



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

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

Prepared by

Students

Kelbie Kennedy, J.D. Candidate, 2015
Megan Anderson, J.D. Candidate 2015
Kathryn Hamstra, J.D. Candidate 2015
Miranda Sinclair, J.D. Candidate 2015
Lauren C. Mitcham, J.D. Candidate 2015

Professors

Lindsay Robertson
Alvaro Baca

April 2015

University of Oklahoma College of Law, International Human Rights Clinic

Acronyms and Abbreviations

CAIMI	Comprehensive Care Centers
CAP	Permanent Care Centers
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CODISRA	Presidential Commission on Discrimination and Racism Against Indigenous People in Guatemala
Committee	The Committee on the Elimination of Racial Discrimination
COPAF	Presidential Commission for Combating Femicide in Guatemala
DEMI	Office for the Defense of Indigenous Women
EIA	Environmental Impact Assessment
IHRC	International Human Rights Clinic
ILO	International Labor Organization
INE	National Institute of Statistics
FONTIERRA	Land Fund
MINEDUC	Ministry of Education
MARN	Ministry of Environment and Natural Resources
Ombudsman Office	The Guatemala Human Rights Ombudsman Office
RIC	Land Registry Act
SAA	Secretariat for Agrarian Affairs
UCI	Institutional Training Unit of the Judiciary
UTAGPI	Advisory Technical Unit on Gender and Indigenous Peoples

Table of contents

	Paragraphs	Page
Summary.....		4
Application of the International Convention on the Elimination of All Forms of Racial Discrimination.....		
Articles 1 and 2.....	1 – 3	5
Article 3.....	4	6
Article 4.....	5	6
Article 5 (a) (b) and 6.....	6 – 25	7 - 13
Article 5 (c).....	26 – 37	13 - 16
Article 5 (d).....	38 – 59	16 - 21
Article 5 (e)	60 – 77	21 - 25
Article 7.....	78 – 105	25 - 30

Summary

The University of Oklahoma College of Law International Human Rights Clinic, U.S.A. (“IHRC-OU”) submits its first alternative report to the 86th session of the Committee on the Elimination of Racial Discrimination that will take place from 27 April to 15 May 2015, during which the Committee will review the report of the Republic of Guatemala.

The University of Oklahoma was established in 1890. The College of Law is currently the academic home of over 500 students enrolled in the full-time Juris Doctor Program. The College of Law also offers Masters of Law programs in Energy and Natural Resources, Indigenous Peoples Law, and U.S. Legal Studies and Masters of Legal Studies programs in Energy and Natural Resources and Indigenous Peoples Law. The University of Oklahoma College of Law Center for the Study of American Indian Law and Policy provides counsel to tribal, state and national policymakers and a forum for the interdisciplinary discussion and resolution of problems facing Native communities. The International Human Rights Clinic was created in 2009 to provide research and training in the field of international human rights law. For the elaboration of this alternative report, IHRC-OU traveled to the Republic of Guatemala from August 10-14, 2014. During the trip IHRC-OU visited various government agencies in Guatemala City including the Presidential Commission on Racial Discrimination against Indigenous Peoples (CODISRA), the Office for the Defense of Indigenous Women (DEMI) and the Human Rights Ombudsman of the Indigenous Peoples. IHRC-OU also met with Guatemalan Congressman Mr. Amilcar Pop. Additionally, IHRC-OU met with non-government organizations and civil society groups that included the UN High Commissioner for Human Rights (OHCHR) and the Association of Mayan Lawyers of Guatemala. Furthermore, IHRC-OU was pleased to have traveled outside of capitol to meet with Councilors and the President of the Vecinos de la Aldea Chuarrancho, an Indigenous Community in Guatemala.

This report concerns indigenous populations in Guatemala. Specifically, the report considers (1) Violence Against Women and Access to Justice, (2) Political Rights, (3) Land Rights, (4) Health, and (5) Education. The purpose of this report is to provide a balanced view of indigenous concerns in Guatemala and recommend measures to address these concerns. The IHRC-OU notes the commitment expressed by Guatemala to recognizing the rights of indigenous peoples. We thank the indigenous people of Vecinos de la Aldea Chuarrancho, Mr. Victor Ferrigno of OHCHR, the Association of Mayan Lawyers of Guatemala and their staff, and the Guatemalan government for their support and cooperation. We hope the Committee will find the following information helpful to its work.

Article 1 & Article 2

1. There has been some progress and advancement with regards to public policies aimed at indigenous peoples, including implementation of the public policy for coexistence and elimination of racism and racial discrimination (PPCER), which was formulated in 2006. From 2009-2012 various discussions, workshops, meetings and programs have been implemented that address economic discrimination against indigenous peoples, public health policies, access to land, wage discrimination, and food security.¹
2. In 2011, the Presidential Commission on Discrimination and Racism (CODISRA) appealed for the establishment of a legal instrument to implement the public policy for coexistence and elimination of racism and racial discrimination (PPCER).² In furtherance of this goal, a board has been set up and text has been drafted with the endorsement and signature of almost all of the ministers.
3. In recent years additional State policies that include cultural diversity, gender and indigenous peoples components have also been implemented, which include: an Agricultural policy from 2008-2012, a National Plan for the Health of All Guatemalans in 2008, Education policies from 2008-2012, Policy on early childhood from 2010-2020, a National Policy on Climate Change, Government Decision No. 329-2009, a National Policy on biological diversity Government decision No. 220-2011, a National agreement for the advancement of security and justice, and a National policy for sustainable tourist development in Guatemala from 2012-2022.³ There have also been various Ministerial and Government decisions focusing on eradicating racism and discrimination.⁴

¹ 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, ¶ 1-7, CERD, U.N. Doc. CERD/C/GTM/14-15 (Oct. 28, 2013).

² *Id* at ¶ 15.

³ *Id* at ¶ 19-26.

⁴ *Id* at ¶ 27-49.

Article 3

4. Article 3 of the CERD mandates that the State has an obligation to “condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”⁵ To meet this obligation Guatemala has issued Legislative Decree No. 39-2005, acceding to the International Convention on the Suppression and Punishment of the Crime of Apartheid.⁶ In addition the Guatemalan legal system includes a regulatory framework guaranteeing full equality of rights regardless of race, ethnic origins, gender, language, religion, opinion or social status.⁷ The Committee did not make any recommendations regarding article 3.

