

**Observations on the State of Indigenous Human Rights in Light of the UN Declaration on the
Rights of Indigenous Peoples**

GUATEMALA

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CULTURAL SURVIVAL

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*; in a newspaper, *Voices*, that educates indigenous peoples about their rights; and on its website: www.cs.org. In preparing this report, Cultural Survival collaborated with student researchers from Harvard University and consulted with a broad range of indigenous and human rights organizations, advocates, and other sources of verifiable information on Guatemala.

EXECUTIVE SUMMARY

Since the 1996 Peace Accords ended the Guatemalan civil war, the country has made strides to legally recognize the rights of its indigenous peoples and has criminalized racial discrimination. However, political exclusion, discrimination, and economic marginalization of indigenous peoples still regularly occur due to the lack of resources and political will to stop them. Precarious land tenure, delays in land restitution, disproportionately extreme poverty, and geographical remoteness result in indigenous Guatemalans having less access to healthcare, clean water, and security, and lower living standards than the country's *Ladino* population. Most indigenous children do not have access to bilingual education. Many crimes against indigenous peoples are not investigated or go unpunished; by comparison, indigenous leaders are frequently attacked or prosecuted for defending their claims to their lands. The government needs to energetically address discrimination, and to take steps to secure land rights and economic equality for its indigenous peoples. It also needs to strengthen the rule of law and increase indigenous access to effective legal remedies, and to or extradite prosecute those responsible for war crimes and crimes against humanity during the country's civil war.

BACKGROUND

Guatemala's Maya, Garifuna, and Xinca populations account for roughly half the nation's 12 million people. Indigenous people speak 24 distinct languages and are dispersed throughout the country, though most live in the north, north-west, and south-west parts of the country where the most extreme poverty is concentrated. The 1996 Peace Accords marked the end of a 36-year civil war during which indigenous Maya made up 83% of the estimated 200,000 dead and missing. Ninety percent of these were killed or disappeared by the government. The Commission for Historical Clarification concluded that government security forces had systematically committed genocide against indigenous peoples.¹ The repercussions still threaten indigenous communities, their cultures, and their physical and economic security.

In 1995 the Guatemalan government and rebel groups signed the Agreement on Identity and Rights of Indigenous Peoples (the Agreement) which recognizes Guatemala as a multi-ethnic, multicultural nation and acknowledges the Maya, Garifuna, and Xinca as indigenous peoples.

Constitutional reforms recognizing indigenous languages and customary laws were proposed in 1999 but rejected in a nationwide referendum.² Former President Oscar Berger enacted legislative changes to recognize the promises set forth in the Agreement and in the Peace Accords but lack of infrastructure and political will stymied implementation. In November 2007, incoming President Alvaro Colon, was elected with indigenous support which has created high expectations that implementation will finally happen.

THREATS TO PHYSICAL SECURITY – VIOLENCE AND HEALTH

Guatemala's homicide rate, linked to rising gang and drug violence, is one of the highest in the world and has risen steadily since 2001.³ Such violence is highest in urban areas where many indigenous people migrate for wage labor. While not an exclusively indigenous issue, basic security is a serious human rights concern in Guatemala. Solutions require eliminating both extreme poverty and extreme economic disparity throughout the country as well as strengthening the rule of law. Both steps would substantially improve the quality of life for the country's indigenous people.

Guatemala's extreme poverty disproportionately affects its indigenous people. Guatemala's score on the UN Human Development Index is one of the lowest in Latin America.⁴ In addition, those departments with the highest indigenous populations are also those with the most extreme poverty.⁵ Almost 40% of indigenous people live in extreme poverty and about 80% have little or no access to water, sewer, or electricity.⁶ Guatemala also has the third highest level of chronic malnutrition in the world.⁷ An estimated 70% of indigenous children suffer from chronic malnutrition compared to only 36% of non-indigenous children.⁸ Furthermore, only five percent of indigenous Guatemalans have health insurance compared to 18% of non-indigenous.⁹ Lack of health care resources in rural indigenous areas has also resulted in disproportionately high maternal mortality rates.

These statistics result from a history of neglect of indigenous peoples. When Tropical Storm Stan hit Guatemala in 2005, 90% of those who died were indigenous.¹⁰ The reconstruction process was poorly implemented and blighted by political manipulation, leaving many indigenous families dependent on foreign aid¹¹ or forced to reoccupy homes that had been declared unsafe.¹²

POLITICAL AND SOCIAL DISCRIMINATION

Legislation aimed at eliminating discrimination has been ineffective in the face of widespread discriminatory social attitudes. Article 2 of the constitution recognizes indigenous peoples and their cultures.¹³ Discrimination based on race, gender, disability, language or social status is a criminal offense under the Guatemalan Anti-Discrimination Act. The government has established an Indigenous Affairs Commission in the Supreme Court, an Office for the Defense of Indigenous Peoples in the Office of the Human Rights Ombudsman, and other public offices dedicated to protecting indigenous peoples' rights.¹⁴ These offices have launched positive public awareness campaigns to combat discrimination, have made a drive to recruit indigenous people into the civil service,¹⁵ and have added anti-discrimination curriculum to police training.¹⁶ Yet, as the government of Guatemala recognizes, racism and racial discrimination are still pervasive among Ladinos and the media.¹⁷

In September, 2007, General Efraín Ríos Montt, a former military leader considered responsible for many of the atrocities against Mayans during the civil war, was elected to Congress, despite having been indicted for genocide in Guatemala and in Spain.¹⁸ His election protects him from extradition or prosecution for these crimes in Guatemala for as long as he remains in office, and thus stands as a symbol of both the citizenry's continuing discriminatory attitudes, and the government's failure to bring those responsible for genocide to justice.

