



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/GTM/CO/11
15 May 2006

Original: ENGLISH and
SPANISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-eighth session
20 February-10 March 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the Elimination
of Racial Discrimination**

GUATEMALA

1. The Committee considered the eighth to eleventh periodic reports of Guatemala, due respectively on 17 February 1998, 2000, 2002 and 2004 and submitted as one document (CERD/C/469/Add.1), at its 1739th and 1740th meetings (CERD/C/SR.1739 and 1740), held on 24 and 27 February 2006. At its 1756th and 1757th meeting, held on 9 March 2006, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party and expresses its satisfaction at the resumption of a constructive dialogue with Guatemala. While the Committee appreciates that the delegation was composed of members of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), it notes that it did not include representatives of the State party's Ministries.

3. The Committee, noting that it received the report after a delay of seven years, invites the State party to respect the timetable set by the Committee for the submission of its future reports.

B. Positive aspects

4. The Committee welcomes the establishment of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), and the Office for the Defence of Indigenous Women's Rights within the Presidential Human Rights Commission.

5. The Committee welcomes the promulgation of the Framework Law concerning the Peace Agreements by which the Peace Agreements, and in particular the Agreement on Identity and Rights of Indigenous Peoples, become binding on the State.

6. The Committee welcomes the declaration by the delegation that it is the intention of the Supreme Court of Justice and the institutional policy of the judiciary to recognize the indigenous legal system.
7. The Committee welcomes the promulgation of the Mayan Language Act and of legislation with respect to the wearing of regional indigenous dress in schools.
8. The Committee welcomes the reform of chapter IV of the Municipal Code, particularly the recognition given to traditional indigenous authorities (alcaldías indígenas) for the first time as regular municipal authorities, in national legislation and the commitment by the State to promote and respect indigenous people's own forms of political and administrative organization.
9. The Committee welcomes Government Agreement No. 22-04, which provides for intercultural bilingual education as part of the national education system as well as measures for its practical implementation.
10. The Committee notes with interest the follow-up to the institutionalization of B'eleje' B'atz Day (women's day in the Mayan calendar).

C. Subjects of concern and recommendations

11. The Committee is concerned that the statistics in the State party's report on the country's indigenous peoples are incomplete and that the State party does not keep statistics relating to the population of African descent. The Committee recalls that such information is necessary to assess how the Convention is implemented in respect of these groups.

The Committee draws the attention of the State party to its General Recommendation 4 and to paragraph 8 of its guidelines regarding the submission of reports, and recommends to the State party that it include in its next periodic report updated disaggregated statistics on indigenous peoples and persons of African descent so that their situation can be more accurately assessed.

12. The Committee is deeply concerned at the extent to which racism and racial discrimination against the Maya, Xinca and Garifuna peoples is entrenched within the territory of the State party and at the inadequacy of public policies to eliminate racial discrimination. (art. 2, para. 1, and art. 2, para. 2).

The Committee urges the State party to adopt the proposed policy entitled "Towards harmonious intercultural coexistence", which is intended to eliminate racial discrimination. It likewise recommends the State party to undertake special measures as provided for in article 2.2 of the Convention in favour of indigenous peoples and persons of African descent, who have historically been subjected to discrimination. The Committee also recommends that coordination be intensified between the various bodies involved in combating racial discrimination, such as the Office for the Defence of Indigenous Women's Rights, the Presidential Commission on Discrimination and

Racism against Indigenous Peoples in Guatemala and the Ministry of Education.

13. While the Committee recognizes that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination. (art. 4, subpara. (a)).

The Committee recommends that the State party adopt specific legislation classifying as a punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, and violent acts directed against indigenous peoples and persons of African descent in the State party.

14. While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).

The Committee reminds the State party of its General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), which calls on the State party to ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to the use of interpreters and bilingual counsel in court proceedings.

15. The Committee is concerned at violence, including domestic violence against indigenous women. (art. 5, subpara. (b)).

Bearing in mind its General Recommendation 25, the Committee recommends that the State party guarantee indigenous women access to the justice system. Furthermore, it recommends that the State party adopt the bill classifying sexual harassment as an offence, and that the commission of such an offence against an indigenous woman shall constitute an aggravating circumstance.

16. The Committee notes with concern the low level of participation, especially by indigenous women, in political life and in particular the lack of representation in Congress of the Xinca and Garifuna peoples. The Committee is likewise concerned by the absence of any specific reference to indigenous political participation in the Elections and Political Parties Act (art. 5, subpara. (c)).

The Committee, bearing in mind paragraph 4 (d) of its general recommendation 23, recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples, especially

indigenous women, in public affairs and that it take effective measures to ensure that all indigenous peoples, particularly the Xinca and Garifuna, participate at all levels. It also urges that the Elections and Political Parties Act be amended with a view to promoting the political participation of all indigenous peoples.

