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International Human Rights Clinic
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Report on the Republic of Guatemala to the 42nd Session of the Universal Periodic
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Executive Summary. The University of Oklahoma College of Law International Human Rights Clinic (OU-IHRC), United States of America submits the following report on the Republic of Guatemala to the 42nd Session of the Universal Periodic Review, Human Rights Council. This report concerns Indigenous People of Guatemala and how Guatemala has implemented the recommendations received during its third cycle of the Universal Periodic Review (UPR). Specifically, the report focuses on the selected areas of **(I) Land Rights; (II) Indigenous Women and Girls; (III) Healthcare; and (IV) Education.** The purpose of this report is to provide a balanced view of Indigenous Peoples concerns in Guatemala and recommend measures to address these concerns.

I Land Rights: Guatemala ratified the International Labor Organization's (ILO) Indigenous and Tribal Peoples in Independent Countries Convention on April 10, 1996 and has remained in force since June 5, 1997. The State did not submit reservations at the time of ratification. Pursuant to Articles 14, 16 and 17, ownership and possession over indigenous lands must be recognized, guaranteed and safeguarded by the State's government. To faithfully execute the Convention, the State must implement legal procedures and mechanisms to: (i) recognize communal ownership title and possessory rights, (ii) resolve land disputes, (iii) prohibit removal of indigenous communities unless by necessity, as an exceptional measure, and under such circumstances, (iv) convey lands of equal quality and legal status to the one previously occupied.

During the third cycle of Universal Periodic Review (UPR), Guatemala received recommendations para.111.16;111.24 and Special Rapporteur (A/HRC/39/17/Add.3/para.29,32,33) to adopt (i) effective legal framework to identify and apply ownership rights in accordance with traditional land tenure systems; and (ii) allocate sufficient budget to facilitate resolution of pending land disputes under the jurisdiction of the Land Registry Act, Land Fund or Secretariat for Agrarian Affairs.

The Committee on the Elimination of Racial Discrimination (CERD/C/GTM/CO/16-17, para. 22) urged Guatemala to: (i) establish an appropriate and effective mechanism for the filing of land claims and restitution of ancestral territories and lands and ensure the allocation of sufficient human, technical and financial resources for the mechanism's proper operation; and (ii) ensure the protection of indigenous peoples' right to own, use, develop and exercise full control over their lands by providing necessary legal recognition and safeguards. The OU-IHRC adopts the view that Guatemala did not implement these recommendations.

Overlapping Mandates between Governmental Agencies and Legislation in Respect to Indigenous Peoples' Land Rights: The Guatemalan Constitution affords "special protection, preferential credit, and technical assistance that may guarantee ownership of lands for native communities or other forms of communal possession" – however, the guarantees are not reflected in the countries' legislation. Guatemala has created various governmental agencies and legislation for the promotion of and protection of indigenous people's land rights, including the Office of the Secretariat for Agrarian Affairs, the Land Fund for Indigenous Development, and the Land Registry Act. The agencies and legislative jurisdiction, would seemingly, provide a legal framework to establishing legal title, possessory rights and resolution of land disputes. The OU-HRC adopts the view that Guatemala's governmental agencies and legislation in respect to indigenous peoples' land rights have not conformed with their purpose.

Persistence of the Problem: Guatemala adopted in 2017, as a response to the recommendation of implementing consultations with indigenous people, the Procedural Guide to the Implementation of Consultations with Indigenous Peoples and noted it as an important step. This Procedural Guide is

unable to guarantee full implementation of its obligations under the ILO - Indigenous and Tribal Peoples in Independent Countries Convention.” (A/HRC/37/9/Add.1/para.15).

The State’s assignment of significance to Indigenous People’s right to consultation is commendable; once it is implemented into the State’s domestic legal system, the consultation provision will have successfully been met. However, there are numerous, remaining provisions to be met for faithful execution of the ILO Convention No.169.

The Land Registry Act is the only enacted legislation whose purpose was to spearhead the necessary legal framework to recognize land availability and title; however, it has been weakened by subsequent amendments. Both, the Land Fund and Secretariat of Agrarian Affairs have a serious backlog in granting land access applications and on-file dispute resolutions, affecting more than a million people, collectively.

Recommendations: Bearing in mind that no substantial progress has been made in fulfillment of the mentioned recommendations, and absence of inapplicability of a legal mechanism, the OU-IHRC respectfully recommend:

- Establish a mechanism of good faith full implementation of ILO Convention No. 169 that ensures the legal framework concerning indigenous people’s land rights and dispute resolutions are enacted and in full effect.
- Improve and strengthen the Land Registry Act to implement a legal framework that recognizes indigenous people’s communal land title and possessory rights.
- Consolidate the Land Fund and Secretariat of Agrarian Affairs with the Land Registry Act or other legislation that allocates higher budgets and resources for these governmental agencies and improve its operational efficiency.
 - Adopt in a reasonable time, the necessary legislation and further taking into account the indigenous communities’ input before, during and after that legislative and implementation process.

