



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

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Report on the Republic of Guatemala to the 28<sup>th</sup> Session of the Universal Periodic Review, Human Rights Council (Oct - Nov 2017)

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## **EXECUTIVE SUMMARY:**

The International Human Rights Clinic of the University of Oklahoma College of Law, U.S.A submits the following five-page report to the 28<sup>th</sup> Periodic Review of the United Nations Human Rights Council. The report survey's Guatemala's compliance with certain human rights obligations in regards to its indigenous peoples. The report focuses on the following five selected areas: (I) Political Rights and Judicial Access, (II) Education, (III) Healthcare Access, (IV) Extractives, and (V) Land Tenure. The purpose of this report is provide a balanced view of indigenous concerns in Guatemala and recommend measures to address these concerns. The authors note that Guatemala has expressed its commitment and taken various measures to increase compliance with international obligations in each of the identified areas.

### **I. Political Rights and Judicial Access**

**International obligations:** In 2012, the CCPR Committee report recommended: (i) bringing more awareness to the Covenant among lawyers and officials, as well as the general population. It appears that while Guatemala is making strides to educate their officials on other relevant indigenous issues, they have potential to continue education in this area. (ii) additional work Guatemala could undertake to increase the prosecution and legal support for victims of human rights abuses within the country. These recommendations have not been fulfilled and need to continue on as Guatemala continues under the ICCPR.

**Domestic Undertakings:** In 2015, the CERD Committee report recommended: (i) a political and governance training program that focuses on indigenous people—specifically women—and civics training. While this program seems like an important step it lacks sufficient detail in its description and it is unclear whether the program is leading to women and indigenous people having access to office. (ii) that impunity be lifted in high profile human rights abuse cases, this supports the rehabilitation of victims and the overall legitimacy of the legal system in the country. Importantly, Guatemala waived immunity for Efraim Rios Mott, but still can work towards holding officials liable for human rights abuses within the country.

The 2012 ICCPR Committee recommended, that there needs to be changes to both the way human rights abuses are prosecuted and the way that human rights defenders are attacked and persecuted more generally. These recommendations included both increased protection mechanism for human rights defenders and prosecution and also protection for those who are prosecuting and investigating human rights abuses.

### **Human Rights on the Ground**

There are significant opportunities for improvement still remaining—mostly in regards to: political corruption, lack of legitimate voting, voting obstruction based on language and lack of resources, low percentages of representation for women and indigenous people within congress, judicial impartiality, judicial access for indigenous people and judicial remedy availability for victims of human rights abuses. There are significant issues with ability to vote in rural communities based both on the ability for rural indigenous voters to get to the polls and lack of access to ballots in indigenous languages. Because of the universal ID system there is a potential for universal suffrage over the age of 18, however, because indigenous groups are not always able to access major hospitals for birth they may face difficulties in receiving a national ID.

There are also issues that the Presidential Commission on Discrimination and Racism (CODISRA) are attempting to remedy for indigenous people finding remedies within the judicial system. Remedies within the legal system are rare for indigenous people in addition to the remedies available being small both in duration for imprisonment and in value for monetary remedy. Additionally, there is a significant time span from when suits are usually filed and completion of the action. Continued

support of CODISRA is a positive step for the Guatemalan government, Guatemala should continue to take steps to strengthen penalties and continue to eradicate abuse prior to the legal process.

There have also been issues of groups targeting Human Rights Defenders, including false accusations against them and disappearing. The 2015 IACHR, Guatemala Report, Chapter IV pointed out that to comply with the inter-American system states have a duty to provide necessary protection for human rights defenders. This includes 380 attacks in 2015, these attacks are usually against human rights defenders protecting the rights of victims, the indigenous groups and the environment; these disproportionately affect those defenders of economic, social and cultural rights. The Ombudsman has reported that at least 60% of these were members of the indigenous groups. This is something Guatemala must improve upon moving forward.

### **Recommendations:**

- Increase awareness of the ICCPR among the general population but also specifically amongst the legal community: included legal faculty, lawyers, judges and government officials.
- Increased protection and legal remedies should be sought by the government on behalf of human rights defenders to protect them from their increase risk of violence.
- Increase access of women and indigenous women to voting, party leadership and political offices within congress and the executive branch.

## II. Education

### International Obligations:

In 2014, the ICESCR Committee report recommended that Guatemala remove all direct and indirect charges in primary education, which should be compulsory, and available free to all, as established in Article 13 of the ICESCR. These recommendations have not been met.

### Domestic Undertakings:

In 2014 the ICESCR Committee also recommended that (i) to improve the salaries, materials, and the trainings of the teaching staff; (ii) continue to implement its literacy plan and increase its efforts in rural areas and among indigenous peoples; (iii) and to develop targeted programs aimed at helping to ensure that students do not drop out of school. These recommendations have not yet been met.