Article 4

5. Under Article 4 of the CERD the State is obligated to take measures against incitement to discrimination and develop laws to stop these actions.⁸ The Committee in their 2010 report recommended that Guatemala “redouble its efforts to adopt a law which specifically classifies the various manifestations of racial discrimination as punishable acts in accordance with article 4 of the Convention and that it introduce the legislative amendments required in order to align domestic laws with the convention.”⁹ While the State has created seven draft laws relating to this recommendation, none of the draft laws has been passed.¹⁰ Therefore, the State has not complied with the recommendation made by the Committee. The State must ensure the effective enforcement of Article 4 of the CERD at the national level regarding indigenous peoples in Guatemala.

5 International Convention on the Elimination of All Forms of Racial Discrimination art. 3, Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

6 C.E.R.D. Consideration of reports submitted by State parties under article 9 of the Convention, Guatemala, Oct. 28, 2013, CERD/C/GTM/14-15, ¶ 130 (2013.)

7 *Id.*

8 International Convention on the Elimination of All Forms of Racial Discrimination art. 4, Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

9 Consideration of reports submitted by States parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination, ¶ 7, CERD, U. N. Doc. CERD/C/GTM/CO/12-13 (May 19, 2010).

10 C.E.R.D. Consideration of reports submitted by State parties under article 9 of the Convention, Guatemala, Oct. 28, 2013, CERD/C/GTM/14-15, ¶ 131-137 (2013.)

Article 5 (a), 5 (b) & Article 6: Indigenous Women's Rights
Violence Against Indigenous Women & Access to Justice:

6. *Violence Against Indigenous Women*: Under Article 5(b) of the CERD, the State has an obligation to guarantee “[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”¹¹ To comply with this obligation the State must provide indigenous women with security of their person and enforce assured protections regardless of whether attacks originate from government officials, individuals, groups of citizens, or institutions.¹² Even though the State has taken on this obligation, the rate of violence against indigenous women remains high. In their most recent reports, INE has stated that domestic violence against women has varied only slightly in the past three years. Their statistics reveal that 30,578 domestic violence cases were reported in 2011,¹³ with a sharp rise in 2012 to 33,140 reports.¹⁴ In 2013, there was only a slight decrease in the number of cases to 32,918.¹⁵ The Ombudsman Office reports have confirmed that more than 9 out of every 10 of these reported cases ended with the abuser evading conviction.¹⁶ With such low rates of conviction, indigenous women remain vulnerable to future attacks from the alleged abusers who never face justice.
7. *Femicide*: The State currently has one of the highest rates of Femicide in the world despite efforts to lower the rate in recent years. In 2011, COPAF reported 705 cases across the State.¹⁷ According to the Ombudsman's Office, this number dropped to 560

11 International Convention on the Elimination of All Forms of Racial Discrimination art. 5(b), Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

12 *Id.*

13 National Institute of Statistics, number of domestic violence reports by sex of the victim, <http://www.ine.gob.gt/index.php/informacion-publica/informacion-publica-de-oficio>.

14 *Id.*

15 *Id.*

16 Human Rights Watch, World Report 2014: Guatemala, <http://www.hrw.org/world-report/2014/country-chapters/guatemala?page=2>.

17 Organization of American States, IACHR Hails Progress Against Impunity in Guatemala, press release, 12 March 2012, http://www.oas.org/en/iachr/media_center/PR_releases/2012/033.asp.

reported cases in 2012.¹⁸ While the rate of reported Femicide cases seems to be decreasing, one of the more alarming statistics shows that convictions under current laws, such as The Act Against Femicide and Other Forms of Domestic Violence Against Women (Decree 22-2008), are quite rare. In 2012, only 150 perpetrators of Femicide were sentenced by State courts.¹⁹ Additionally in 2013, while 198 cases of Femicide were reported, 31,836 cases concerning other forms of violence against women were also reported.²⁰

8. *Access to Justice and Indigenous Language Translators*: Both Article 5(a) and Article 6 outline the State’s obligations regarding “equal treatment before tribunals and all other organs administering justice,²¹” as well as the obligation to produce “effective protections and remedies through the competent national tribunals and other State institutions...”²² While neither article explicitly references indigenous women, it is clear that the State has assumed an obligation to provide adequate access to justice for all indigenous people, including indigenous women.²³ Currently, 40% to 60% of the population of Guatemala is indigenous, and Guatemala is home to over 22 indigenous languages.²⁴ While the official language of the State is Spanish, many indigenous people communicate only in their native tongue. Interviews with indigenous women revealed that language barriers keep many indigenous women from reporting crimes committed against them, especially in rural areas. This obstacle to justice is exacerbated by an inadequate amount of translators in courthouses and police stations.

¹⁸ Guatemala Human Rights Ombudsman Office 2012 report.

¹⁹ United Nations Populations Fund, *Breaking the Silence on Violence Against Indigenous Girls, Adolescence and Young Women*, (May, 12 2013), http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/VAIWG_FINAL.pdf.

²⁰ United Nations High Commissioner of Human Rights, *Report of the United Nation Hugh Commissioner for Human Rights on her activities of her office in Guatemala*, ¶ 51, Doc. A/HRC/25/19/Add.1 (January 13,2014.)

²¹ International Convention on the Elimination of All Forms of Racial Discrimination art. 5(b), Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

²² International Convention on the Elimination of All Forms of Racial Discrimination art. 6, Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

²³ International Convention on the Elimination of All Forms of Racial Discrimination art. 5(b), Dec. 21, 1965, Sept. 8, 1967, U.N.T.S. 660.

²⁴ United Nations Populations Fund, *Breaking the Silence on Violence Against Indigenous Girls, Adolescence and Young Women*, (May, 12 2013), http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/VAIWG_FINAL.pdf.

