

Observations on the State of Indigenous Human Rights in Guatemala

Prepared for:
The 28th Session of the UN Human Rights Council
Universal Periodic Review
March 2017



Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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Asociación Sobrevivencia Cultural is Cultural Survival's sister organization based in Guatemala. Es una organización que promueve los derechos y desarrollo de los pueblos indígenas en Guatemala, nace legalmente en el 2010, es miembro del Movimiento de Radios Comunitarias de Guatemala que impulsa la aprobación de la iniciativa 4087 Ley de Medios de Comunicación Comunitaria, para que los pueblos originarios accedan a sus propios medios de comunicación en el ejercicio de la libertad de expresión y democratización de los medios de comunicación en Guatemala.

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I. Executive Summary

Since its review during the second UPR cycle, Guatemala has made no progress in implementing Indigenous Peoples' right to Free, Prior and Informed Consent before large-scale development projects take place on Indigenous lands. Rather, human rights defenders are increasingly targeted for speaking out against these projects, with the complacency and sometimes direct support of the Guatemalan state. Indigenous Peoples continue to be denied access to radio frequencies despite orders from the Constitutional Court and recommendations in both the first and second cycles to modify the Telecommunications Law. Indigenous women face strong discrimination in access to services, especially adequate health care that is culturally appropriate, and a recent bill that was passed to address this issue was vetoed by President Jimmy Morales for obviously discriminatory reasons.

II. Background

Guatemala has a population of approximately 16 million people. Three groups are considered Indigenous: the Maya, Xinka, and Garifuna. Indigenous Guatemalans have lived through 500 years of colonization and brutal repression, including a 36-year long civil war related to the distribution of land. Supported by the United States, the war lasted from 1960-1996. During this time there was a genocide in which 200,000 Indigenous Guatemalans were murdered or disappeared. An additional 1.5 million people were displaced and more than 150,000 people were forced to flee the country to Mexico as refugees.¹ The army also instituted a scorch and burn policy in which they burned and destroyed buildings and crops, contaminated water supplies, slaughtered livestock, and desecrated sacred lands and cultural symbols of Indigenous People. In 1996, Guatemala signed the United Nations sponsored Peace Accords ending the 36 year long civil war. However, many Indigenous Guatemalans are still suffering from the after-effects of the civil war such as poverty, displacement, widowhood, and trauma. In 2007, Guatemala voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Indigenous Guatemalans are twice as likely to lack access to education and literacy as their Ladino counterparts.^{2 3} In 2013, on average, 14 percent of Indigenous students in 9th grade achieved national standards in Mathematics, compared to 30 percent of their Ladino counterparts. Only 9 percent of Indigenous students reached national standards in Reading, compared to 31 percent of their Ladino counterparts.⁴

Access to land is still a major source of political strife, as Indigenous Guatemalans represent between 40-60 percent of the population but hold just a fraction of the land in the country, leading Guatemala to be one of the most inequitable societies in the world.

III. Continuing Rights Violations

A. Violations to the Right of Free, Prior and Informed Consent

The Ministerio de Energia y Minas (MEM), is the body who currently awards concessions for mining, hydro, and oil extraction with hundreds of licenses across the country. As of January 2017, there were 27 licenses for mines authorized in Huehuetenango alone. 65 licenses for hydroelectric projects were listed as of 2015. Many of these projects are part of a World Bank-supported campaign Plan MesoAmerica, aimed to increase development by creating a common energy market that interconnects the infrastructures of all Central American countries. However, a number of Indigenous municipalities have held referenda about extractive industries and transnational companies operating on their lands and territories. These referenda, or *consultas comunitarias* have overwhelmingly resulted in the Indigenous communities rejecting the projects. However, the government authorities and companies do not respect the Indigenous communities' decisions, arguing that the government has absolute power over granting licenses for the exploitation of subsoil resources. The Guatemalan military and police forces have been deployed to protect transnational business interests, rather than the protection of citizens, especially when these citizens are Indigenous and rural. This is a violation of the Indigenous Guatemalans' right to Free, Prior and Informed Consent, as established by the Article 19 of the UN Declaration on the Rights of Indigenous Peoples, as well as ILO Convention 169.