17. The Committee is highly concerned at indigenous peoples' lack of access to land, the lack of respect shown for their traditional lands, such as community forests, and the problems in relation to the restitution of lands to indigenous peoples displaced as a result of armed conflict or economic development plans (art. 5, subpara. (d) (v)).

Bearing in mind its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 thereof, the Committee calls upon the State party to take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. In cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories. The Committee also urges it to ensure the effective implementation of the national land register law so that indigenous community lands can be identified and demarcated.

18. The Committee is concerned by reports of obstructions to the use of traditional sacred sites by indigenous peoples and conflicts arising from these tensions being handled by judicial officers as criminal matters. It has also been reported that a Commission examining a constitutional provision on sacred sites has been discontinued. (art. 5, subpara.(d)(vi))

The Committee requests the State party to examine the possibility of an alternative to criminal proceedings in handling these conflicts and urges it to ensure unobstructed enjoyment of this cultural right of the indigenous peoples.

19. The Committee notes with concern that mining licences have been granted by the Ministry of Energy and Mines to concession enterprises and regrets that indigenous peoples were not consulted or informed that the permission to exploit the subsoil of their territory had been awarded to such enterprises. The Committee likewise expresses its concern at the draft legislation on consultative procedures which, if adopted, would infringe indigenous peoples' right to participate in decisions affecting them. (art. 5, subpara. (d) (v)).

The Committee recommends that when taking decisions having a direct bearing on the rights and interests of indigenous peoples the State party endeavour to obtain their informed consent, as stipulated in paragraph 4 (d) of its general recommendation 23. The Committee also recommends that before adopting the draft legislation on consultative procedures, the State party include a clause referring to the right of indigenous peoples to be consulted whenever legislative or administrative measures are contemplated

that may affect them with a view to securing their consent to such measures.

20. The Committee is concerned by the high illiteracy rate that exists within the indigenous population, especially in rural areas, where 65 per cent of indigenous women are illiterate. The Committee is also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls. (art. 5, subpara. (e) (v)).

The Committee urges the State party to take steps in the short and medium terms to implement measures to reduce illiteracy, especially in rural areas and among women and girls. The Committee recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.

21. While the Committee welcomes the information provided on the structure, composition and competence of the Ombudsman for Indigenous Peoples of the Office of the Human Rights Procurator (Defensoría de los Pueblos Indígenas de la Procuraduría de los Derechos Humanos), it regrets that no information has been provided on the results of the cases filed before this body.(art. 6).

The Committee recommends that the State party provide information on the results from the 28 complaints of racial discrimination that have been submitted including whether the victims have received due compensation.

22. While the Committee welcomes the information provided by the delegation on statistics relating to cases brought before the Office of the Human Rights Prosecutor (Fiscalía de Derechos Humanos), which investigates offences involving discrimination and racism, it nevertheless notes that of the 79 cases brought, only 1 resulted in conviction and sentence. (art. 6).

The Committee requests the State party to include in its next periodic report explanations as to why a sentence was handed down in only 1 out of 79 cases. The Committee would also appreciate statistical information on the complaints brought before the Office of the Human Rights Prosecutor, the proceedings initiated and the outcomes of cases involving racial or ethnic discrimination as well as specific examples of such cases. The Committee would also like to know whether the victims received just and adequate reparation for any material and moral damage suffered as a result of racial discrimination.

23. The Committee is greatly concerned by attitudes of contempt and rejection displayed by the communication media towards indigenous peoples. The Committee also wishes to express its concern at the fact that community radio stations have a broadcasting range of less

than 1 kilometre, thus restricting the enjoyment of this medium by indigenous communities. (art.7)

The Committee recommends that the State party take appropriate measures to combat racial prejudice that can lead to racial discrimination in the media. It also recommends that a multicultural approach be adopted in the local, community and free communication media, in terms of their content and supervisory structures, and ensure in particular the proper functioning of community radio stations so that they reach the largest possible number of indigenous communities.

24. The Committee recommends that the State party accelerate adoption of the bill authorizing the Government to recognize the competence of the Committee by means of the declaration provided for in article 14 of the Convention.

25. The Committee recommends that the State party take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2 to 7, into its domestic law. It also recommends that, in its next periodic report, the State party provide information on measures it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of the national plan of action.

26. The Committee recommends that the reports of the State party be made public as soon as they are submitted, and that the observations of the Committee in this regard likewise be published and disseminated.

27. In accordance with article 9, paragraph 1, of the Convention, and rule 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of the implementation of the Committee's recommendations contained in paragraphs 13, 15 and 19 within one year of the adoption of the present conclusions.

28. The Committee recommends that the State party submit its twelfth and thirteenth periodic reports in a single report, due on 17 February 2008.