9. *The Creation of Training Courses for Judges and Judiciary Staff*: The State claims that they have implemented anti-discrimination training programs to educate judges and judiciary staff. However, as of now, the effectiveness of the programs has been called into question with the recent case of Ms. Maria Trinidad Gutierrez. Ms. Gutierrez, the Commissioner Coordinator of CODISRA and an indigenous woman, was recently discriminated against by a State judge during a hearing in the Judiciary Courts Tower.²⁵ Ms. Gutierrez began to speak in her indigenous language, Q'eqchi', when greeting the court but was swiftly silenced by the presiding judge.²⁶ The judge then prevented Ms. Gutierrez from speaking in her indigenous language, only allowing her to continue her testimony in Spanish.²⁷ This ongoing case highlights the large barrier placed between indigenous women and access to justice when court officials refuse indigenous women their right to speak in their native tongue. As Ms. Gutierrez is fluent in both her indigenous language and Spanish, she was able to continue with her testimony. However, an indigenous woman unable to speak Spanish would be barred from reporting a crime or facing her abuser in court due to her inability to effectively communicate.
10. *Anti-Discrimination Law*: Decree 57-2002 amended the State Criminal Code to include Article 202.bis. which criminalizes discrimination against any person based on their "gender, race, ethnicity, language, age, religion, economic status, illness, disability, marital status..."²⁸ However, one of the shortfalls in the law can be found in its remedy. The remedy provided is too small to be effective against mass discrimination in the State. With a jail sentence of less than three years and a maximum fine of 3,000 quetzals, a person could easily avoid any substantial punishment,²⁹ since Article 50 of the Criminal Code allows a person sentenced to less than five years in jail the option to pay an additional fine, between 5 and 100 quetzales (not a substantial sum), in order to avoid any time in prison.³⁰ In addition, the majority of money obtained through the fine is usually

²⁵ Interview with Maria Trinidad Gutierrez, the Commissioner Coordinator of the Presidential Commission on Racial Discrimination Against Indigenous Peoples, in Guatemala City (Aug 11, 2014).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Decree No. 57-2002 of the Guatemalan National Congress, published on October 9, 2002.

²⁹ *Id.*

³⁰ Criminal Code of Guatemala, Title VI, Chapter I, Article 50.

used to pay legal fees, with little going to the victims.³¹ During our interviews it was revealed that high legal costs and small remedies keep many indigenous women from coming forward with their cases.³² Any money awarded will often go to paying for an attorney rather than going to the victim and her needs. In addition to financial concerns, the high burden of proof needed to convict an individual of the crime remains a roadblock to enforcing the law. In many cases a person needs to be either caught on camera voicing their discrimination against the victim or a third party must testify to witnessing the act of discrimination. Both types of proof are usually very hard for victims to obtain.

11. *DEMI*: Certain State agencies have attempted to assist indigenous women by promoting their access to justice. For example, DEMI provides free legal representation for indigenous women who are unable to speak Spanish.³³ The Office currently has six regional offices throughout the State and assists women in their home villages as opposed to asking them to travel to more urban centers.³⁴ Once a case is taken on by DEMI, the Office offers both legal representation and medical assistance to the victims.³⁵ While the Office does present a variety of services to indigenous women, it is severely limited by the small budget allocated by the State.

Measures Adopted by the State:

12. *Presidential Commission for Combating Femicide In Guatemala*: Under Order No. 46-2012 the State established the Presidential Commission for Combating Femicide in Guatemala.³⁶ While the main goal of this Commission is to eliminate Femicide in the State, currently the Commission is without a Minister.³⁷ The Commission's previous Minister, Alba Trejo, resigned in February 2013 over security threats made against her

³¹ Interview with Maria Trinidad Gutierrez, the Commissioner Coordinator of the Presidential Commission on Racial Discrimination Against Indigenous Peoples, in Guatemala City (Aug 11, 2014).

³² *Id.*

³³ Office for the Defense of Indigenous Women, <http://demi.gob.gt/main.asp?clc=249>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Centro de Reportes Informativos sobre Guatemala, http://cerigua.org/1520/index.php?option=com_content&view=article&id=13439%3Acomision-presidencial-contra-el-femicidio-aun-sin-coordinadora&Itemid=10 (April 24, 2014.)

³⁷ *Id.*

family.³⁸ Trejo stated that she feared for the lives of her children.³⁹ At the time of the preparation of this report, the government had not replaced Trejo or appointed anyone to take on the responsibilities of the Presidential Commission.

Measures Adopted by the Congress:

13. The Congress is not currently any draft bills regarding Femicide, violence against women or access to justice for indigenous women or increasing the number of indigenous language translators for courts.

Observations and Recommendations of the Committee and State Measures Taken to Address the Recommendations:

14. In 2010, the Committee made no recommendations regarding indigenous women's rights or violence against indigenous women.
15. The Committee in their last report recommended that the State guarantee the right of indigenous peoples to an appropriate system of legal interpreters, bilingual counsel and court officials in judicial proceedings. To address this recommendation the State has created the Office of the President of the Judiciary and the Supreme Court, Creation of the Indigenous Affairs Unit of the Judiciary. The Indigenous Affairs Unit of the Judiciary, inaugurated March 12, 2012, assists the Office of the President of the Judiciary in hiring interpreters for judicial proceedings.⁴⁰ In addition, the Public Criminal Defense Institute has worked toward interpreting initial statements and subsequent proceedings into indigenous languages.⁴¹ They facilitate the use of cultural experts reports as evidence in criminal proceedings and formulate culturally relevant criminal defense strategies.⁴² Lastly, the Institute provides criminal law counsels with 13 interpreters to assist in their daily tasks.⁴³ However, no official bilingual or mandatory interpreter laws have been passed by the State since the 2010 recommendation. While the State has not guaranteed

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ C.E.R.D. Consideration of reports submitted by State parties under article 9 of the Convention, Guatemala, Oct. 28, 2013, CERD/C/GTM/14-15, ¶ 235 (2013.)

⁴¹ C.E.R.D. Consideration of reports submitted by State parties under article 9 of the Convention, Guatemala, Oct. 28, 2013, CERD/C/GTM/14-15, ¶ 245 (2013.)

⁴² *Id.*

⁴³ *Id.*

the rights that the Committee recommended, they are moving toward establishing availability for interpreters in the judicial system. Nevertheless, much remains to be done.

