



University of Oklahoma College of Law
International Human Rights Clinic
The United States of America

Report on the Republic of Guatemala to the 28th Session of the Universal Periodic Review,
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ANNEX

Prepared by

Students

Brooke Hamilton, J.D. Candidate, 2017

Emma Land, J.D. Candidate, 2017

Kristen Dikeman, J.D. Candidate, 2017

Ashley Edwards, J.D. Candidate 2016

Susan Kuruvilla, J.D. Candidate, 2017

Professors

Lindsay Robertson

Alvaro Baca

March 9, 2017

I. Introduction

The Republic of Guatemala is a Central American country bordering the Pacific Ocean to the southwest, Mexico to the north and northwest, Belize (the subject of a still-unresolved frontier dispute) and the Caribbean sea to the east, and Honduras and El Salvador to the southeast. The country is divided into twenty-two departments, which in turn are divided into 338 municipalities.

In 2015, Guatemala's economy was heralded by the World Bank as one of the strongest—and largest—economies in the Americas because of its steady annual growth in recent years.¹ Much of this economic growth can be attributed to macroeconomic growth and public investment. Poverty, however, remains prevalent: 59.3% of the population lives in poverty.² Poverty in Guatemala is largely geographically concentrated in the country's rural areas.³ Although there have been improvements in poverty rates amongst Guatemala's non-indigenous population, indigenous populations have not witnessed the same declines.⁴

Estimates of the indigenous population vary; this uncertainty has been suggested as “itself an expression of a state-institutionalized practice of attempting to cover up their existence and deny their basic rights.”⁵

II. Political Rights and Judicial Access

Best Practices:

In the 2012 National Report, Guatemala asserts that it accented to the Rome Statute of the International Criminal Court, which was approved domestically by the congress and deposited in

¹ <http://www.worldbank.org/en/country/guatemala>

² <http://www.worldbank.org/en/country/guatemala/overview>

³ <http://www.worldbank.org/en/country/guatemala/overview>

⁴ <http://siteresources.worldbank.org/INTLACREGTOPPOVANA/Resources/GuatemalaPovertyAssessmentEnglish.pdf>

⁵ The Indigenous World 2011, 89 (Katherin Wessendorf ed.) (2011).

April of 2012. This helps provide an enforcement mechanism to hold human rights abusers accountable for crimes that still remain an issue against human rights defenders. Guatemala has supported the oversight and assistance of the International Commission against Impunity in Guatemala (CICIG), which has attempted to help establish stability and partiality within Guatemala's court systems. Guatemala is also a signatory of the ICCPR but political corruption remains a pressing issue

Domestically, as a result of many of Guatemala's international obligations and stances, the country seems to have taken steps to improve its domestic judicial system. The state has attempted to implement anti-discrimination training programs to educate judges and their staff. While Guatemala's cooperation with CICIG and continuing renewal of the program is a good first step, the criminal penalties for discrimination hold very limited remedies, which both provides very little benefit to the victims and also does not serve as a substantial deterrence. The oversight as well as assistance from impartial counsel within the legal system seems to have been a catalyst behind some of the recent internal criminal charges against political corruption and alleged war crimes. Guatemala outlines significant undertaking in regards to human rights violations.⁶ These are steps in the right direction to restructure and strengthen the legal system against violations as well as discussion about amendments for specific armed conflicts and those responsible. These positive steps should be continued because there still appear to be significant violence against human rights defenders.

In 2007, Guatemala voted in favor of the UN Declaration on the Rights of Indigenous People (UNDRIP), which shows a commitment towards the reflection of indigenous rights within its policies. However, violent attacks on those that are there to protect those rights need to

⁶ CCPR/C/GTM/3.

be remedied. Politically, Guatemala has adopted some legislation to attempt to design political, social, and economic change for indigenous groups to attempt to help encourage indigenous participation in the legislative system. Government Decision No. 84-2009 created the Presidential Commission on the National Permanent Dialogue System (SNDP) within the executive branch.⁷

Challenges and Obstacles:

The country recently faced a major challenge when President Otto Pérez Molina stepped down from his office along with a dozen other department heads and state officials after allegations and charges were pressed against them for allegedly taking kickbacks. The 2015 IACHR, Guatemala Report, Chapter V also discusses this and the congress' removal of Molina's immunity from suit, it is important that the country hold its leaders accountable for corruption. These trials are important to human rights defenders and the moral of the country moving forward, because they set the tone for government leadership moving forward and the rule of law within society generally.⁸ The IACHR discusses how this is usual for a post-conflict administration but has been particularly problematic in Guatemala. Additionally, these issues with impunity are implicated by trials following the Guatemalan civil war where Efraín Ríos Montt's sentence was just suspended. Also, under the ICCPR the Guatemalan government has a significant number of "notices" listed where the country has declared there is a state of

⁷ See Alternative Report on the Republic of Guatemala to the CERD, University of Oklahoma College of Law International Human Rights Clinic, 2015, see also 53 CERD/C/GTM/14-15. ¶ 148.

