrospective justice to the repossession of indigenous lands that had occurred prior to the adoption of the 1999 Constitution, especially in cases where victims continued to suffer the effects. The request for data disaggregated by ethnicity was standard Committee procedure. He appreciated the fact that the State party viewed itself as a multicultural and multi-ethnic society and was aware of the difficulties involved in collecting disaggregated data. However, such information was crucial to the effective implementation of the Convention. The Committee supported individuals' right to identify with a particular racial or ethnic group and considered it inappropriate for any Government to override that concept. He commended the delegation both for the summary of the meaning of equality contained in paragraph 253 of the report, which constituted a thoughtful approach to the principles underpinning the Convention, and for the comment on the republican as opposed to the liberal notion of freedom. He asked what role, if any, religious missions played in relation to indigenous communities.

42. Mr. CALITZAY asked the delegation to clarify whether the Government sought to integrate indigenous communities or, conversely, based its policies on respect for their specific economic, social and cultural characteristics.

43. Mr. de GOUTTES requested disaggregated data on the proportion of indigenous persons or persons of African descent in detention.

44. Ms. POITEVIEN CABRAL (Venezuela) said that her country was a multicultural, multi-ethnic society and the Government promoted respect for the diversity and identity of indigenous peoples, rather than seeking their integration into mainstream society. The same applied to religious diversity. As a rule, the State assumed responsibility for guaranteeing indigenous communities' access to health care and education. Nevertheless, a number of religious missions continued to operate in indigenous communities and, together with NGOs, assisted in the provision of a range of services.

45. Her delegation would gladly provide detailed disaggregated data on the prison population. According to the most recent statistics, 169 indigenous persons had been in detention in 2004.

46. Mr. AVTONOMOV said that the Committee was encouraged by the re-establishment of dialogue with the State party and by the delegation's willingness to express its views in an open and sincere manner.

47. Ms. POITEVIEN CABRAL (Venezuela) said that, in its dialogue with the Committee, her delegation had taken note of a number of issues that would require further consideration. She thanked the Committee for its assistance and expressed her delegation's willingness to continue cooperating with it in order to enhance the effective implementation of the Convention.

The meeting rose at 1.05 p.m.