16. The Committee also recommended that the State and the UCI continue to offer courses for judges and staff to help ensure that indigenous people have effective and equal access to justice. During 2010-2012 the State created an academic program for providing updated information on the rights of indigenous peoples and the elimination of racism in Guatemala.⁴⁴ So far training has been administered to judiciary staff, the Public Prosecution Service, the Public Criminal Defense Institute, the Office of the Counsel-General, the Office of the Human Rights Advocate and the National Civil Police.⁴⁵ Ninety-eight professionals completed the program during 2010-2012.⁴⁶ However, no data has been issued for the number of officials who completed the program since 2012. Therefore, it is unclear to what extent the State has met the recommendation prescribed by the Committee.
17. In addition, the Committee has recommended that the Public Prosecutor's Office raise awareness and develop training courses for attorneys and other staff in that office on criminal prosecutions for the offence of discrimination and on the rights of indigenous peoples. While the State did administer a new training program for judicial officials as noted in paragraph 12 above, there is no information to indicate that a training program is currently run by the Public Prosecutor's Office. However, members of the Public Prosecutors Service do attend some training on the rights of indigenous peoples and the elimination of racism.⁴⁷ It appears that the State has not met the recommendation of the Committee.
18. Since the 2010 Committee recommendation the State has passed no legislation regarding access to justice for indigenous peoples. However, certain recommendations may have been met through the creation of government agencies such as DEMI, presidential policies or Supreme Court policies. The Criminal Chamber of the State Supreme Court recently passed Circular No. 7-2012 which instructs lower courts to apply international agreements, such as the CERD and UNDRIP, to domestic cases involving indigenous

44 C.E.R.D. Consideration of reports submitted by State parties under article 9 of the Convention, Guatemala, Oct. 28, 2013, CERD/C/GTM/14-15, ¶ 267-270 (2013.)

45 *Id.*

46 *Id.*

47 *Id.*

people.⁴⁸ The Court explained that this was necessary in order to comply with the State's international obligations. Because this is a policy developed by the Criminal Chamber of the Supreme Court, the Circular does have some binding effect upon lower courts. However, the policy does not have the same weight as a law passed by the State legislature. The State has taken some steps to assist indigenous people in access to justice, but has failed to do so through legislative means as the Committee recommended.

19. Lastly, the Committee made the recommendation for the State to formally recognize indigenous legal systems in their court system. This recognition would ensure respect for the traditional systems of justice of indigenous peoples, in conformity with international human rights law. Currently, the State has passed no law that requires courts to accept traditional forms of indigenous law as legally binding. The State has made some effort in this regard, including Circular 7-2012 (addressed in paragraph 18 above), which directs courts to recognize indigenous legal systems.⁴⁹ Nevertheless, more remains to be done.

Recommendations for the State:

20. Allocate sufficient resources to DEMI in order to ensure its effective operation, and effectively enforce Article 5(b) of CERD at the national level regarding violence against indigenous women and their rights.
21. Create a network of indigenous translators who may travel to each courthouse in each zone. Using a network model, instead of stationing 22 indigenous language translators (one for each indigenous language in the country) at every courthouse, would enable the State to meet its obligation at a lower cost. However, the State would still need to place a certain number of indigenous language translators at every courthouse for daily assistance.
22. Modify the remedy in the anti-discrimination law (Decree 57-2002) to include attorney fees. This would allow victims to receive the money from the judgments and have the security that their attorney will be paid.
23. Increase the maximum prison sentence under the anti-discrimination law (Decree 57-2002) to more than five years to allow for stronger repercussions.
24. Expand permissible evidence under the anti-discrimination law (Decree 57-2002) to include victim testimony and other forms of evidence.
25. Consult with indigenous communities to create and implement a road development project that would connect rural areas with urban areas. This road development from rural

⁴⁸ Supreme Court of Guatemala, Criminal Chamber, *Circular No. 7-2012*, April 23, 2012.

⁴⁹ *Id.*

areas is essential to access to justice for indigenous women. Many courts are stationed in urban areas; rural indigenous women often cannot afford to travel to urban areas multiple times for entire days. A better road system connecting rural indigenous communities to cities would allow indigenous women to make their journey in a quicker time and permit them to return home sooner.

Article 5 (c): Equality in the Enjoyment of Rights: Political Rights

Background on Voting Rights of the Guatemalan Indigenous Population:

26. In 2013, the State of Guatemala submitted its fourteenth and fifteenth combined periodic report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. The report goes through an in-depth analysis over the current state of discrimination in many different areas including voting rights and the capability to participate in the election of national, local, and municipal government.
27. The reality of the situation remains that many indigenous populations are located in rural areas of Guatemala with little to no access to transportation. Many indigenous peoples do not own a car or have access to a car or bus to take them to areas such as Guatemala City, rendering access to polling areas difficult, if not impossible.
28. For the few that have taken the trek to access voting polls, often times the polls are not available in the native language of the indigenous population. According to Congressman Amiclar Pop, Member of the Committee on Indigenous Peoples Congress of Guatemala, voting is available in all languages, Spanish and the indigenous language of the population⁵⁰. However upon meeting with the Indigenous Community Vecinos de la Aldea Churranco, in the central area of Guatemala, one of the members of the Elderly Council informed us voting polls are rarely, if ever, written in the native language, but are exclusively in Spanish.⁵¹ According to the Elders in the Indigenous Community of Churranco, education is one of the main reasons people either do not vote or only vote based on propaganda.⁵² Political campaigning often focuses on telling the people what they want to hear and making promises the candidate is unable to keep. Often, an indigenous person who is able to find a way to the polls on voting day, because they cannot read Spanish, votes for the name with which they are familiar due to political campaigning. Often, they are unaware of who they are actually voting for.

⁵⁰ Conversation with Congressman Amiclar Pop, August 11, 2014.

⁵¹ Conversation with Elders, Indigenous Community of Churranco, August 13, 2014.