⁸ IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, 2015 ("Along with other obstructions, or "bottlenecks," such as the intimidation of judicial officials and the arbitrary use of state secrecy to hide information, corruption affected judicial proceedings systematically; independent of whether they concerned human rights violations, organized crime, or common crime.").

emergency and temporarily removed listed rights protected under the ICCPR. The 2015 IACHR, Guatemala Report, Chapter IV also points out that these lead to governmental uncertainty and rule of law questions among the population because these states of emergency remove constitutional protections and guarantees and usually come in response to protests by the indigenous groups within the country.

Politically, the system for election to office favors those with financial resources or those with substantial connections to gain office, often requiring a certain status level and sufficient expenditures before running for office would be attainable.⁹ This may not explicitly harm women's chances to run but is a class-based obstacle and the current congress only has 24 women members. These low numbers seem to stem from women's traditional roles within the home, the prevalence of women without voter identification in rural areas limiting their ability to vote or run, and the lack of political party support for women's leadership within the party and as a candidate on behalf of the party.¹⁰ Additionally, with in the congress there has been a recent law voted down which attempted to mandate an even 50/50 breakdown between men and women represented in the unicameral legislature.

Similarly, there are issues of indigenous participation in the legislature. Between 1999 and 2011 participation in the government by indigenous peoples ranged from 10-13 percent. The number of indigenous women was even lower, fluctuating in the same period between .06- 2.5

⁹ *Id.* (“The lack of economic competition and the enjoyment of privileges in return for political favours, as well as the speed at which money can be accumulated through illicit and criminal activities including drug trafficking, smuggling, money laundering, trafficking in persons and corruption, are rapidly increasing the inequality gap.”).

¹⁰ <https://www.ndi.org/node/21064>.

percent. With the indigenous population being close to 41 percent of the Guatemalan population this level of representation is under representative.¹¹

III. Education

Best Practices:

The Committee on the Elimination of Discrimination (CERD) in their 2015 report applauded Guatemala in their efforts made by the State party in the area of bilingual education.¹²

In their 2012 Universal Periodic Review, Guatemala stated that they had published workbooks, reading schemes, and children's literature in thirteen Mayan languages, and supplied these materials to bilingual schools for the bilingual education program. Technical and pedagogical support was given to teachers in bilingual nursery and primary schools to increase the quality of their education programs. To ensure access to education, the Directorate for Education Outside the School System developed initiatives such as the adult education correspondence program, the family education program, the family education for development program, flexible modalities for secondary education, municipal centers for human resources training and skills building, and educational radio stations.

In 2008, Guatemala implemented a conditional transfer program, which selects families to receive a subsidy provided that their school-age children attend school in order to be incorporated into the integrated teaching-learning process.¹³ The program does not target a

¹¹ Examination of the Situation of Indigenous Peoples and their Participation in Democracies and Electoral Processes in Latin America under the United Nations Declaration on the Rights of Indigenous Peoples, Note by the Secretariat, Permanent Forum on Indigenous Issues, 2014.

¹² CERD/C/GTM/CO/14-15, p. 22.

¹³ CERD/C/GTM/14-15, p. 231

specific gender, but it benefits females the most, especially indigenous females, because they are faced with greater obstacles, particularly financial ones, to attend school.¹⁴

Challenges and Obstacles:

The CERD was troubled with the lack of availability of bilingual education beyond the pre-primary level.¹⁵ According to the CERD's report, only 26% of students receiving basic education and only 17% of students receiving secondary education are members of indigenous groups.¹⁶ The existence of discrimination against indigenous peoples in the education system is concerning to the CERD.¹⁷ The CERD also expressed its concerns regarding the high rate of illiteracy among indigenous and Afro-descendant populations.¹⁸ For the Garifuna people for example, 97% of their population is illiterate, which is concerning.¹⁹

According to the ICESCR Committee, Guatemala is one of the countries in Latin America that spends the least amount of money on education.²⁰ According to the ICESCR Committee, there are not enough funds allocated in the budget to cover educational costs, which has led to some public schools charging informal fees in the form of "donations" or "voluntary contributions."²¹ This impacts indigenous females in particular.²²