i. Flaws in Existing Legal Frameworks

Guatemala's Mining Law was passed in 1997 and is still in urgent need of updating and replacing, despite recommendations issued by Norway in the second cycle. Designed to encourage investment, the law in 1997 reduced the percentage of royalties on gross revenues to the government from 7 to 1 percent and allowed foreign companies 100 percent ownership of mining enterprises and are exempted from paying various taxes, amongst other things on the use of water and on imported machinery.⁵ It fails to mention Indigenous Peoples rights to their ancestral lands nor does it require consultation nor Free, Prior and Informed Consent of Indigenous Peoples.⁶ Despite heavy criticism and some attempts to update the law in 2012-2014, the existing Mining Law remains in effect and has not been improved for the benefit of Guatemalan citizens and is glaringly inconsistent with ILO Convention 169 which Guatemala ratified as domestic law.⁷ The Perez Molina administration acknowledged problems with the existing mining laws and

in 2012 a series of reforms to the Mining Law were proposed under Bill 4590. However, the proposed changes in Bill 4590 were seen by Indigenous Peoples organizations as largely benefitting mining companies, and still did not take into account the Free, Prior and Informed Consent of affected communities⁸.

ii. Conflict as a Result of Failure to Consult

In July of 2015, representatives of the community in Santa Cruz Barillas, Guatemala, submitted an official complaint to the World Bank regarding a proposed hydroelectric dam on the Q'am B'alam River in their small town in the department of Huehuetenango. Cecilia Mérida, the partner of an environmental defender who was arrested, falsely charged, and imprisoned in Guatemala, testified at the World Bank in Washington, D.C. She spoke of the damage being inflicted by the Bank's financing of the project and the strategies of criminalization being employed by the Guatemalan government and Spanish company Hidro Santa Cruz in an attempt to silence local opposition, giving first-hand testimony about the impacts on families and communities when leaders are illegally detained and imprisoned for months, or even years, on end.

Since 2009, Hidro Santa Cruz was planning a series of dams on the Q'am B'alam River that surrounds the town of Santa Cruz Barillas. The river and its three waterfalls are considered sacred by the Q'anjob'al community. The project was to be installed in an area used by the community for ceremonial, recreational, and agricultural purposes, and in an ecosystem that is of highest priority for conservation, according to the International Commission on Tropical Biology and Natural Resources. The community has twice held referenda and both times voted unequivocally to reject the exploitation of its natural resources by transnational corporations. Nevertheless, the government approved the Cambalam I Dam with neither the Free, Prior and Informed Consent of the community, nor any legitimate social or environmental impact assessments. Dozens of community organizers and leaders were arbitrarily detained and arrested after speaking out against the dam, including Mérida's partner, Ruben Herrera. Some were imprisoned for over two years. All were eventually released due to lack of evidence of having committed a crime. Two men have been killed for defending their lands against this project; one, Andres Francisco Miguel, was shot at by security guards of the company in 2012, and another, teacher Daniel Pedro Mateo, was kidnapped while on his way to a community meeting training environmental defenders in 2013. His body was later found with signs of torture. In 2016 Hidro Santa Cruz announced it would be pulling out of the project Cambalam. However, the community has yet to be compensated for the damages, including victims of violence and rape during the multiple military raids on the town in favor of the company (outlined below) the families of deceased, and individuals who were arbitrarily detained, all as a result of aggressive push for development without the free, prior and,