In the 2012 UPR Working Group Report, Guatemala examined and supported the recommendations to: (i) continue public policies aimed at the reduction of illiteracy rates; and (ii), eliminate limitations placed on, and ensure that disabled children have access to education. These recommendations have not been met yet.

In 2015, the Committee on the Elimination of Discrimination (CERD) reiterated its recommendation to Guatemala to:(i) to extend the scope of bilingual education; (ii) and to strengthen its bilingual education training in teacher training programs. These recommendations have not yet been met.

### **Human Rights on the Ground**

Guatemala allows indigenous students to wear their regional clothing to school. Revised texts of Mayan origin have been accredited and certified to be taught in schools. Several Guatemalan schools however, do not teach their students in their native language. Many schools have only one teacher for the entire elementary school. It is common for high school students to be taught via video, and the videos are only in Spanish, thus further marginalizing indigenous students. Guatemala's low retention rates are due to the lack of funding for education in Guatemala. The Constitution and the National Education Act stipulate that education imparted by the State is free of charge. However, a presidential decision of 1968, currently regulates the charges for school meals and other levies applied by the country's official educational establishments. Thus local authorities and school management bodies are empowered with the means to impose financial collections of any kind. For example, students are being charged fees for enrolment, school equipment, and meal costs.

### **Recommendations:**

- Guatemala needs to make education actually free.
- Increase the number of teachers for secondary education, and provide videos used in schools in Mayan languages to increase indigenous enrollment in secondary education.

### **III. Healthcare:**

**International Provisions:** In the 2014, the CESCR Committee recommended that the State party: (i) increase the healthcare budget and take the necessary measures to consolidate a national health system accessible to all without discrimination of any kind, in accordance with article 12 of the Covenant and taking into consideration general comment No. 14 (2000) on the right to the highest attainable standard of health (Article 12 of the Covenant), (ii) strengthen measures to ensure the coverage and accessibility of the healthcare services provided by the State in rural areas and zones inhabited by the indigenous population. The State Party received these recommendations and agreed to work towards implementing them.

**Domestic Provisions:** In 2012, Guatemala examined and supported recommendations proffered by certain State Parties through the UN Working Group Report including (i) the recommendation to strengthen and financially support efforts to combat sexual and gender-based violence, (ii) create mandatory sensitivity training for law enforcement and health professionals who interact with victims, and (iii) increase accessibility of medical services to indigenous communities. The State Party has made efforts to implement traditional indigenous medicine within the State-run health services system. Additionally, the State Party has passed legislation geared to supporting survivors of sexual violence but the implementation of such legislation has yet to be seen.

In 2015, the CERD noted the State's efforts in increasing healthcare access but recommended that the State Party "redouble" its efforts to (i) conduct baseline surveys geared towards understanding the ethnic and cultural aspects of communities, (ii) adopt a policy on midwives, and (iii) respect alternative forms of healthcare within indigenous communities. The State Party has made efforts to adopt an intercultural healthcare system through the establishment of the Health Care for Indigenous Peoples and Intercultural Unit in 2009. However, measurements of improvements from the CERD report have yet to be accounted for or attained.

### **Human Rights on the Ground**

**Access to Healthcare:** The public healthcare system in Guatemala is not an integrated care model. It does not focus on preventive measures and has very limited coverage across Guatemala. Public healthcare coverage is limited to outpatient treatment centers that are far and few in between. In rural regions, which are predominately concentrated with indigenous people, these public health facilities are almost nonexistent even though these are among the more impoverished communities within the country.

**Sex Education & Abortion:** The predominant age of young mothers in Guatemala is 10-14 years old. With abortions still being illegal in the country, back alley, illegal abortions are still regularly performed. Many private practitioners perform partial abortions and then send young women to the hospitals where emergency care cannot be denied to them and the abortions are completed to term. This method of abortion is exponentially risky for young women who are transferred while still bleeding without the proper care- mere minutes can make a difference in whether a woman survives the procedure or not. Furthermore, since Guatemala practices an abstinence only sexual education policy there are many myths and false contraception methods that are increasingly becoming more popular and utilized. These false contraception methods do not protect individuals from getting pregnant nor do they protect individuals from sexually transmitted diseases. As a direct result of the lack of access to condoms, birth control, legal abortion clinics STI/HIV is on a rise, teen pregnancy is on a rise, and illegal abortion procedures are continuing to be utilized.

### **Recommendations:**

- Guatemala should look to expand acceptable sexual education programs to include prevention methods including birth control.
- Free STI/HIV screening exams should be available at all government health facilities, so that more people have means of becoming aware of their health conditions and take effective measures.
- More health facilities need to be opened or operating in rural communities, which are severally underserved.
- Consider reevaluating legislation concerning abortion procedures and whether certain measures can be taken to reduce the number of illegal abortions that on a rise.

