



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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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 twelfth and thirteenth periodic reports of Guatemala, submitted as one document (CERD/C/GTM/12-13), at its 1981st and 1982nd meetings (CERD/C/SR.1981 and 1982), held on 19 and 22 February 2010. At its 2003rd meeting (CERD/C/SR.2003), held on 8 March 2010, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by Guatemala and appreciates the State party's efforts to submit its reports on time. It also has welcomed the opportunity to continue its dialogue with the State party and expresses its gratitude for the dialogue maintained with the delegation and for the extensive and detailed oral and written responses given to both the list of issues and the questions posed orally by Committee members. It would also like to draw attention to the diversity reflected in the delegation's composition.

B. Positive aspects

3. The Committee welcomes the ongoing collaboration which has occurred between the State party and the Office of the United Nations High Commissioner for Human Rights (OHCHR) ever since OHCHR established an office in the country in January 2005. It also takes note of the assistance provided by OHCHR to the State party in the preparation of its twelfth and thirteenth periodic reports.

4. The Committee observes with satisfaction that policies, governmental agreements and administrative measures designed to promote and coordinate public policies relating to indigenous affairs have been adopted. It particularly welcomes the following initiatives:

(a) A public policy for coexistence and the elimination of racism and racial discrimination, adopted in 2006;

(b) The National Reparations Programme, which has been established in order to act upon the recommendations of the Guatemalan Commission for Historical Clarification, including the recommendation concerning care for the civilian victims of the internal armed conflict, 83 per cent of whom are Mayan;

(c) Governmental agreement No. 22-2004, which establishes the comprehensive application of bilingual education and the compulsory use of national languages in instruction as national linguistic policy through the Directorate-General for Bilingual Intercultural Education (DIGEBI) of the Ministry of Education. Under this agreement, the teaching and practice of multiculturalism and interculturalism in the classroom in the Garifuna, Xinca or Mayan languages and/or Spanish is compulsory.

5. The Committee takes note of the commitment made by the State party in the course of the universal periodic review conducted by the Human Rights Council to promote the equality of rights of indigenous peoples and encourages the State party to honour that pledge.

C. Concerns and recommendations

6. The Committee is concerned at the lack of sufficient statistical information, as noted by the State party's delegation, on the demographic make-up of the Guatemalan population, particularly with regard to the Mayan, Xinca and Garifuna peoples. The Committee observes that such information is needed in order to assess the Convention's implementation and oversee policies designed to benefit indigenous peoples.

The Committee recommends that the State party continue to upgrade the methodology to be used in the forthcoming census in 2012 in order to capture the ethnic complexity of Guatemalan society, bearing in mind the principle of self-identification as set forth in general recommendation No. 8 (1990) and in accordance with paragraphs 10–12 of the guidelines for the specific document to be submitted to the Committee under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee requests the State party to include disaggregated statistics on the composition of the population and data on the census to be taken in 2012 in its next periodic report.

7. The Committee reiterates its concern about the absence of domestic legislation under which the dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination and violent acts directed against indigenous peoples or persons of African descent in the State party are classified as punishable acts (art. 4 (a)).

The Committee recommends that the State party redouble its efforts to adopt a law which specifically classifies the various manifestations of racial discrimination as punishable acts in accordance with article 4 of the Convention and that it introduce the legislative amendments required in order to align domestic laws with the Convention.

8. While noting the efforts made by the judiciary in the area of training, in the provision of interpreters, in the application of cultural expertise and in the appointment of bilingual staff to the courts to improve indigenous peoples' access to the official system of justice, the Committee reiterates its concern about the problems experienced by indigenous

peoples in gaining access to justice, particularly because the indigenous legal system is not recognized and applied and because of the lack of a sufficient number of interpreters and bilingual court officials who are knowledgeable about judicial proceedings. It regrets, in particular, that, when a number of judges were appointed to the Supreme Court in late 2009, no indigenous person was selected (art. 5 (a)).

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party in its national legal system to recognize the indigenous legal system and 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 an appropriate system of legal interpreters and of bilingual counsel and court officials in judicial proceedings. The Committee encourages the State party to continue to work with the OHCHR office in Guatemala in order to comply with the recommendations set forth in the study entitled “*Acceso de los pueblos indígenas a la justicia desde el enfoque de derechos humanos: perspectivas en el derecho indígena y el sistema de justicia oficial*” (Access for indigenous peoples to justice from human rights perspective: views on indigenous law and the official justice system). The Committee also encourages the State party and the Institutional Training Unit of the Judiciary (UCI), in particular, to continue to offer courses for judges and staff of the justice system that are designed to help ensure that the indigenous population has effective and equal access to justice. The Committee urges the Public Prosecutor’s Office to develop awareness-raising and training courses for attorneys and other staff of that Office on criminal prosecution of the offence of discrimination and on the rights of indigenous peoples.

9. The Committee is gravely concerned about recent serious attacks on social activists and defenders of indigenous peoples’ rights, in particular the murder of some of those defenders (art. 5 (b)).