¹⁴ *Id.*

¹⁵ CERD/C/GTM/CO/14-15, p. 22.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ E/C.12/GTM/CO/3, p.24

²¹ *Id.*

²² *Id.*

Children are also married between 12-14 and enter the workforce, because families cannot afford to support their children when they get to that age.²³ Thus females often do not receive an education further than sixth through ninth grade.²⁴

Guatemalan history is often not taught in schools, students learning Mexican history instead, and if Guatemalan history is taught, they are not taught about prior genocide of indigenous peoples, or of the details of the Guatemalan civil war.²⁵

IV. Health

Best Practices:

Guatemala, in an effort to curb femicide and implement UPR recommendations regarding gender-based violence, adopted the Law Against Femicide to enhance legal protection for women. The State Party has also established other prevention procedures including (i) the inter-institutional Protocol against Sexual Exploitations and Trafficking, (ii) Protocol for the Repatriation of Victims of Trafficking, and (iii) shelters for victims of trafficking. Based on interview and on-the-ground reporting, these measures do not seem to have substantially improved the landscape of crimes committed against women.

Challenges/ Obstacles:

Guatemala is the economic leader of Central America, leading the region in agricultural exports.²⁶ With over 15 million inhabitants, approximately 50% of Guatemalans live below the poverty line and are equally disbursed among rural and urban populations.²⁷ Among the Central

²³ Personal Interview, August 17, 2016, record on file with the University of Oklahoma College of Law.

²⁴ *Id.*

²⁵ Personal Interview, August 17, 2016.

²⁶ <http://data.un.org/CountryProfile.aspx?crName=Guatemala>

²⁷ https://www.usaid.gov/sites/default/files/documents/1862/Guatemala-HSA%20_ENG-FULL-REPORT-FINAL-APRIL-2016.pdf.

American countries, Guatemala allocates the least amount of resources per capita to provide health services. The rural population of Guatemala is predominantly comprised of indigenous communities, especially in the North and Northwest regions of Guatemala.

Guatemala has a network of public health facilities but it does not have enough financial support to meet the needs of the densely populated country. This financial reality has revealed the true depth of inequality that exists in the country. In urban communities it is 8x more likely for an individual to have access to health services than in rural communities. Furthermore, those healthcare providers who work with rural communities lack language skills and cultural education of the indigenous communities they serve. Therefore, Guatemalans are left with an urgent need to extend basic health service coverage to approximately 46% of the underserved population.

In 1996, in an effort to tackle these rural/ urban health access inequalities, Guatemala instated the Programa de Extension de Cobertura (PEC). PEC was designed to create accessible health measure by contracting with NGOs and other organizations to provide health services to rural populations. However in 2013, the government of Guatemala suspended PEC contracts with NGOs due to the unsatisfactory reports of lack of transparency and insufficiencies in health services provided to indigenous communities. Since the 2013 suspension of government partnering healthcare providers, there has been a void in healthcare access that has yet to be addressed. This suspension has left rural, indigenous populations with even less options to health services than before with no sign of reinstatement, new programs, or new provisions. There is a need to develop or reinstate a national program to increase access to health services and healthcare centers, especially in rural communities. Additionally, the State should instate some checks and balances to ensure that those healthcare providers partnered with public entities are

equipped to understand the culture, traditions, and language(s) of the communities they work with.

In 2009 by a Ministerial decision the Health Care for Indigenous Peoples and Intercultural Unit was created to improve health services available to the indigenous population and to sensitize health workers to understand and respect traditional medicine. The Unit helped promote the implementation of indigenous traditional medicine and alternative medicine remedies within State health programs. The initiative pushed to create a medicinal plants handbook and train health workers to recognize and respect “the ancestral wisdom embodied in traditional medicine.”²⁸ The Unit was also responsible for improving physical infrastructure of maternal centers for childbirth, such as installing steam- bath delivery wards. These cultural based childbirth adjustments have been carried out in over 45 State-run childcare centers.

In Guatemala poverty is directly correlated with ethnic origin and gender. The Guatemalan Congressional Committee of Women and Committee of Youth reported the stark reality of increased rates in teen pregnancies and the ripple effect of economic disparities that follow these young mothers. In particular, the Guatemalan government does not currently budget for programs for sexual violence/ sexual abuse rehabilitation, non-traditional educational programs for young mothers, or alternate sexual education programs. For example, one common sexual education myth that seems to be prolific among youth is the condom boiling prevention method. Some people believe that boiling a condom and drinking the water it was boiled in will temporarily make a male infertile. This myth along with other unsafe sexual practices significantly contributes to the illegal abortion procedures and increase in sexual transmitted infections, STIs.

