



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined fourteenth and fifteenth periodic reports of Guatemala\*

1. The Committee considered the combined fourteenth and fifteenth periodic reports of Guatemala (CERD/C/GTM/14-15) at its 2329th and 2330th meetings (CERD/C/SR.2329 and SR.2330), held on 29 and 30 April 2015. At its 2345th meeting, held on 11 May 2015, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the State party's fourteenth and fifteenth periodic reports. It also expresses its appreciation to the State party for the presentation made by the sizeable high-level delegation and for the informative responses given to the numerous questions asked by members of the Committee.

#### B. Positive aspects

3. The Committee takes special note of the State party's commitment to promoting international instruments and policies in support of rights of indigenous peoples.

4. The Committee applauds the ongoing cooperation between the State party and the Office of the United Nations High Commissioner for Human Rights, and welcomes the signing of the United Nations Development Assistance Framework for 2015-2019.

5. The Committee acknowledges the action taken to promote and coordinate public policies on racial discrimination, in particular:

(a) The public policy for coexistence and the elimination of racism and racial discrimination;

(b) The "K'atun: Nuestra Guatemala 2032" National Development Plan.

6. The Committee also welcomes the State party's accession to the Rome Statute of the International Criminal Court.

7. The Committee acknowledges the work of the national Human Rights Advocate, as well as the active participation and contributions made by civil society and organizations representing indigenous peoples.

\* Adopted by the Committee at its eighty-sixth session (27 April-15 May 2015).



## C. Concerns and recommendations

### Statistical data

8. The Committee continues to be concerned by the lack of complete, reliable and up-to-date statistical data on the country's demographic composition. Of particular concern is the delay in the census that was scheduled to be conducted in 2012 and the uncertainty this generates, given that the number of people who self-identify as indigenous persons varies between an estimated 40 per cent and 60 per cent of the population.

**The Committee reminds the State party of the urgent need for disaggregated information to inform public policies and programmes intended to address the needs of vulnerable groups in society. The Committee reiterates its recommendation on the census methodology (CERD/C/GTM/CO/12-13, para. 6), and it urges the State party to continue working with international cooperation agencies to give priority to the gender-based approach and take fully into account the principle of self-identification when conducting the census, specifically by ensuring that census forms reflect the full range of ethnicities, including any blending of cultures. The Committee recommends compiling statistical data on the population of African descent so that appropriate decisions may be taken within the framework of the International Decade for People of African Descent.**

### Legal framework

9. The Committee notes with concern the gaps in implementation of the Agreement on Identity and Rights of Indigenous Peoples, one of the 12 peace agreements, and in this regard underscores the importance of structural reforms. The Committee takes note of the State party's commitment to amending the Constitution as necessary to formally recognize indigenous peoples and their languages, religious beliefs, justice systems and other issues covered in the Agreement. The Committee continues to view with concern the stalled deliberations and delay in the approval by the Congress of draft legislation on consultation with indigenous peoples (draft bill 4051), indigenous jurisdiction (draft bill 3946), integral rural development (draft bill 4084), sacred sites (draft bill 3835), bilingual, multicultural and intercultural education (draft bill 3913), community radio broadcasting (draft bill 4087), a national reparations programme (draft bill 3551), amendment of the Political Parties and Electoral Act (draft bill 4783) and amendment of the Mining Act (draft bill 4945). The Committee is concerned that this draft legislation has been pending in the Congress for over a decade.