The Committee recommends that the State party investigate these murders and punish those responsible. The Committee also calls upon the State party to adopt legislation that specifically guarantees protection for human rights defenders and to take appropriate steps to prevent such acts, taking into consideration the Declaration on The Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Committee recommends that steps be taken to expedite the entry into effect of the draft governmental agreement which provides for a programme of preventive measures and protection for human rights defenders and other vulnerable groups, as advocated by the Presidential Human Rights Commission. It also recommends that the State party comply with the recommendations made during the follow-up visit by the Special Representative of the Secretary-General on the situation of human rights defenders in 2008.

10. While taking note of the State party’s repeated expressions of its commitment to ensuring participation by indigenous peoples in political processes, in particular in representative institutions and the parliament, the Committee reiterates its concern at the still insufficient number and range of government posts occupied by indigenous persons in particular indigenous women (art. 5 (c)).

In the light of paragraph 4 (d) of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure full participation by indigenous people, especially women, in all decision-making bodies, in particular representative bodies such as the parliament, and in public affairs, and that it take effective steps to ensure that all

indigenous peoples participate in all levels of public service. The Committee also recommends that the State party effectively enforce the Urban and Rural Development Councils Act in order to secure fuller participation by indigenous peoples in decision-making.

11. The State party's ratification of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and its support for the United Nations Declaration on the Rights of Indigenous Peoples, notwithstanding the Committee, is deeply concerned about the growing tension among indigenous peoples occasioned by the exploitation of natural resources in the country. The situation surrounding the establishment of a cement plant in San Juan Sacatepéquez is a particularly serious case of this sort. The Committee reiterates its concern at the fact that the State party continues to allow indigenous peoples to be dispossessed of land that has historically belonged to them, even though title to the property in question has been duly recorded in the appropriate public registries, and that indigenous peoples' right to be consulted prior to the exploitation of natural resources located in their territories is not fully respected in practice. The Committee is also concerned that the traditional form of land tenure and ownership is not recognized under the State party's domestic laws and that the State party has not adopted the necessary administrative measures to guarantee this form of tenure (art. 5 (d) (v)).

The Committee recommends that the State party:

(a) Establish suitable procedures, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, to effectively consult the communities that may be affected by development projects or the exploitation of natural resources with a view to obtaining their free, prior and informed consent. The Committee reminds the State party that the absence of implementing regulations for Convention No. 169 does not prevent it from conducting prior consultations. In the light of its general recommendation No. 23 (para. 4 (d)), the Committee recommends that the State party consult the indigenous population groups concerned at each stage of the process and that it obtain their consent before executing projects involving the extraction of natural resources;

(b) Amend the laws governing the exploitation of natural resources so as to establish procedures for the prior consultation of relevant population groups regarding the impact of such projects on their communities;

(c) Expedite the adoption of the Indigenous Peoples Consultation Act proposed by indigenous peoples and the amendment of the Mining Act to include a chapter on consultations prior to the issuance of mining permits;

(d) Ensure the effective application of the alternative methods for the settlement of disputes, such as mediation, negotiation, conciliation and arbitration, established by the Office of the Secretary for Agrarian Affairs. The State party should also ensure that these procedures are in line with international standards relating to human rights and indigenous peoples' rights and specifically with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples;

(e) Strengthen the implementation of round-table dialogues at which representatives of the Office of the Secretary for Agrarian Affairs take an active part in a range of forums and ensure that those dialogues give rise to specific, viable and verifiable agreements that are effectively implemented;

(f) In the exceptional cases in which the relocation of indigenous peoples is considered necessary, ensure the observance of article 16 paragraph 2, of ILO Convention No. 169 and article 10 of the United Nations Declaration on the Rights of

Indigenous Peoples, which require free and informed consent and fair and equitable compensation, and provide relocation sites equipped with basic utilities, such as drinking water, electricity, and washing and hygiene facilities, and with appropriate services, including schools, health-care centres and means of transportation.

12. While the Committee notes the adoption in 2005 of the Food and Nutritional Security System Act, it is greatly concerned that 50.9 per cent of the population is living below the poverty line and 15.2 per cent in extreme poverty and that a majority of the persons concerned belong to the indigenous population. It is also quite concerned about the rate of chronic malnutrition, which is 43.4 per cent among children nationally and is over 80 per cent among the indigenous population (art. 5 (e)).

The Committee urges the State party to take appropriate measures to ensure the comprehensive implementation of the new legal and regulatory framework in order to fully guarantee for all Guatemalans, in particular indigenous Guatemalans, the right to food. The Committee also recommends that the State party take all necessary steps to ensure that any violation of people's right to food be considered justiciable under the new Food and Nutritional Security System Act.

13. The Committee recognizes the State party's efforts to provide culturally sensitive health-care coverage for indigenous peoples. However, it is concerned that the highest maternal and infant mortality figures are in the departments of Alta Verapaz, Huehuetenango, Sololá and Totonicapán, where the indigenous population accounts for between 76 and 100 per cent of the population. The Committee is concerned about the lack of adequate and accessible health services for these communities and over the lack of sufficient data on health indicators and on measures taken to improve them (art. 5 (e)).