informed consent of the community.⁹

On January 17th, 2017, members of the Maya Chuj and Q'anjob'al communities in the Ixquis region, located in northern Huehuetenango, held a peaceful demonstration against the development of the Pojom I, Pojom II, and San Andrés hydroelectric projects in Ixquis by the development company Promotores y Desarrollos Hídricos, Sociedad Anónima (PDH, SA). During the demonstration, personnel from the National Civil Police, the private security team for PDH, SA, the military, and forest rangers fired on the peaceful protestors.¹⁰ Sebastian Alonso Juan, an indigenous and land rights defender from Yulchen, Huehuetenango who was leading efforts to obtain a suspension on the hydroelectric projects, was shot during the chaos. After four hours without receiving medical care, Sebastian Alonso Juan died due to the gunshot wound.¹¹ Prior to the demonstration the affected communities had mobilized various times to denounce the diversion of the Yalwitz, Pojom, and Negro rivers by the company PDH, S.A. During this time, the Chuj and Q'anjob'al Indigenous Peoples of Guatemala had repeatedly asked the municipal, departmental, and national authorities of Guatemala to respect their right to free, prior, and informed consent.¹² However, Chuj and Q'anjob'al communities were not included in PDH, S.A.'s initial consultation with affected communities and the Ministry of Energy and Mines approved the Pojom I, Pojom II, and San Andrés hydroelectric projects despite various irregularities, such as PDH, S.A. using explosives without authorization from the Ministry of Defense.

In August 2014, more than 1,500 police officers occupied the Q'eqchí communities of Cobán, Chisec, and Raxruhá following a nonviolent resistance movement in protest against the proposed Santa Rita hydroelectric dam. Three Q'eqchí villagers were killed, five were detained, and more than 60 were injured in the police raid. The dam project threatens the integrity of ancestral Q'eqchí territory and was approved without consultation.¹³

B. Militarization of Indigenous Lands, Criminalization and Violence against Indigenous Human Rights Defenders (UNDRIP Articles 7, 30)

As a direct result of the failure to consult, increased protest and conflict has been met by the Guatemalan government with militarization and violence against human rights defenders. Despite previous UPR recommendations, Indigenous human rights and environmental defenders regularly face death threats, physical attacks, and home raids. These are carried out by hired hitmen, clandestine security organizations, or the military themselves.

According to NISGUA, From January 1 to October 31 2016, eleven human rights defenders were killed in Guatemala, and since October 31, the killings have escalated. For example, on November 2, Indigenous leader Benjamin Roderigo Ic Coc, departmental representative of the Mayan Council of the Peten, was found shot to death in Sayaxché. He had received threats prior to his killing. On November 6, journalist Hamilton Hernández and his wife were assassinated in Coatepeque. On November 9, union leader Eliseo Villatoro Cardona, in Tiquisate, was killed. On November 12, Jeremy Abraham Barrios Lima, Assistant to the General Director of the Center for Environmental and Social Legal Action of Guatemala, was shot to death. Miguel Suchite Hernandez, COCODE president, in La Llorna, Petén, was killed November 18, bringing the total number of defenders killed to date in 2016 to sixteen. By comparison, the number of defenders assassinated by December 31 in 2015 was thirteen. In 2014, it was seven. The cases of the defenders killed in the Petén are still being verified to ascertain whether their work on behalf of human rights led to their deaths. But even excepting those two cases, the total number of murders this year exceeds that of last.

Indigenous Peoples, union members, environmental defenders, and journalists have been the most heavily targeted groups, especially the intersections of those identities.

On April 7, 2014 six Q'echi Mayans were shot, including Flori Maribel Bol, who was pregnant at the time, in the Nueve de Febrero community in Cobán, Alta Verapaz.¹⁴ The attack happened a few meters away from the Dolores River where Q'echi community members were leading a resistance against the development of a hydroelectric project by the company Hidroeléctrica Santa Rita.¹⁵ One of the victims, Victor Cuc, died on April 20, 2014 due to injuries sustained during the attack.

On January 6, 2017 Laura Leonor Vásquez Pineda was assassinated in Mataquescuintla in the department of Jalapa. Vásquez Pineda was a prominent community leader in the peaceful resistance to the advancement of mining in Mataquescuintla by the Canadian company Tahoe Resources and its subsidiary company Minera San Rafael.¹⁶ On April 13, 2014 Merylyn Topacio Reynoso and her father Edwin Alex Reynoso, active members in the resistance-movement against Tahoe Resources' El Escobal silver mine in San Rafael las Flores, in the department of Santa Rosa, were attacked by gunmen on their way from a community meeting. Topacio, coordinator of a local youth movement against mining, was killed during the attack and her father was seriously wounded.¹⁷ The resistance to the mining project began in 2007 when communities in the departments of Santa Rosa and Jalapa came together to oppose the Escobal project. On April 3, 2013 the Guatemalan government granted Tahoe Resources a license to operate the mine.