**The Committee recommends that draft legislation on combating racial discrimination and promoting the rights of indigenous peoples be given priority in the legislative agenda for urgent debate and adoption, in consultation with the indigenous population. The Committee also recommends making the structural reforms needed for full implementation of the Agreement on Identity and Rights of Indigenous Peoples, including the necessary reforms to the Constitution, and giving consideration to the possibility of establishing specific joint boards with the indigenous population for this purpose.**

### Impunity

10. The Committee welcomes the action taken to combat impunity, including the bringing to trial of high-profile cases such as the Sepur Zarco case. The Committee also welcomes the Constitutional Court's position on the inadmissibility of amnesty orders or time limitations for the prosecution of grave human rights violations, and its recognition of the jurisprudence of the Inter-American Court of Human Rights as

being of mandatory application. The Committee underscores the importance of these trials for reparations and the rehabilitation of victims. However, it remains concerned by the numerous challenges remaining, as demonstrated by the annulment of the judgement against Efraín Ríos Montt. The Committee is concerned also that State institutions have issued statements on the legal merits or status of some cases before the courts have issued their decision, as occurred with Congressional Resolution 3-2014 (art. 6).

**The Committee recommends to the State party that it step up efforts to investigate and prosecute the grave human rights violations perpetrated during the internal armed conflict, bearing in mind that many of the victims were members of indigenous peoples. It recommends in particular strengthening the Office of the Prosecutor for Human Rights of the Public Prosecution Service. It also recommends continuing with all necessary action to strengthen the independence of the judiciary.**

#### **Free, prior and informed consent**

11. The Committee is concerned by the highly conflictual situations surrounding the awarding of licences or authorizations for hydroelectric projects, the exploitation of natural resources and single-cropping on lands and territories belonging to indigenous peoples or traditionally occupied by them.

12. The Committee notes with concern that these concessions were granted without respecting the indigenous peoples' right to be consulted. The Committee notes that, under article 46 of the Constitution, which gives the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries pre-eminence over internal law, that right should be respected even in the absence of any national legislative framework. The Committee notes that consultation is mandatory both when the natural resources belong to indigenous peoples and when the State has reserved to itself the ownership of underground resources, as set forth in article 6 and article 15, paragraph 2, of ILO Convention No. 169. The Committee notes with interest the judgements handed down by the Constitutional Court in the San Juan Cotzal and San Juan Sacatepéquez cases, in which it ordered that such consultations be conducted.

13. The Committee takes note of the information provided on collective ownership. It notes with concern, however, that the legal framework governing land, territories and natural resources has not been adopted, despite the observation by the Special Rapporteur on the rights of indigenous peoples that the legal protection currently provided does not meet international standards. The Committee is thus concerned about the scant protection afforded to indigenous peoples, inasmuch as the State party continues to allow lands traditionally owned by indigenous peoples to be taken from them without consultation.

14. The Committee is further concerned by the acts of violence that occurred during the protests triggered by the concession of those projects and it is concerned by the State party's response in declaring a state of emergency (art. 5, para. (d) (v)).

**The Committee underscores the impact produced by not observing the right to consultation and the right to land in these conflicts. Accordingly, and pursuant to its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee:**

**(a) Reiterates its recommendation on the right to consultation (CERD/C/GTM/CO/12-13, para. 11), and urges the State party to devise practical ways of consulting with indigenous populations through the institutions representing them. The Committee notes that only in exceptional cases may**

**indigenous populations be moved and resettled and that the consent of the population in question is necessary in those cases;**

**(b) Recommends the adoption, in consultation with indigenous peoples, of a national legal framework to govern the right to consultation. The Committee recommends as well updating the existing legal framework, including the Mining Act, the Environmental Protection and Enhancement Act and the Regulations on the Assessment of Environmental Impact Studies;**

**(c) Recommends strengthening the round-table dialogues with a view to ensuring compliance with signed agreements, and recommends a temporary moratorium on the granting of new licences for such projects until consultation mechanisms are in place;**

**(d) Recommends prompt implementation of court decisions, such as the ones handed down in the San Juan Cotzal and San Juan Sacatepéquez cases;**

**(e) Urges the State party to recognize the right of indigenous peoples to lands and territories by creating an appropriate legal framework in consultation with the indigenous population;**

**(f) Recommends fully safeguarding the free exercise of the right to protest, taking all necessary action to protect protesters and investigating any attacks against them. Special mention is made of the need to implement fully the Private Security Services Act (Decree 52-2010).**

#### **Human rights defenders**

15. The Committee is greatly concerned by the persistent attacks and threats against human rights defenders and journalists in general and against indigenous defenders and journalists in particular. The Committee notes that, in many instances, these attacks and murders have occurred in connection with conflicts linked to the exploitation of natural resources. The Committee is concerned that, often, such protests lead to criminal proceedings being brought against the activists on charges such as terrorism, kidnapping, incitement to commit a crime or criminal association, which are disproportionate to the seriousness of the acts (art. 5, para. (b)).