The Committee recommends that the State party, in close consultation with the communities concerned, devise a comprehensive and culturally appropriate strategy to guarantee that indigenous peoples are provided with quality health care. The implementation of such a strategy should be ensured by providing adequate resource allocations, in particular for the Indigenous Peoples and Intercultural Health Unit, together with the active participation of departmental and municipal authorities, compilation of appropriate indicators and transparent progress monitoring. Particular attention should be paid to improving access to health care for indigenous women and children.

14. The Committee is concerned that 90 per cent of Guatemala's 38 hydrographic basins are polluted, which hinders adequate access to safe drinking water, and notes that the most severely affected areas are San Marcos, Huehuetenango, Quiché and Sololá. The Committee is even more concerned that this situation has caused the spread of diseases associated with a lack of sanitation, with indigenous communities being the most affected (art. 5 (e)).

The Committee recommends that the State party take urgent steps to ensure access to safe drinking water for all the indigenous communities in question, in particular in the areas of San Marcos, Huehuetenango, Quiché and Sololá. The State party should also develop suitable tools for preventing and monitoring water pollution, and ensure proper treatment of those hydrographic basins that are already polluted. It also recommends that the State party adopt national legislation guaranteeing all communities access to safe drinking water.

15. The Committee notes the launch of the National Comprehensive Literacy Strategy (2004–2008) with the aim of reducing the high illiteracy rates existing among the State party's indigenous population. However, it remains concerned that illiteracy is particularly high in rural areas, where the rate for the indigenous population is at least 61 per cent in the departments of Quiché, Alta Verapaz, Huehuetenango, San Marcos, Totonicapán, Baja

Verapaz and Sololá. It is even more concerned that the situation is still worse for women, since 87.5 per cent of them are illiterate and only 43 per cent complete their primary education (art. 5 (e) (v)).

The Committee urges the State party to take steps in the short, medium and long terms to reduce illiteracy, especially in rural areas, where the indigenous population is concentrated. The Committee also 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 duly implement educational reform, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples signed by the Government and the Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Union).

16. The Committee notes with concern that, according to official information of the 412 cases of discrimination brought before the Public Prosecutor's Office, only 4 have, to date, resulted in convictions, 1 under an abridged procedure and 3 in public and oral proceedings. The Committee notes a lack of clarity concerning complaints of racial discrimination and the follow-up to such complaints before the competent judicial authorities (art. 6).

In light of its general recommendation No. 31 (para. 5 (e)), the Committee observes that the absence of cases involving racial discrimination may be due to the victims' lack of information about the existing remedies. The Committee recommends that the State party ensure that appropriate provisions exist in its national legislation regarding effective protection and remedies against violations of the Convention. The Committee also recommends that the State party implement programmes to inform members of the public about their rights and the legal remedies available to them in cases of discrimination. The Committee recommends that reported cases of discrimination be brought before the courts. The State party should provide detailed information in its next periodic report on: (a) existing mechanisms and institutions for dealing with cases of racial discrimination; (b) investigations, number of cases and sentences for discrimination-related offences; (c) compensation obtained by victims; and (d) initiatives to disseminate information in various languages on the legal remedies available when people's rights are violated in cases of discrimination.

17. While taking note of the existence of the Alliance against Racism, which has established the Observatory on Racism in the Media, with a view to creating an inclusive public space, the Committee remains concerned about racial discrimination against indigenous peoples in the media, whose manifestations include stereotyped, disparaging characterizations of indigenous people in television programmes and in articles appearing in the press (art. 7).

The Committee recommends that the State party take appropriate steps to combat racial prejudice that can lead to racial discrimination in the media, including both public and private channels and the press. The Committee also recommends that, within the field of information, the State party take steps to foster understanding and tolerance among the various racial groups present in the country, including through the adoption of a media code of ethics whereby the media would undertake to respect the identity and culture of indigenous peoples.

18. The Committee recommends that the State party expedite the adoption of the bill authorizing the Government to recognize the competence of the Committee by means of the declaration referred to in article 14 of the Convention.

19. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, in incorporating the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action adopted in September 2001 by the World Conference against

Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

20. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-committee Meeting of the human rights treaty bodies, held in June 2006 (HRI/MC/2006/3 and Corr.1).

21. The Committee recommends that, when preparing its next periodic report, the State party consult extensively with civil society organizations working to protect human rights, and especially those working to combat racial discrimination.

22. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the recommendations made by the Committee in paragraphs 7, 9 and 14, above, within one year of the adoption of the present concluding observations.

23. The Committee should also like to draw the attention of the State party to the special importance of recommendations 8 and 11 and requests that in its next periodic report the State party include detailed information on the specific measures taken to implement them.

24. The Committee recommends that the State party submit its fourteenth and fifteenth periodic reports in a single document by 17 February 2013, taking into account the guidelines for the specific document to be submitted to the Committee by States parties in accordance with article 9, paragraph 1, of the Convention (CERD/C/2007/1). The report should contain updated information and respond to all the points contained in the concluding observations.