Twenty-four days later, Tahoe Resources' private security guards opened fire on peaceful protesters.

In May 2013, the Guatemalan government declared a state of siege in the municipalities of Mataquescuintla and Jalapa in the department of Jalapa and San Rafael la Flores and Casillas in the department of Santa Rosa, deploying thousands of soldiers and police to the municipalities.¹⁸ Under pretenses of cracking down on drug trafficking and terrorism, the government suspended the freedom to assembly, the freedom to movement, detainee rights, and prisoner rights during the week-long state of siege. Dozens of community members were subject to search and arrest warrants, with the community organizers involved in the resistance against mining being the most affected by the siege. After the siege, many of the soldiers left; however some stayed behind. As late as 2015, Oscar Morales, an organizer from San Rafael Las Flores, told Mongabay "In Mataquescuintla and in Casillas, the two municipalities are militarized. There's a military outpost seven kilometers from San Rafael [in one direction] and another military outpost seven kilometers away [in the other direction]."¹⁹

Similarly, the department of Huehuetenango, Guatemala has been highly militarized over the last decade. The intensification of transnational investments in the area has led to the emergence of several movements of resistance in defense of the territory and its natural resources. As an answer to these community initiatives, the military has been deployed in order to enforce the implementation of hydroelectric and mining projects. Guatemalan officials have called the area "ungovernable"²⁰, and equate social movements with drug-traffickers in order to use donor funds to inflict violence against communities fighting development projects.

In May 2013, former president of Guatemala, military general Otto Perez Molina, declared martial law in the municipality of Santa Cruz Barillas, Huehuetenango to quell a protest against the Hidro Santa Cruz dam. Approximately 500 military and 350 national police equipped with army tanks and anti-riot gear invaded the town. Many homes surrounding the Q'am B'alam River and Pozo Verde were violently raided by military, who refused to give identification or justification. Perez-Molina justified the military presence saying that the local community members were actually involved in gang activity. He claimed they were "interested in promoting drug-trafficking and organized crime, which explains why they are seeking the removal of military from the region." In actuality, they were Indigenous activists who were vocally opposed to the dam being built in their community²¹. On May 3, 2013 Perez-Molina announced, "[w]e have identified 100 people involved [in the drug trade] that have attempted to protect the interests of drug trafficking and organized crime." Twenty-three arrest warrants were

issued and the rest were pursued and threatened. Many of these arrest warrants still stand and individuals are still being pursued and in hiding. Not a single person has been convicted of a crime even after dozens have been arrested and held in prison for months and sometimes years. The arbitrary detentions and illegitimate use of criminal proceedings, and intentionally slow court proceedings against community leaders, is aimed at preventing them from carrying out their legitimate activities or community organizing.

In March 2015, Rigoberto Juárez and Domingo Baltazar, prominent community leaders of the Q'anjobal region, were detained on false charges, spending 5 nights in a 2x4m cell, with more than 20 other men.²² He remained in prison for over two years, as hearings continued to be delayed, until he was released when the judge ruled there was no evidence to continue keeping him in custody. In June 2015, Ermitaño López Reyes was detained for his opposition to the hydroelectric dam being built by Ecoener Hidralia Energía.

In Santa Cruz Barillas, the military regularly harasses community members. In the last two weeks of May 2014, residents were surprised by military presence in their communities on three separate occasions.²³ When they inquired about the purpose of the intrusion, the military officers refused to answer and refused to show their identification badges. When asked again, two military personnel aimed their assault rifles at the community member threatening them. Events like these are common, and create a tense atmosphere that causes residents to feel unsafe.