**The Committee reiterates its recommendation that those responsible for attacks on human rights defenders, particularly indigenous human rights defenders, be prosecuted and punished (CERD/C/GTM/CO/12-13, para. 9). The Committee recommends also the adoption and full implementation, in consultation with civil society and with indigenous peoples, of an effective mechanism for protecting human rights defenders and journalists, bearing in mind the extreme danger to which indigenous leaders are exposed when defending their right to consultation and right to land, including its natural resources.**

#### **Participation in political life**

16. The Committee notes with concern the very small number of indigenous and Afro-descendent persons in high-level positions in the executive branch and the judiciary vis-à-vis their percentage share of the national population. It also notes with concern that only 23 of the country's 158 legislators are members of an indigenous population. Despite the efforts made by the State party, the Committee is concerned about the obstacles still standing in the way of full political participation by members of indigenous populations, in particular in rural areas. The Committee welcomes the decision of the Constitutional Court, taken in the framework of amending the Political Parties and Electoral Act, that special measures should be taken to ensure a level of

representation of at least 30 per cent women and members of indigenous peoples (art. 5, para. (c)).

**The Committee reiterates its recommendation on the participation of indigenous peoples (CERD/C/GTM/CO/12-13, para. 10), bearing in mind its general recommendation No. 23 (1997). The Committee recommends expanding the participation of indigenous peoples in the community development councils. The Committee also recommends amending the Political Parties and Electoral Act to improve the representation of indigenous and Afro-descendent peoples and to promote their participation in rural areas. It further recommends taking urgent action to ensure that all citizens have personal identity documentation. The Committee recommends that special measures or affirmative action be taken to ensure that indigenous and Afro-descendent populations are appropriately represented in high-level positions, bearing in mind its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent.**

#### **Access to justice and legal pluralism**

17. The Committee takes special note of the progressive incorporation of international standards relating to the rights of indigenous peoples into the jurisprudence of the Constitutional Court. The Committee notes the advances made in the area of access to justice, in particular the establishment of the Centre for Interpretation of Indigenous Justice Systems, the 15 offices for indigenous peoples' rights and the Department of Indigenous Peoples in the Public Prosecution Service. However, the Committee is concerned that challenges remain in ensuring full access to justice for indigenous peoples, in such areas as ethnic self-identification in official documents and records, culturally appropriate access to justice and the training of interpreters.

18. The Committee takes note of the memorandum issued by the Criminal Chamber of the Supreme Court on applying indigenous legal systems in coordination with the official legal system and of the information provided orally during the dialogue on the preparation of a protocol for multicultural justice and the information on the broad, acknowledged material competence of indigenous justice. While noting the two decisions by the Criminal Chamber absolving K'iche' authorities in Totonicapán who had been detained after administering justice, the Committee is concerned by the legal proceedings instituted against indigenous authorities for having applied their legal systems and by a decision by that Court's Chamber of *Amparos* denying the existence of indigenous jurisdiction. The Committee is thus concerned about the lack of a clear legal framework for recognition and application of legal pluralism (art. 5, para. (a)).

**The Committee reiterates its recommendation (CERD/C/GTM/12-13, para. 8) on access to justice and legal pluralism 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 recommends that institutional policies be adopted on access to justice for indigenous peoples and that the programmes of the judiciary's training units be updated. It also recommends developing a specific legal framework for coordinating indigenous jurisdiction with the ordinary system of justice. The Committee recommends that the State party further strengthen the judiciary's Indigenous Peoples Affairs Unit and the Department of Indigenous Peoples in the Public Prosecution Service, including by means of financial and human resources.**

**Legal definition of racial discrimination**

19. The Committee reiterates its concern that there is no national legislation defining as an offence punishable by law the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and racially motivated acts of violence (art. 4, para. (a)). The Committee notes with concern the small number of court decisions involving racial discrimination. It is also concerned that the penalties stipulated for racial discrimination in article 202 bis of the Criminal Code can be commuted to minor fines (art. 4, para. (a); and art. 6).