⁵² *Id.*

29. Not being able to access the voting polls and not having the opportunity to vote in their native languages constitute discrimination against indigenous populations.
30. The participation of indigenous persons in the legislative branch is still very limited. Of the total deputies in the 2008–2012 legislature, only 19 were indigenous, despite the fact that 42.7% of the population is indigenous. In the 2009 legislature (14 January 2008 – 14 January 2009), two indigenous deputies (Ms. Rosa Elvira Zapeta Osorio, fourth secretariat, and Mr. Pedro Pascual, fifth secretariat) participated in the Steering Committee and an indigenous deputy chaired the Commission on Indigenous Peoples. As a result of the 2011 elections, of the 158 deputies for the legislative period 2012–2016, only 23 are indigenous, including only 3 women.⁵³

Measures Adopted by the State:

31. The state of Guatemala has begun to adopt measures to try to encourage more 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.⁵⁴ The Commission is entrusted with designing viable political, social and economic approaches to the various indigenous sectors, territories, communities and peoples in order to help to solve problems affecting their interests.⁵⁵ Additionally there has been implementation of new educational policies to help encourage widespread education of indigenous population, which will also help with democratic participation.⁵⁶
32. The Indigenous Development Fund of Guatemala (FODIGUA- started 2011) is the State indigenous body entrusted with launching and promoting individual and collective initiatives that contribute to the cultural, political, social, environmental and economic development of the Mayan, Garifuna and Xinka peoples through a multicultural and intercultural perspective and to State reform.⁵⁷ The Fund's policies and activities target 24 linguistic communities, giving priority to indigenous authorities, elders' councils and the expression of indigenous women, youth and children.⁵⁸

⁵³ CERD/C/GTM/14-15. ¶ 148.

⁵⁴ CERD, *supra* note 1

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

33. Training for indigenous women (at Patzun and Chimaltenango) and promotion of election-related multicultural volunteer work. Beneficiaries 250 indigenous women; Training for indigenous young persons (at the Santiago Indigenous Institute) and promotion of election-related multicultural volunteer work. Beneficiaries 250 indigenous young persons. The aim is greater empowerment and the expression of integral and culturally pertinent civic mindedness. in Independent Countries, 1989 (No. 169) of the International Labor Organization (ILO), and to, inter alia, cultural principles and values, democracy, citizen participation, development and leadership.⁵⁹

Measures Adopted by Congress:

34. Aware of its duty to legislate and pursue the welfare of all citizens so that racism and discrimination are eradicated in the country, the Congress, through various deputies and the Commission on Indigenous Peoples, has promoted draft acts in support of the indigenous peoples. In 2012, the Commission held various meetings with indigenous peoples' institutions and organizations in order to promote a legislative agenda for indigenous peoples.⁶⁰ The main purpose of the meetings was to reach agreement with participants on initiatives to submit to the Congress. Various such draft acts have been submitted to the Congress directly.

Observations and Recommendations of the Committee:

35. The Committee recommends that the State party redouble its efforts to ensure full participation by indigenous people, especially women, in all decision-making bodies, in particular representative bodies such as the parliament, and in public affairs, and that it take effective steps to ensure that all indigenous peoples participate in all levels of public service. Some measures have been taken to comply with these recommendations, but much remains to be done.

36. The Committee recommends that the State party effectively enforce the Urban and Rural Development Council Acts in order to secure fuller participation by indigenous peoples in decisionmaking. To date, no measures have been taken to comply with this recommendation.

Recommendations for the State:

⁵⁹ *Id.*

⁶⁰ *Id.*

37. Adopt measures in consultation with indigenous peoples to improve and secure fuller participation by indigenous peoples in decision-making, and effectively enforce the Article 5(c) at the national level regarding political rights of indigenous peoples in Guatemala.

Article 5(d): Access and Right to Land

General Background on land rights and its actual situation in indigenous communities:

38. Guatemala has a long history of discrimination and inequality in land distribution. In the 1996 Peace Accords in Guatemala, many promises were made by the State on the Identity and Rights of Indigenous Peoples to guarantee the rights of indigenous peoples. These promises included the regularization of land tenure and commitments to give indigenous peoples the right to use and manage their own land resources. This, combined with Guatemala's own Constitutional Articles protecting the rights of indigenous peoples⁶¹ and their commitment and signing of the CERD and the ILO Convention 169, both of which include specific language regarding land rights,⁶² provides the foundation of Guatemala's legal commitment to protecting indigenous people's land rights. While these measures taken are a positive step, there are still major concerns, which include the allocation of land to indigenous communities, the lack of consultation and good faith consultation with indigenous communities regarding the exploitation of natural resources by mining companies, compliance with Guatemala's legal obligations, and enforcing mechanisms available when indigenous communities are found legally to be owners of their land.

39. In July 2014, the Constitutional Court of Guatemala issued a ruling in favor of the Indigenous Community of Vecinos de la Aldea Chuarrancho, holding that the people of Chuarrancho possess ownership of their land. Unfortunately, in Guatemala, in order for a decision of the Constitutional Court to be precedential, the Court must reach the same decision three times, and this case may prove to have been unique. There are approximately 1200 indigenous land conflicts pending in Guatemala, and these may not meet with the same result as the Chuarrancho case. Since the ruling, the media have disparaged the judges, denouncing them as "communist". This negative public reaction evidences that many thought the ruling was incorrect. Much needs to be done to inform the public concerning the land rights of indigenous peoples.

⁶¹ Political Constitution of the Republic of Guatemala, art. 66-68, 31 May, 1985.

⁶² International Convention on the Elimination of Racial Discrimination, art. 5(d)(v), 4 Jan. 1969. International Labor Organization Convention No. 169, art. 6-7, 5 Sept., 1991.

40. Despite the decision of the Constitutional Court, a mining company is now operating in Chuarrancho without the Community's consent.
41. Under Article 67 of their Constitution, Guatemala has a duty to "protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."⁶³ Guatemala thus has a duty to help protect Churranchos' ownership and control of the land and not enable those such as mining companies to operate without the consent of the indigenous community.
42. Additionally, there are concerns regarding Guatemala's duty to consult. This is especially true in cases where indigenous peoples have the right to the land and this right has been duly recorded, but the right to consultations regarding the exploitation of natural resources is not respected. While Guatemala has a duty to consult under its international obligations, it lacks a legislative framework regulating the consultation procedure.⁶⁴ And when consultations do take place, there is concern that they are not conducted in good faith. Moreover, despite the fact that the Constitutional Court has twice ruled that Guatemala has an obligation to consult with indigenous peoples, the Court has failed to overrule administrative and legislative measures that were adopted without prior consultation. The court has ruled that while there is a duty to consult, sometimes the country's development policies are in direct conflict with this duty, and the Court has been hesitant to make any rulings that interfere with this development policy.⁶⁵
43. Approval of licenses for mining and energy projects continues without good faith consultation with indigenous communities. The State continues to issue licenses without knowing if consultations took place between mining companies and indigenous communities.