II Indigenous Women and Girls: Lack of Connectivity Between State institutions and Indigenous Peoples: Guatemala has several State institutions dealing with indigenous peoples, some established on the basis of the Peace Agreements, such as the Office for the Defence of Indigenous Women’s Rights, and the Presidential Commission on Discrimination and Racism against Indigenous Peoples. Unfortunately, at times these institutions operate inconsistently in their decision-making regarding indigenous communities.

Domestic and Sexual Violence against Women: During the third cycle of the Universal Periodic Review (UPR) Guatemala received recommendations by Uruguay para. 111.103 to “Adopt measures to combat violence and discrimination against women and indigenous communities”, and Singapore para. 111.122 to “Implement more measures to prevent violence against women, such as the training workshops conducted by the Office for the Defense of Indigenous Women’s Rights on the protection of indigenous women”. These recommendations have not been satisfactorily implemented, as insufficient measures have been taken to adequately alter existing discriminatory legislation.

The Committee on the Elimination of Racial Discrimination (CERD/C/GTM/CO/16-17, para. 34 (d) urged Guatemala to “Take steps to prevent gender-based violence against indigenous and Afrodescendent women, thoroughly investigate all cases of such violence, including sexual violence, ensure that those responsible are duly punished and guarantee victims’ access to justice and effective

and culturally appropriate protection mechanisms”. This recommendation has not been satisfactorily implemented, as such offices continue to struggle with the proper allocation of resources.

The Committee on the Elimination of Discrimination against Women (CEDAW/C/GTM/CO/8-9, para. 15(b) recommended Guatemala “Increase the capacity and resources for the advancement of women of the Presidential Secretariat for Women, the Office for the Defence of Indigenous Women’s Rights and the National Coordination Office for the Prevention of Domestic Violence and Violence against Women, ensuring increased coordination among them, and expedite the reinstatement of the National Coordination Office under the Presidential Secretariat;” Concerns surrounding limited and inadequate resources, authority, and capacity apply not only to the Presidential Secretariat for Women, but also to other institutions including the Office for the Defence of Indigenous Women’s Rights, and the National Coordination Office for the Prevention of Domestic Violence and Violence against Women. These institutions would greatly benefit from the proper allocation of resources, as would ensuring increased coordination among them. Guatemala’s reinstatement of the Presidential Secretariat for Women is a good step forward, however, there is still concern due to insufficient funding and budget allocations to achieve the needed institutional strengthening and the implementation of necessary policies (this owes partly to insufficient tax revenue). The Presidential Secretariat for Women would also benefit from being elevated to the ministerial level. This recommendation has not been met by Guatemala as adequate resources and funding of the Presidential Secretariat for Women and the aforementioned Office’s remain a cause for concern.

In 2018, the Special Rapporteur on the rights of indigenous peoples (A/HRC/39/17/Add.3, para. 103. Indigenous women and girls (b) recommended “Sufficient resources should be allocated for the prevention and investigation of violence against indigenous women and girl;” While Guatemala has undertaken some measures to prevent and investigate the aforementioned violence, this recommendation has not been sufficiently implemented as there is still concern about the amount of gender-based violence that women continue to suffer, particularly indigenous women, and the lack of reliable disaggregated data and effective preventative strategies. Additionally, there has been a failure to allocate sufficient resources to the prevention of this gender-based violence and to victim support services.

Trafficking, Sexual Exploitation and Femicide: The Committee on the Elimination of Discrimination against Women (CEDAW/C/GTM/CO/8-9, para. 21(b) recommended Guatemala “Ensure that all crimes committed against women and girls, in particular femicide, are investigated by the police, that perpetrators are prosecuted and adequately punished and that victims are provided with adequate reparations”. Guatemala has made efforts to strengthen its response to trafficking, including initiatives to provide women who wish to leave prostitution with alternative income-generating opportunities. The judiciary of Guatemala has also strengthened the Control, Monitoring, and Evaluation Units of the specialized bodies in femicide and other forms of violence against women, which in conjunction with the creation of the Office of the Prosecutor for Femicide Cases in 2016 is a positive step forward. The adoption of Decree No. 9-2016, which concerns immediate searches for disappeared women and the creation of a related mechanism, and Decree No. 18-2016, which created within the Office of the Public Prosecutor positions for special prosecutors for trafficking and femicide are positive steps forward. Additionally, activities regarding the prevention and support for indigenous women exposed to violence lead by the Office for the Defence of Indigenous Women’s Rights have resulted in notable outcomes. Specifically, community level dialogue in conjunction with training and the dissemination of information regarding the procedures for reporting violence have resulted in the implementation of 12 specific community plans, participatory community assessments, community

safety maps, and festivals for the prevention of violence against women and the family. However, even though Guatemala has taken several positive steps towards the implementation of processes and programs regarding the trafficking, sexual exploitation, and femicide of women, especially indigenous women, further progress is needed to sufficiently combat this violence. This recommendation has not been adequately met by Guatemala, as femicide and the prevalence of trafficking of women and girls, particularly indigenous women, for forced labor and sexual exploitation remains a significant concern, especially within indigenous communities.