²⁸ CERD/C/GTM/14-15 Page 29 Para. 216.

In 2012, the Office of the High Commissioner for Human Rights, OHCHR, released a report indicating the need to combat high levels of gender-based violence and the need for gender sensitivity training in Guatemala. Furthermore, in its 2012 State Party Report to the UPR, Guatemala reported 3,272 cases of violent deaths of women. The victims of these crimes were mostly victims of domestic violence, children, and trafficked women and children. The rate of trafficking in Guatemala was reported to have increased by 44% from 2010 thru 2012. In response to these abysmal statistics, the State Party pledged to continue with its policy agenda to increase judicial protection of women.

Additionally, in the 2012 summary to the General Assembly submitted by OHCHR, it was reported that there were no overall improvements in health care services. With approximately 40% -75% of indigenous people living in poverty or extreme poverty in Guatemala, access to healthcare, education, and food is minimal and needs improvement. In 2012 World Food Program reported that 50% of children were malnourished in Guatemala and the rate was even higher at 72% among the country's indigenous children. Furthermore, the Association for the Elimination of Sexual Exploitation in Guatemala addressed the government's failure to comply with provisions of the National Action Plan for Children and Adolescent implemented to prevent and reduce the sexual exploitation of children and women.

In early 2016 the Guatemalan government made valiant efforts to seek judicial recourse against perpetrators of sexual violence and slavery against Mayan Q'eqchi women.²⁹ In January 2016 the Guatemalan High Risk Tribunal A heard the Sepur Zarco case of fifteen indigenous women who were taken into custody by Guatemalan military officials during the Civil War. These women were forced into domestic and sexual servitude in the army base camps for six

²⁹ <http://www.aljazeera.com/indepth/features/2016/03/guatemala-justice-sepur-zarco-sex-slavery-victims-160303072107762.html>

years while their husbands were off fighting for land titles. The tribunal found two military officials guilty for perpetrating sexual and domestic violence against indigenous women during the Civil War. Furthermore, the Tribunal officially recognized that sexual violence was used as a weapon of war during the Guatemalan Civil War.

V. Extractive Industry

Best Practices

Guatemala has undertaken several domestic initiatives in order to promote the rights of indigenous peoples, though the actual efficacy of many of these programs has been called into question. For example, the Guatemalan government did draft a law that would require consultation of indigenous peoples, but that legislation has been pending since 2013.³⁰

In recent years, Guatemalan prosecutors have made progress in cases of corruption and extrajudicial killings, due in significant part to support the Attorney General's Office has received from CICIG. On January 1, 1997, Guatemala adopted the Mining Act by Decree 48-97. This legislation was intended to comprehensively regulate the mining industry in Guatemala, including requiring consultation and an environmental impact study be conducted by any company applying for a Guatemalan mining license.

Communities have had some success fighting mining companies in domestic courts. In August and September 2015, the Constitutional Court suspended the licenses of two energy

³⁰ United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention Combined fourteenth and fifteenth periodic reports of States parties due in 2013 Guatemala*, CERD/C/GTM/14-15 (28 October 2013); Robertson, Lindsay *et al.*, *Submission of an alternative report on the Republic of Guatemala for the consideration of the Committee on the Elimination of Racial Discrimination, during its 86th periodic report from 27 April to 15 May 2015* (April 2015).

projects due to failure to consult the indigenous populations beforehand.³¹ In November 2015, the court suspended the license for the expansion of the mining firm Mayaníquel's projects into the department of Alta Verapaz over concerns of the environmental impact.³² Additionally, some municipal governments have been able to demand consultations with mining companies when the federal government was unable or unwilling to do so on their behalf.³³ These constitute notable successes in the realm of protection of indigenous rights.

Challenges and Obstacles

In multiple reporting mechanisms—including the 2013 ICESCR report³⁴ and the 2012 UPR report³⁵—the Guatemalan government has expressed its commitment to protecting indigenous rights. However, the government has not effectively protected indigenous communities from the effects of extractive industry. There is often a total lack of consultation prior to the installation of mining, hydroelectric and other projects in rural areas, which has led to increased tension. Despite repeated calls for Guatemala to observe its international obligations, the authorities failed to ensure meaningful consultation with affected communities, while international companies failed to observe international standards on business and human rights. Though the Mining Act claims to regulate the way extractive companies consult with indigenous

³¹ Jeff Abbott, UDW, *The Power to Defend Our Territory: Indigenous Communities Win Consultation Law in Guatemala* (Nov. 18, 2015), <http://upsidedownworld.org/main/guatemala-archives-33/5524-the-power-to-defend-our-territory-indigenous-communities-win-consultation-law-inguatemala>.