Measures Adopted by the State:

44. The State has formed several agencies and programs that address specifically access to land for indigenous peoples.
45. The Land Fund (FONTIERRAS), which was enacted in 1999 and implemented in 2005, has worked to develop programs that help regulate access to land through the

⁶³ Political Constitution of the Republic of Guatemala, art. 67, 31 May, 1985.

⁶⁴ Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, ¶ 16, H.R.C., U.N. Doc. A/HRC/15/37/Add.8 (July 8, 2010) (by James Anaya).

⁶⁵ Annual Report of the United Nations High Commissioner for Human Rights, ¶ 57, H.R.C., U.N. Doc. A/HRC/25/19/add.1 (Jan. 13, 2014).

government's purchasing farmland for redistribution to poor farmers, many of whom are indigenous.⁶⁶ The Land Fund focuses on four principles: Equality, Transparency, Cultural Relevance, and Social Justice. Between 2004-2008 75% of the land awarded was to indigenous communities. The Land Fund has also paved the way for the recognition of indigenous communities' holding direct collective rights.⁶⁷ Although the creation of the Land Fund was a significant step, there remain problems, including the lack of resources and funding, corruption in the system, poor technical assistance, low-quality land available under the system, and inefficiency.

46. Two programs that have resulted from the Land Fund established in 1999 are the Access to Land Program and the Land Leasing Program, the former of which distributes estates, and the latter of which grants loans and subsidies for land leases. From 2009-2011, the majority of these leases and loans were to indigenous peoples.⁶⁸
47. The Secretariat for Agrarian Affairs (SAA) provides procedures to identify the type of land dispute and then settle the dispute in a non-judicial approach. These non-judicial approaches include mediation, negotiation, conciliation, arbitration and free legal assistance. The SAA additionally holds round-table discussions on ancestral land claims in indigenous communities, including the Zinka communities of Santa Maria Zalapan.⁶⁹ Between 2009 and July of 2012, the SAA settled approximately 1,516 cases. While these approaches provide non-judicial alternatives, it is unclear what effect they have on indigenous communities when the communities have land disputes involving mining companies.

Measures Adopted by Congress:

48. The Decree Law on Cadastral Information Registry (Decree No. 41-2005) created the Land Registry (RIC) and established a legal structure for the protection of land ownership and tenure for indigenous peoples. Under Article 23 of this Decree, "communal land" is recognized and defined as "Land that indigenous or rural communities, as collective

⁶⁶ Summary Record of the 1981st Meeting, ¶ 10, CERD/C/SR.1981 (Mar. 3, 2010).

⁶⁷ Annual Report (2013) at ¶ 60.

⁶⁸ 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, ¶ 200-201, CERD, U.N. Doc. CERD/C/GTM/14-15 (Oct. 28, 2013).

⁶⁹ Annual Report at ¶61.

entities own, possess or hold in tenure, regardless of whether or not legal title to the land has been established, and land appearing registered to the State or municipalities but having traditionally been owned or held under the communal regime.”⁷⁰ This Decree requires that once ownership, possession or tenure of land has been established, the Land Registry (RIC) must recognize and administratively declare and record such land as communal, and if necessary, adjust the register.

49. The Land Registry (RIC) established the Specific Regulation on the Recognition and Declaration of Communal Land. The Specific Regulation established the procedures of Communal land identification and recognition by the Land Registry (RIC). However, there are no procedures that adequately address disputes over land recognition. The Specific Regulation states that when there is a dispute, the Land Registry (RIC) shall invite the parties in question to seek a solution based on mutual consent, but the overall procedures for this are unclear, especially when dealing with indigenous communities and mining companies.
50. The current Mining Law provides that mining companies seeking an exploitation license must complete an Environmental Impact Assessment (EIA), which is reviewed by the Ministry of Environment and Natural Resources (MARN), and states that communities should be involved in the discussion of the environmental impacts of proposed mining projects. There is little guidance on what exactly is required of the mining companies and what these discussions must entail.
51. Since 2009, while the Draft Act No. 3684 on consultations with indigenous peoples has been proposed but is currently pending, there have been no other proposals about this topic that have been submitted.

Observations and Recommendations of the Committee:

52. In 2010, the Committee recommended that Guatemala establish procedures that complied with their international obligations concerning free, prior, and informed consent. The Committee urged that Guatemala needs to be effectively consulting indigenous communities that may be affected by development projects, particularly those involving mining corporations.⁷¹ The Committee also pointed out that even without domestic

⁷⁰ CERD/C/GTM/14-15 at ¶ 203.

⁷¹ Consideration of reports submitted by States parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination, ¶ 11, CERD, U. N. Doc. CERD/C/GTM/CO/12-13 (May 19, 2010).

legislation and regulations, Guatemala still has a duty to conduct prior consultations. The Committee recommended that Guatemala work with indigenous communities in setting up legislation and regulations concerning their duty to consult.⁷²

53. Another area that the Committee highlighted was the need for more communication between the government and the indigenous communities. The Committee suggested round-table dialogues. Additionally the Committee recommended expediting the adoption of the Indigenous Peoples Consultation Act and amending the Mining Act.⁷³

54. Overall, the main issue in the 2010 Recommendations concerned Guatemala's duty to consult and work together with the indigenous communities to establish these standards.

55. Since these recommendations were made, Guatemala has yet to adopt clear legislation that addresses indigenous land rights, but through the courts Guatemala has taken steps to establish indigenous rights and access to land. Guatemala has not addressed either the duty to consult issue or the Mining Act. Guatemala has set up round tables for dialogue including several Boards whose goals are to avoid disputes and promote governance.⁷⁴

Recommendations for the State of Guatemala:

56. Guatemala's Land Registry (RIC) should address the mechanisms that are available when there is a dispute regarding land recognition and make sure that indigenous peoples are given the proper information and resources to help them resolve the dispute. Additionally there needs to be an available procedure through which indigenous peoples can more easily prove traditional ownership of land.

57. Guatemala should create a mechanism for the government to be more involved with consultations and make sure that these consultations are meeting Guatemala's international obligations, and effectively enforce the Article 5(d) at the national level regarding access and right to land of indigenous people in Guatemala.