Indigenous Textiles and Clothes: In 2018, the Special Rapporteur on the rights of indigenous peoples (A/HRC/39/17/Add.3, para. 103. Indigenous women and girls (c) recommended that “The legislation that is currently pending for the protection of collective intellectual property rights for indigenous textiles and clothes should be adopted.” In 2017 the Constitutional Court ruled in favor of the Mayan weavers, requesting Congress reform Article 11 of the law on the protection of collective intellectual property rights for indigenous textiles and clothing to avoid discrimination, and to consider the organizational reality of indigenous peoples. The Court urged Congress to issue and implement a law to establish mechanisms to protect indigenous people’s collective individual property. However, Congress has failed to realize a law in this regard, and the Constitutional Court failed to impose a reasonable time-limit for the law to be issued within. Guatemala has failed to meet this ruling by the Constitutional Court since the judgment was handed down almost five years ago, on October 24, 2017, and enforcement is still pending. As a result, the lack of intellectual property protection for indigenous textiles and clothes remains a cause for concern, and these prolonged delays are regrettable, particularly from the perspective on indigenous communities in Guatemala.

III Healthcare: Lack of access to primary healthcare is an issue faced by the majority of the indigenous population of Guatemala. Within Latin America, Guatemala ranks among the lowest in terms of investment in health services, which has resulted in a lack of necessary facilities, personnel, and medicine. **National Policy on Indigenous Midwives:** In 2018, the Special Rapporteur on the rights of indigenous peoples (A/HRC/39/17/Add.3, para. 89.) noted that Guatemala ranks second in terms of maternal mortality in the region, and further recommended para. 90, 103 Health and Education (a) that they guarantee the necessary funding and budget for the program to be fully implemented. While the National Policy on Indigenous Midwives is a positive step forward from Guatemala, and the recognition by the State party of the important contribution of traditional practices and indigenous knowledge to women’s health deserves acknowledgement, Guatemala has yet to satisfactorily implement this recommendation, as the program has not received the necessary funding it needs to successfully operate throughout the nation. The Ministry of Public Health and Social Welfare of Guatemala has updated and designed communication strategies concerning the work of grandmother midwives, as well as focused on improving and strengthening the strained relationship between midwives and health service staff. However, even though health service staff have been asked to facilitate the integration of midwives into health services, it remains a point of difficulty which affects the National Policy on Indigenous Midwives as a whole.

IV Education: Intercultural Bilingual Education. In 2018, the Special Rapporteur on the rights of indigenous peoples (A/HRC/39/17/Add.3, para. 91.) noted that “In 2016, the Constitutional Court ruled, in the case of Santa Catarina Ixtahuacán, that the Ministry of Education must develop intercultural bilingual education and put it into operation within six months, but the necessary measures have not yet been adopted.” The Special Rapporteur additionally noted that even though in 2018 the Ministry noted that Maya, Garifuna, and Xinka curricula had been developed, serious retrogression in the program was alleged by indigenous organizations. While Guatemala has made

notable efforts towards the development of a bilingual education system, as well as to provide culturally appropriate education, indigenous girls continue to suffer from significant levels of illiteracy and numeracy, and from limited access to secondary education. Currently, Guatemala lacks the necessary measures to accelerate equal access to free high-quality education at mandatory levels for indigenous girls and women. Additionally, teachers lack the capacity to provide the needed bilingual and cultural education to indigenous communities and communities in rural areas.

Also, the Special Rapporteur recommended para. 103 Health and Education (c) that Guatemala “should increase the budget for health and intercultural bilingual education and ensure that such services are accessible and culturally appropriate, including for indigenous persons with disabilities.” Guatemala has not successfully implemented Intercultural Bilingual Education, and has not allocated the necessary funding, either due to a lack of budget or political will, that is needed for the program to be successfully developed and implemented.

Recommendations: Bearing in mind that: No substantial progress has been made in fulfillment of the mentioned recommendations. The OU-IHRC respectfully recommend:

- Consider and adopt additional measures aimed to prevent, investigate, and ensure access to justice for victims of gender-based violence, in all its forms, including domestic and sexual violence, trafficking, sexual exploitation, and femicide.
- Allocate sufficient resources to the Presidential Secretariat for Women, the Office for the Defence of Indigenous Women’s Rights, and the National Coordination Office for the Prevention of Domestic Violence and Violence against Women.
- Adopt measures to foster political participation and representation among indigenous peoples, especially indigenous women, including the full and adequate participation of indigenous peoples in public affairs and representative institutions.
- Reform Article 11 of the law to establish the necessary protections of collective intellectual property rights for indigenous textiles and clothing, and establish the necessary mechanisms to do so as urged by the Constitutional Court in 2017.
- Guarantee the necessary funding and budget for the full implementation of the National Policy of Indigenous Midwives, and take concrete steps to facilitate the integration of midwives into health service staff.
- Increase investment and allocate sufficient funding for health-care services, particularly in rural areas and in indigenous communities, to ensure full and adequate access to culturally relevant sexual and reproductive health services.
- Adopt the necessary measures to accelerate equal access to free high-quality education as mandatory levels, especially for indigenous women and girls, and allocate the necessary funding for the full and adequate operation of Intercultural Bilingual Education.