In 2014, a report published in the *Diario de Centro America* indicated that Perez Molina met with the Committee of the Agricultural, Commercial, Industrial and Financial Associations (CACIF, in Spanish) to guarantee the use of state security forces to protect private hydroelectric plants San Mateo Ixtatán, Huehuetenango, following protests in the region.²⁴

C. Freedom of Expression (UNDRIP Article 16)

In the first and second cycles, Guatemala accepted recommendations from Norway to reform legislation concerning access of Indigenous Peoples to radio frequencies. The Guatemalan Peace Accords signed in 1996 guarantee Indigenous Peoples access to radio, as well as Article 16 of the UNDRIP. However, bill 4087, the *Ley de Medios de Comunicación Comunitaria*, which would authorize one community radio station per municipality in Guatemala, has remained stalled in congress since 2010. Despite a Constitutional Court decision in 2011 ordering congress to amend the Guatemalan Telecommunications Law to allow for Indigenous Peoples to access radio frequencies,

there has been no progress in making this a reality and Indigenous community radio stations remain in limbo. The volunteers at community radio stations regularly face discrimination as a result of the media campaigns on the mainstream media characterizing them as thieves. They are under constant threat of government raids, imprisonment, and confiscation of equipment for operating without a license to a legal frequency.

From July 2006 to June 2016 the Public Ministry raided twelve non-profit community radio stations that were operated by Indigenous communities. During the raids, police (and sometimes soldiers) seized radio equipment, which led radio stations to shut down indefinitely or for an extended period of time. During four of the twelve raids, Indigenous Guatemalans that were operating the community radio stations were arrested. The continued Government raids of Indigenous community radio stations by police and soldiers constitutes a serious and urgent situation that is causing irreparable harm to the exercise of the right to freedom of expression by the Indigenous communities served by those stations. The detention of community radio broadcasters represents an illegitimate application of the Guatemalan penal code, as no crime exists for which an individual can be charged for broadcasting without a license. The charges, put forward are variable and have not held up in courts, meaning those that have been detained are being held arbitrarily. However, legislation has been put forward to criminalize community radio station operators up to 10 years in prison for broadcasting without a license. This bill, 4479, is unconstitutional and would violate Indigenous Peoples' right to freedom of expression.

D. Indigenous Women

i. Political Representation (UNDRIP Article 5)

Indigenous Guatemalans lack proportionate representation within Guatemalan government, and Indigenous women even more so. Indigenous Guatemalans make up approximately 40-60 percent of the population, yet Indigenous Guatemalans account for only about 12-15 percent of the Guatemalan parliament.²⁵ In 2014, 20 out of the 158 elected members of congress were Indigenous Peoples, 18 of which were men and only 2 of which were women.²⁶ Out of the 21 Indigenous members elected to Congress in 2015, only 2 of them were women,²⁷ leaving Indigenous Guatemalan women a mere representation of 1.27 percent within the Guatemalan Congress. Without equal access to political processes within the country, Indigenous women face serious barriers to ensuring that their interests, concerns, and needs are represented and addressed within the Guatemalan parliament. As of 2010, the State of Guatemala began issuing an official form of identification, a "DPI" which is now required in order to vote or run for political

office. Half a million Guatemalans still lack a DPI²⁸, a majority of those being poor, rural, Indigenous women. Many Indigenous Guatemalans lost official identification documents during forced displacements that occurred throughout the civil war, and remain disenfranchised due to poverty, illiteracy, discrimination and deep bureaucracy within the National Registration of Persons, RENAP. The results of this systemic discrimination have manifested in the lack of representation of Indigenous Peoples, especially Indigenous women, within the Guatemalan government.

ii. Access to Healthcare (UNDRIP Article 24)

In March 2017, the Guatemalan president Jimmy Morales vetoed a law that formalized the work of *comadronas* or traditional midwives which would have allocated Q3,000 (USD \$400) in salary per year as an incentive. His stated reasons for vetoing the law was that the title of the law²⁹ was written in just one [of the 24] Mayan languages (Kakchiquel); which, he argued, did not reflect the diversity of the Mayan peoples. He also cited ILO Convention 189 (in erroneous attempt to reference convention 169) as a reason to veto the bill, saying that the law would impinge on the freedom of Indigenous Peoples as outlined under the convention, because the law would require them to register as midwives in order to receive the Q3,000 incentive, and that convention prohibits the state from requiring anything of Indigenous Peoples.³⁰ This is a clear misuse of Convention 189 [and 169] and demonstrates discrimination, in that no bills have been vetoed by the President on the grounds that they are titled only in Spanish, which also does not reflect the diversity of the country.