58. It is also recommended that the Government provide resources to communities to help with the administration of the land that is owned by the communities, especially in the case of Chuarrancho. The government has an obligation to recognize, respect and promote indigenous peoples rights. This is especially true when mining companies are operating on land that has been declared to be owned by indigenous communities, which have not approved of the operation of mining operations on their land.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ CERD/C/GTM/14-15 at ¶ 211-212.

59. The State should focus particularly on the implementation of legislation and court cases that rule in favor of indigenous peoples' right to land.

Article 5 (e): The Right to Public Health, Medical Care and Social Services

General Background to Health:

60. The Ministry of Public Health and Social Assistance is the primary health-care service provider in Guatemala, constituting seventy percent of all health-care provision. Most services are absent in rural areas.⁷⁵ The social security system covers ten percent through work-based health care, and the Ministry of Defense ensures the armed forces receive health care services.⁷⁶ The amount of investment in health care has declined in recent years and the health sector is under-resourced, especially in rural areas that already have limited access.⁷⁷

61. All citizens of Guatemala have a right to attain the highest standard of physical and mental health under Article 12 of the International Covenant on Economic, Social and Cultural Rights.⁷⁸

Background to Health for Indigenous Peoples:

62. In many indigenous communities basic services are absent, resulting in widespread deprivation and poor health.⁷⁹

63. The constitutional protection of indigenous groups has shown a clear and consistent failure to adequately address the situation of indigenous peoples in Guatemala.⁸⁰ In the March 1995 Agreement on the identity and rights of indigenous peoples, concluded as part of the Peace Accords, it was acknowledged that the indigenous peoples had been subject to discrimination, exploitation and injustice, and had endured unequal and unjust treatment and conditions because of their economic and social status. It further acknowledged that this "historical reality" continues to affect these peoples profoundly,

⁷⁵ *United Nations General Assembly*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Gover, at 6.

⁷⁶ *Id* at 5.

⁷⁷ *Id* at 6.

⁷⁸ *Id* at 7.

⁷⁹ *Id* at 10.

⁸⁰ *Id*.

- denying them the full exercise of their rights and political participation.⁸¹
64. The right to health requires that health goods and services must be accessible, available, acceptable, and of good quality.⁸² Furthermore, the State is obligated to respect, protect and fulfill the right to health, including through policy, legislative and regulatory changes.⁸³
65. The procurement process is opaque, with regulations and administrative procedures that work against the selection of bids from generic drug companies.⁸⁴ The existing bases for contracts under the open bidding system severely limit the free collection of offers.⁸⁵ Other requirements result in the exclusion of generic drugs that have to obtain special commercial registration conforming to the enacted legislation.⁸⁶ These requirements and hurdles constitute barriers to equal access to the market and free competition to the benefit of branded drug companies and against generic drugs.⁸⁷
66. The IHRC visited the Indigenous Community Vecinos de la Aldea Chuarrancho on Wednesday, August 14, 2014. During the visit, it was clear that access to healthcare and other services were not easily accessible.

Measures Adopted by the State and Congress for Health:

67. The Government has made numerous efforts to ensure a continuous and adequate supply of affordable medicines to its people through its national procurement procedure and the provision of medications at Government hospitals.⁸⁸ These efforts are admirable.⁸⁹ Nevertheless, two major Government policies, drug procurement and the intellectual property provisions of the Central America-Dominican Republic-United States Free Trade

81 *Id.*

82 *United Nations General Assembly*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainabl standard of physical and mental health, Anand Gover, at 19.

83 *Id.*

84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id* at 19.

89 *Id.*

Agreement, have had the effect of severely curtailing access to medicines.⁹⁰

68. Workshops and technical and political meetings have been held between the Presidential Commission on Discrimination and Racism (CODISRA) and the Unit for Indigenous Peoples of the Ministry of Public Health and Social Assistance to draft a public health policy for indigenous peoples.⁹¹

69. The Strategic Health Plan, 2012–2016, formulated in that political and strategic framework, covers inter alia the areas of health services and monitoring, both of which include various activities undertaken from an intercultural perspective, the development of indigenous and alternative medicine and the incorporation of epidemiologically relevant sociocultural considerations into health monitoring.⁹² Furthermore, the Basic Model for Health provides for services designed from an intercultural perspective and gives priority to indigenous medicine.⁹³

Measures Adopted by Congress:

70. Many acts have been drafted and submitted to the Congress; however, there has not been one that solely supports the health of indigenous peoples.

Observations and recommendations of the Committee on Health:

71. The Committee recognizes the State party's efforts to provide culturally sensitive health-care coverage for indigenous peoples.⁹⁴ However, it is concerned that the highest maternal and infant mortality figures are in the departments of Alta Verapaz, Huehuetenango, Sololá and Totonicapán, where the indigenous population accounts for between 76 and 100 per cent of the population.⁹⁵ The Committee is concerned about the lack of adequate and accessible health services for these communities and over the lack of sufficient data on health indicators and on measures taken to improve them (art. 5 (e)).⁹⁶

72. The Committee recommends that the State party, in close consultation with the communities concerned, devise a comprehensive and culturally appropriate strategy to

⁹⁰ *Id.*

⁹¹ *CERD 2013*, at 4.

⁹² *Id.* at 30.

⁹³ *Id.*

⁹⁴ *CERD 2010*, at 5.

⁹⁵ *Id.*

⁹⁶ *Id.*

guarantee that indigenous peoples are provided with quality health care.⁹⁷ The implementation of such a strategy should be ensured by providing adequate resource allocations, in particular for the Indigenous Peoples and Intercultural Health Unit, together with the active participation of departmental and municipal authorities, compilation of appropriate indicators and transparent progress monitoring.⁹⁸ Particular attention should be paid to improving access to health care for indigenous women and children.⁹⁹ The Committee is concerned that 90 per cent of Guatemala's 38 hydrographic basins are polluted, which hinders adequate access to safe drinking water, and notes that the most severely affected areas are San Marcos, Huehuetenango, Quiché and Sololá.¹⁰⁰ The Committee is even more concerned that this situation has caused the spread of diseases associated with a lack of sanitation, with indigenous communities being the most affected (art. 5 (e)).¹⁰¹

73. The Committee recommends that the State party take urgent steps to ensure access to safe drinking water for all the indigenous communities in question, in particular in the areas of San Marcos, Huehuetenango, Quiché and Sololá.¹⁰² The State party should also develop suitable tools for preventing and monitoring water pollution, and ensure proper treatment of those hydrographic basins that are already polluted.¹⁰³ It also recommends that the State party adopt national legislation guaranteeing all communities access to safe drinking water.¹⁰⁴
74. Based on the observations made by the IHRC, it appears as though the State should increase its efforts relating to health care. There were signs of efforts made to increase access to health care. However, to ensure health care is more accessible, the State needs to implement the suggestions made by the Committee.