### IV. Extractives

International Obligations: In 2014, the CESCR Committee Report recommended that Guatemala to expeditiously establish a legal mechanism for conducting consultations with indigenous groups. Moreover, the Committee voiced concerns over the fact that indigenous groups did not participate in the debate over the reform of Guatemala's Mining Act. In its 2014 report to the ICESCR, Guatemala expressly stated its commitment to furthering the rights of indigenous peoples to land ownership and self-determination. To date, there have been no reports of the Guatemalan government undertaking measures to establish a legal mechanism for consultation of indigenous groups nor of any material movement on amending the country's Mining Act.

Domestic Undertakings: In the 2012 UPR Working Group Report, Guatemala noted and examined several recommendations directing the country to better implement consultation of indigenous communities with regard to land rights and other potential human rights concerns, and to reform its domestic mining law to ensure indigenous peoples' right to their land, territories and natural resources. To date, there is no evidence that Guatemala has undertaken to improve consultation with indigenous groups, nor to reform its Mining Act. In 2015, the CERD Committee Report recommended that Guatemala renew efforts to provide effective consultation of indigenous groups, reduce incidents of violence that tend to accompany peaceful protest, and implement domestic court decisions on the ground. To date, there is no evidence that Guatemala has improved consultation under domestic law, reduced violence associated with protest, nor significantly changed the way court decisions and domestic law are implemented on the ground.

### **Human Rights on the Ground**

Accusations of the government improperly allocating revenue from extractive industries are on the rise. Most notably, the notoriously mining-friendly former President Otto Perez Molina is currently in jail pending accusations of reallocating millions of dollars that were meant to fund public development. The Guatemalan government continues to promise reform of the Mining Act to create a legal mechanism governing the consultation process and to more fully engage rural and indigenous groups in setting development priorities. However, the government continues to challenge the legal competence of communities organized to conduct consultation and continues to allow rampant violence and false prosecution in the aftermath of protests of extractive projects.

### **Recommendations:**

- Amend the Mining Act to include a concrete legal mechanism for consultation with indigenous communities; This consultation should include a requirement that incoming companies actually engage with indigenous communities, rather than simply provide notice of intended projects.
- Ensure enforcement of the Mining Act on the ground
- Continue allowing indigenous groups to fight mining licenses in court

### V. Land Tenure

International Provisions: In the 2012 UPR Working Group Report, Guatemala noted and examined the recommendations to (i) implement a legislative framework for an appropriate and meaningful consultation procedure that will ensure genuine, free and informed consent of indigenous peoples in land disputes, as set out in the United Nations Declaration on Indigenous Peoples Rights and (ii) safeguard legitimate rights of individual belonging to indigenous communities in relation to land disputes, in particular in rural areas, reforming eviction procedures to comply with international standards. It does not appear that either recommendation has been implemented by Guatemala at this time.

Domestic Undertakings: In 2014, the United Nation's Economic and Social Council's Committee on Economic, Social, and Cultural Rights (CESCR) recommended that Guatemala recognize indigenous peoples in its Constitution, as well as create a legal mechanism that would provide for the recognition of indigenous peoples' rights to their traditional lands and natural resources. No practical application of this right is evident.

In 2015, the CERD Committee urged Guatemala to recognize the right of indigenous peoples to lands and territories by creating an appropriate legal framework in consultation with its indigenous populations. Resolution No. 123-001-2009 of the Governing Board of the Land Registry established procedural regulations for the recognition and affirmation of communal land zones in accordance with the Land Registry Act of 2005. The adoption of the Specific Regulation by the Land Registry in 2009 created a formal framework by which to settle disputed communal lands. In spite of this framework, the process for proving ownership of communal lands with the Land Registry remains exceedingly difficult, often requiring indigenous communities to undertake extensive legal and anthropological investigations.

### **Human Rights on the Ground**

Twenty years after the ratification of the peace accord, the trend of consolidated land ownership in Guatemala continues. Land tenure remains particularly problematic for Guatemala's indigenous peoples, who are often left without recourse to address land claims for lack of state mechanisms. Foreign corporations, particularly mining companies, still wield enormous influence on Guatemalan politics at the expense of the indigenous communities whose lands are often taken for such resource exploitation. Such concerns are highlighted by the forced evictions of indigenous women from their homes in the village of Lote Ocho in 2007, during which employees of the Canadian-owned Hudbay Minerals Company and local police officers are alleged to have raped at least ten indigenous women. The unavailability of institutional recourse for indigenous land claims in Guatemala leaves few options but to pursue legal action internationally. The current state of land tenure and the aforementioned lack of institutional recourse for indigenous land claims exacerbate conditions of poverty and marginalization amongst Guatemala's indigenous peoples.

### **Recommendations:**

- Create funding opportunities to support the extensive research that indigenous communities must undertake to prove land title ownership.
- Reform land dispute eviction protocols in accordance with international standards.
- Implement a legal framework for further recognition of indigenous peoples' rights to not only access, but manage their traditional homelands and their natural resources as they deem fit.
- Focus on the decentralization of landholdings, particularly in rural areas, with special attention paid to land ownership by foreign corporations.