Indigenous Guatemalan women face serious barriers to access to health care services and discrimination within health care facilities. Indigenous Guatemalan women who live in rural areas often face a of lack quality health care facilities in their communities. Many Indigenous women have to travel far away from their homes in order to obtain quality health care services in cities such as Quetzaltenango. Not only does this cost more financially, it is also very taxing for the women to travel long distances when they are sick. Indigenous women who do not speak Spanish also often face language barriers at healthcare facilities due to a lack of translators and health care professionals who speak Indigenous languages. Indigenous women who solely speak an Indigenous language often have difficulties communicating their symptoms to health care professionals and many times they are not allowed to be accompanied into examination rooms by family members who speak Spanish. The lack of quality health care facilities in rural areas and multilingual health care professionals and translators are serious barriers that often keep Indigenous Guatemalan women from receiving the health care services that they need.

A recent study conducted by Cerón et al. (2016) investigated abuse and discrimination

towards Indigenous Peoples in public health care facilities in rural Guatemala via focus group discussions with Indigenous Peoples from fourteen municipalities in the western highlands. The study found that Indigenous Guatemalans often face three types of discrimination when using public healthcare facilities: discrimination in access to health care, abusive treatment during care, and neglect of professional ethics. Also, Indigenous women are more than twice as likely to die during childbirth than their non-indigenous counterparts. The focus group discussions also revealed cases of forced c-sections and sterilization within rural public health facilities.³¹

IV. UPR Recommendations Pertaining to Indigenous Peoples from Previous Cycles That Have Not Been Effectively Implemented:

The following recommendations were accepted by the State of Guatemala

1. *Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios (Norway)*
2. *Undertake a dialogue process with indigenous peoples to seek an appropriate consultation mechanism regarding the adoption of measures affecting indigenous peoples (Costa Rica)*
3. *Adopt national legislation to fully implement the ILO Convention No. 169 on indigenous and tribal peoples. Particular focus should be put on the indigenous peoples' right to be consulted at all levels of decision-making, in policy, legislative, administrative and development processes affecting them (Norway)*
4. *Continue its efforts aimed at regulating the consultation process so that public policies reflect the effective participation of indigenous peoples in its implementation (Paraguay)*
5. *Continue efforts aimed at establishing and implementing a consultation mechanism with indigenous peoples, in accordance with national and international legislation (Peru)*

The following recommendations were noted:

6. *Reform the Mining Law to guarantee indigenous peoples' right to their land, territories and natural resources* (Norway)
7. *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* (Ireland)

V. Questions

1. Many previous recommendations urged Guatemala to enact better policies on consultation with Indigenous Peoples. What steps has Guatemalan taken to implement these recommendations?

VI. Recommendations

Cultural Survival and Sobrevivencia Cultural urge the Guatemalan government to:

1. Urgently approve Bill 4087, Ley de Medios de Comunicación Comunitaria.
2. Cancel arrests warrants against Indigenous human rights and environmental defenders.
3. De-militarize the state response to Indigenous social movements, especially in the Huehuetenango region.
4. Reform the Mining Law to guarantee Indigenous peoples' right to Free, Prior and Informed Consent.
5. Implement a legislative framework for an appropriate and meaningful consultation procedure that will ensure genuine, Free, Prior and Informed Consent of Indigenous Peoples in land disputes, as set out in the United Nations Declaration on Indigenous Peoples Rights.
6. Continue to facilitate the acquisition of identity cards for Indigenous women.
7. Promote the hiring of qualified Indigenous women in political arenas.
8. Invest in quality, culturally sensitive health care facilities in rural areas and create a national network of Indigenous language translators for health care facilities.
9. Compensate Indigenous Peoples in Barillas, Huehuetenango for losses and arbitrary imprisonment as a result of development projects without their free, prior, and informed consent.
10. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.

11. Implement the UN Special Rapporteur on the Rights of Indigenous Peoples recommendations from the upcoming 2017 visit.
12. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.

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