**The Committee, in the light of its general recommendation No. 35 (2013) on combating racist hate speech, reiterates its recommendation (CERD/C/GTM/CO/12-13, para. 7) to give full effect to the provisions of article 4 of the Convention, making sure that the offence of incitement to racial discrimination and all racially motivated acts of violence are sanctioned by penalties commensurate with their seriousness. The Committee also reiterates its recommendation with regard to the small number of decisions handed down involving racial discrimination (CERD/C/GTM/CO/12-13, para. 16).**

**Structural discrimination**

20. The Committee notes with concern that poverty and social exclusion are especially widespread among indigenous and Afro-descendent populations. According to the data presented to the Committee, 47 per cent of the indigenous population lives in extreme poverty; and 87 per cent of that population lives in poverty as defined by multidimensional measurements. Chronic malnutrition is most prevalent among people living in municipalities where indigenous peoples constitute the majority. The Committee observes with concern the expansion of single-cropping and cultivation of cash crops, which has drastically reduced the farmland available for growing staple crops. While noting the State party's initiatives in this regard, including the "Zero Hunger" Pact, the Committee is concerned that these initiatives do not target the structural causes of the problem (art. 5, para. (e)).

**The Committee urges the State party to incorporate human rights principles into existing policies on social inclusion, ensure that indigenous peoples participate in these policies and provide adequate funding and staff for implementing the policies. The Committee recommends adopting structural measures for the full implementation of the land-use policy. The Committee also recommends that special measures or affirmative action be taken to break the linkage between poverty and racism, bearing in mind its general recommendation No. 32 (2009).**

**Intercultural health**

21. The Committee takes note of the State party's efforts in the health sphere, including the establishment of the Indigenous Peoples and Intercultural Health Care Unit, but notes with concern that access to health continues to be limited in areas with higher indigenous populations and that the State party still does not have a universal, culturally appropriate health-care system (art. 5, para. (e)).

**The Committee reiterates its recommendation on the formulation of an intercultural health strategy with active participation by indigenous peoples (CERD/C/GTM/12-13, para. 13). The Committee recommends redoubling efforts to ensure access to suitable and culturally appropriate health-care services in rural areas, including adequate funding. It also recommends taking steps to collect information broken down by ethnicity and community. It recommends adopting a policy on midwives, in consultation with indigenous populations and respecting their own forms of health care.**

### **Bilingual education**

22. The Committee applauds the efforts made by the State party in the area of bilingual education. It is concerned, however, that in many places bilingual education is not available beyond the pre-primary level. The Committee regrets that only 26 per cent of students in basic education and 17 per cent of those in secondary education are members of indigenous populations. The continued existence of discrimination in schools is an additional cause for concern. The Committee is further concerned by the high rate of illiteracy among indigenous and Afro-descendent populations, with it reaching 97 per cent among the Garifuna people (art. 5, para. (e) (v)).

**The Committee reiterates its recommendation on efforts to combat discrimination and the need to extend the scope of bilingual education (CERD/C/GTM/12-13, para. 15). The Committee recommends strengthening bilingual education training in teacher training programmes.**

### **Labour rights**

23. The Committee is concerned that 81 per cent of the economically active indigenous population is employed in the informal sector and has no access to basic labour rights, such as a minimum wage or social security. The Committee is especially concerned by forced labour practices, such as making the payment of wages conditional on excessive work targets such that the person's family must also work in order for the target to be met. The Committee also expresses its concern at the minimum wage in the State party, which is insufficient to provide a decent living for workers and their families (art. 5, para. (e) (i)).