³² *Id.*

³³ *Id.*

³⁴ United Nations, Economic and Social Council, *Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Third periodic report of States parties due in 2008: Guatemala*, E/C.12/GTM/3 (11 April 2013).

³⁵ United Nations, General Assembly, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guatemala*, A/HRC/WG.6/14/GTM/1 (7 August 2012).

groups, according to Case No. 1179-2005 of the Constitutional Court, consultations of communities are legitimate but are not guided by the legal procedures identified for consultation. There is no specific regulation guiding the consultation process. Guatemala continues to promise the creation of legal mechanisms to effect consultation, but no such legislative change has occurred.

Beyond lack of consultation, these companies also often employ private security firms that can be undertrained and likely to commit human rights abuses. The government is currently fraught with accusations of improperly allocating income from these extractive companies into the hands of the rich and powerful, and failing entirely to distribute any wealth back to the affected communities. For instance, notoriously mining-friendly former President Otto Perez Molina is currently in jail pending accusations of reallocating millions of dollars that were meant to be committed to public development.

Even though communities have had success fighting mining companies in domestic courts, reports by human rights organizations continue to highlight the major problems surrounding the extractive industry in Guatemala, and the rate of industry growth is only projected to increase; the Inter-American Development Bank has called for the doubling of energy production from Guatemala by the 2027.³⁶ Moreover, despite the September 2015 success in court, the following day a leader of the indigenous community was brutally murdered.³⁷ In fact, following many of these court victories, violence and false prosecution has again ensued against indigenous protesters.

Further, there are major problems with the way the Guatemalan government confronts protest to extractive projects. When indigenous groups organize to protest an industry in their

³⁶ Abbott, *supra* note 2.

³⁷ *Id.*

community, violence often follows. The government has a history of instituting a state of emergency in order to allow police to act in violation of individual rights. The state continues to prosecute ancestral authorities for their work resisting the encroachment of extractive industries with thinly veiled charges such as illicit association or kidnapping.

Overall, the Guatemalan government has not undertaken the necessary measures in earnest to better the consultation and protection of indigenous communities. While the government in its official position seems amenable to the idea of change, there are scant reports of any actual change within government processes to effect improvement on indigenous rights, and reports of continued tension and violence have not slowed.

VI. Land Tenure

Best Practices

The 1996 Peace Accords, which formally ended the country's thirty-six year long civil war and represents a pivotal turning point in modern Guatemalan history, included several provisions relating to indigenous land tenure. In the Agreement on Identity and the Rights of Indigenous Peoples, Guatemala committed to the following: the adoption of measures to appropriately administer and protect indigenous land titles; the recognition of the right of indigenous groups to access lands historically utilized, but not exclusively occupied by indigenous peoples; the development of a system for the recognition of indigenous title to communal lands; and the creation of a cooperative management system between the State and indigenous communities to allow indigenous leaders a greater role in how their lands and resources are managed. While there have been significant improvements to the recognition and administration of indigenous land rights, particularly those held communally by indigenous

groups, many other provisions from the 1996 Peace Accords with respect to land tenure have yet to be fulfilled by the State.

Challenges and Obstacles:

Consolidated land ownership has always played a prominent role in Guatemala. In the late nineteenth century, foreign corporations, primarily those involved in resource extraction industries, began exerting enormous influence on Guatemalan politics. Attempts in the early twentieth century to reform national land policies that had encouraged consolidated ownership in foreign corporations were met with political resistance, both domestic and abroad, which ultimately led to a coup d'état that incited the country's civil war that lasted from 1960 until 1996. Today, land consolidation remains problematic; Guatemala's land ownership is the second most highly concentrated in Latin America. This is particularly troubling given that many of the land inequities that sparked the country's devastating civil war remain present.

In spite of the Land Registry's adoption of the Specific Regulation in 2009, indigenous communities still face barriers in establishing ownership of their communal lands. Proving title regularly entails extensive legal and anthropological investigations, often tracing back hundreds of years. These cumbersome inquiries into the origins of communities' titles to their communal landholdings are often further frustrated by the fact that many of the original titles granted by the Spanish Crown were lost by the State during the eighteenth century, making it nearly impossible in many cases for indigenous communities to prove their rights to their lands. The difficulties faced by indigenous communities in establishing legal ownership of their communal lands contribute to indigenous land insecurity in Guatemala.