In October, 2003, Guatemalan politicians chanted racist taunts at prominent indigenous spokeswoman Rigoberta Menchú and were arrested. While the fact that they were arrested at all was something of a triumph, delays in their trials and their light sentences underscored that double standard that is still the norm in the Guatemalan justice system. Most lower-profile cases of discrimination are not investigated at all. During 2006, of the 79 cases brought before the Office of the Human Rights Prosecutor (*Fiscalía de Derechos Humanos*) which investigates offenses involving discrimination and racism, only one has resulted in conviction.¹⁹ To combat this pattern, the government established a Racism and Discrimination Court, increased the number of tribunals authorized to hear discrimination suits, and created a National Compensation Program to compensate victims of rights violations stemming

from the civil war. However, geographic remoteness, burdensome procedural requirements, and inadequate resources within the courts impede many indigenous people from accessing these remedies.²⁰ As of 2006, the Department of Indigenous People in the Ministry of Labor which investigates cases of discrimination had no independent budget or resources and only four employees.²¹ Improvements to this situation are exacerbated by the low numbers of indigenous people in political office.²²

RIGHTS TO LAND AND RESOURCES

Land disputes were among the catalysts for the country's long civil war.²³ In its aftermath, the government committed itself to increasing land ownership for indigenous and other poor rural farmers.²⁴ Yet the structural inequalities related to wealth, land, and political participation are still omnipresent.²⁵ In 2005, nine years after it was called for in the Peace Accords, the Guatemalan Congress finally passed a National Land Registry law. The Land Registry is a positive step towards establishing accurate and legally binding descriptions of land claims. However, the Registry, which is headed by the Minister of Agriculture, gives the appearance of being biased towards rich landowners.²⁶ The law behind the Registry does not address unused land and restricts land claims to the 20% of land that is described on property documents, most of which were registered by large estate owners.²⁷ Furthermore, the Registry is limited in its ability to grant land restitution for lands that were confiscated under earlier governments. Recent conflicts over mining rights near Lake Izabal have spotlighted this issue. In the 1960's the Guatemalan government sold land near Lake Izabal to the Canadian mining firm INCO, leading to the violent eviction of the indigenous Mayan Q'eqchi' inhabitants. In 2004, Sky Resources bought the land from INCO and announced its intention to resume mining in the area, which angered many Maya who view the mining as a violation of their ancestral lands. In late 2006, Mayan families reoccupied some of the land, but Skye quickly obtained a government order for their eviction and in November, 2006 they were removed from the land.²⁸

RIGHT TO CULTURE

Cultural rights are formally protected under Guatemala's constitution, which recognizes indigenous rights to culture, language, dress, customs, and social organization.²⁹ However, the

government has failed to implement the legislation. It also has ignored the educational needs of indigenous children by failing to introduce bilingual education. Indigenous languages are rarely used in politics, education, or the media. In 2000, only 53% of indigenous Guatemalans aged 15-64 could read and write in Spanish, in contrast to 82% of Ladinos.³⁰ Underlying problems include a national educational curriculum that poorly serves children whose first language is not Spanish, as well as a lack of resources and trained teachers in indigenous areas. Article 76 of the Constitution recommends bilingual education in predominantly indigenous areas,³¹ but its vagueness makes implementation difficult. The Agreement on Identity and Rights of Indigenous Peoples also promises to “protect bilingual and intercultural education and institutions such as the Mayan Schools and other indigenous educational projects.”³² The Mayan Schools are a pilot educational project promoting bilingual and improved education for indigenous populations. However, the World Bank concluded that although the infrastructure is present, “less than a third of indigenous Guatemalans are enrolled in bilingual education.” The government’s recognition of indigenous languages is thus meaningless without more effective implementation and promotion.

Recently, there has been an increasing use of indigenous languages on public interest community radio stations, which provide many indigenous Guatemalans with their only access to news. Although these community radio stations were guaranteed by the Peace Accords, the government has not legislated to protect legitimate volunteer community radio stations from bandwidth encroachment by other stations and from prosecutorial crackdowns during politically sensitive moments.

Conclusion:

Guatemala needs to energetically address discrimination against indigenous peoples, and take steps to secure land rights, and political and economic equality, and reduce poverty and increase security for its indigenous peoples. It also needs to increase the effectiveness of legal remedies, and prosecute those responsible for crimes against humanity during the country's civil war. And it needs to institutionalize educational and other opportunities for indigenous peoples to use and learn in their languages.

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