**The Committee recommends to the State party that it continue doing everything possible to reduce the size of the informal sector of the economy and to ensure fair, satisfactory working conditions consistent with international human rights standards. The Committee also recommends strengthening the Labour Inspection Office with appropriate funding, staff and mechanisms to penalize failure to comply with labour standards.**

### **Mass media**

24. The Committee notes with concern that there continue to be manifestations of racial discrimination in the mass media. It underscores the importance of community radio broadcasting for indigenous peoples and notes with concern the action taken by the State party to close down community radio stations and the absence of a legal framework in this area (art. 7).

**The Committee reiterates its recommendation that appropriate steps be taken to address racial prejudice in the mass media (CERD/C/GTM/CO/12-13 para. 17). The Committee recommends continuing the work, in consultation with indigenous peoples, to institute a legal framework for community radio broadcasting, including reserved frequencies for community radio stations.**

### **Institutional strengthening**

25. The Committee takes note of the strengthening of the State party's institutions in the area of indigenous peoples' rights, including the Office for Indigenous Peoples Affairs, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, the Guatemalan Indigenous Development Fund and the Office for the Defence of Indigenous Women. The Committee is concerned, however, that those institutions are under-resourced. Despite the efforts made by the

State party, the Committee is concerned that indigenous peoples are still not enjoying full participation under the policies pursued by those institutions (art. 2).

**The Committee recommends that the State party continue to strengthen its institutions to fight racial discrimination and promote indigenous peoples' rights by providing the necessary funding and staff. It also recommends that an evaluation be undertaken — with the participation of indigenous populations — to determine if those institutions are fulfilling their purpose and how they could be improved.**

#### **Multiple discrimination**

26. The Committee is concerned that women in indigenous communities continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life. The Committee notes with concern that indigenous women continue to be subjected to violence and face hurdles in seeking access to justice (art. 2, para. 2).

**The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and include a gender perspective in all its policies and strategies to address the multiple forms of discrimination faced by indigenous women in particular. The Committee also recommends taking action to break the circle of violence and change the circumstances and patterns that make indigenous women vulnerable to violence, while taking steps to ensure protection and redress for them.**

### **D. Other recommendations**

#### **Ratification of other treaties**

27. The Committee urges the State party to ratify the international treaties to which it is not yet a party, in particular the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

#### **Declaration under article 14**

28. The Committee urges the State party to make the optional declaration provided for in article 14 of the Convention.

#### **Amendment to article 8 of the Convention**

29. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992.

#### **Durban Declaration and Programme of Action**

30. Pursuant to its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that the State party take into account 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, when incorporating the Convention into its national legislation. The Committee requests the State party to include in its next



periodic report detailed information on the action plans and other measures taken to implement the Durban Declaration and Programme of Action in the country.

#### **International Decade for People of African Descent**

31. Pursuant to General Assembly resolution 68/237 on the proclamation of the International Decade for People of African Descent (2015-2024) and Assembly resolution 69/16 on the Decade's programme of activities, the Committee recommends that the State party prepare and implement an appropriate programme of measures and policies. The Committee also requests the State party to include in its next report detailed information on the specific measures taken in this regard, bearing in mind its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

#### **Dissemination of the reports and concluding observations**

32. The Committee recommends that the State party make its reports available to the public as soon as they are submitted and that it disseminate the Committee's concluding observations in the official language and, if appropriate, other languages commonly used in the State party.

#### **Consultation with civil society organizations**

33. The Committee recommends that the State party continue to hold consultations and broaden its dialogue with civil society organizations working to protect human rights, particularly in the area of racial discrimination, as part of the preparations for the next periodic report and the follow-up to the present concluding observations.

#### **Follow-up to concluding observations**

34. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 9 and 13 above.

#### **Paragraphs of particular importance**

35. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 11 and 14 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

#### **Preparation of the next report**

36. The Committee recommends that the State party submit its sixteenth and seventeenth periodic reports, combined into a single document, by 20 December 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports and 42,400 words for common core documents.