Recommendations for the State:

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

75. Take more practical and effective steps to ensure equality and increased availability of health care for the indigenous peoples of Guatemala. The steps that have been made are encouraging, but they are not yet effective.
76. Set up a basic health care facility location in or near each indigenous community to help ensure more efficient and permanent access. This will hopefully increase overall general health and wellness for all indigenous peoples. And effectively enforce the Article 5 (e) of CERD at the national level regarding the right to public health of indigenous people in Guatemala.
77. Introduce proper water filtration systems in or near each indigenous community to ensure long-term access to clean water.

Article 5 (e)(v) & Article 7: The Right to Education

General Background:

78. This section discusses education for indigenous people, specifically, the access to, quality, and duration of education in indigenous communities. Under Article 7, State parties are responsible for eliminating discrimination and promoting understand and tolerance among ethnic groups through teaching, education, and culture. Article 33 of the National Education Act sets out the State's education obligations, which include: (a) promoting free and compulsory education; (b) promoting and encouraging education without discrimination; (c) guaranteeing the all-round development of every human being and knowledge of the country's reality; (d) according priority to education in resource allocation under the national budget; and (e) encouraging and guaranteeing literacy training as a matter of urgency by providing and using the necessary resources.¹⁰⁵ This portion of the Report provides an overview of the education system, followed by an examination of measures adopted by the state and congress to eradicate discrimination and disparity in education for indigenous people, and concludes with a recommendation based on the CERD's findings.
79. The elimination of school fees has led to an increase in school attendance by Guatemalan children. Primary school education is 94.46%. However, only about three-fourths of those enrolled in primary school graduate from 6th grade (80% of boys and 73% of girls), and the enrollment rate for middle school (7th-9th grades) is less than 40%.¹⁰⁶

¹⁰⁵ Ibid., art. 33, paras. 2 to 5, 8 and 26.

¹⁰⁶ Vernor Muñoz Villalobos, *Report of the Special Rapporteur on the right to education*, 11 Human Rights Council 7 (2009).

80. Education quality is also a pressing issue. Guatemala currently has the lowest literacy rate in Central America, and according to 2010 MINEDUC data, only 50% of third graders reach national standards in mathematics and just over 50% reach national standards in reading.¹⁰⁷ Among sixth graders, only 45% reach national mathematics standards and only 30% reach national reading standards.¹⁰⁸ Even when students are able to complete primary school, many do not acquire the necessary skills to advance.
81. Furthermore, while there are nominal national differences in school enrollment between boys and girls, the enrollment gap between rural and urban areas is significant. In 2002 75.3 percent of urban boys were in school, as opposed to 57.5 percent of rural boys; 54.7 percent of urban girls attend school, as opposed to 34.7 percent of rural girls.¹⁰⁹
82. In Guatemala, youth face increasingly difficult conditions, including high levels of unemployment, social and economic marginalization, rapid urbanization, increasing crime, and lack of basic services. Long-term, sustainable development and improved equity will only be possible if education of children and youth continues to improve.
83. According to MINEDUC data, only 35% of the adolescent population completed basic education; 20% enrolled for diversified secondary education and 0.27% attended university. Although the abolition of schools fees has led to a 95% enrollment rate in primary schools for indigenous children, 53.5% of young Mayan people aged 15-19 do not completing their primary education.¹¹⁰
84. Despite the efforts made by the Government to promote access to education, recent reports have caused concern that the efforts of the Guatemalan government and other NGO organizations do not address the concerns of students in indigenous areas. Among the principal concerns are: (1) the disparity in quality between indigenous and nonindigenous schools, including the disparity in student completion levels, the disparity in enrollment between boys and girls, and the disparity in actual time spent in class; (2) the number of teachers that are bi-lingual in Mayan languages; and (3) incorporation of indigenous religion, language, and history into the curriculum.
85. With respect to the disparity in quality between indigenous and nonindigenous schools, the level of literacy is highest in nonindigenous areas. Approximately 30% of all

¹⁰⁷ Ministry of Education Critical Path Report 2012-2016.

¹⁰⁸ *Id.*

¹⁰⁹ XI Censo de publication y VI de habitacion, 2002.

¹¹⁰ Ministry of Education Critical Path Report 2012-2016.

Guatemalan adults over 15 cannot read or write.¹¹¹ In addition, the student competition level is lowest in indigenous areas. Only 22% of children who complete the sixth grade move on to the Junior High level.¹¹² This situation is even more extreme among the indigenous population with 53.5% of young Mayan people aged 15-19 not completing primary education.¹¹³ This is likely linked to economic reasons. Most families can't afford the tuition for an education, and young people are expected to support the family after the sixth grade.

86. Disparities between indigenous boys and girls evidence gender discrimination in education. Only 54% of indigenous girls are in school, compared with 71% of indigenous boys. By the age of 16, only 25% of indigenous girls are enrolled, compared with 45% of boys.¹¹⁴
87. Although there are many contributing factors, poverty is influenced by disparities in formal schooling. More than half of the earnings gap between indigenous and nonindigenous adults can be explained by differences in the amount of schooling.¹¹⁵
88. The majority of educational programs in Guatemala are taught in Spanish. Only 60% of Guatemala's population speaks Spanish; the remaining 40% speak indigenous Mayan languages. Often, teachers in indigenous areas are non-indigenous and do not speak their students' native languages. *K'iche'*, *Kakchiquel*, *K'ekchi*, *Mam*, and *Quiche*, are primarily used in the rural areas of the country. Employing teachers who are not bilingual in the five native Mayan languages places indigenous children at a disadvantage educationally. A report from the MINEDUC indicated that bilingual education was not universal and that children found it difficult to adjust to the monolingual system. This language barrier forces indigenous children either to learn Spanish or to forgo educational opportunities.
89. Further, indigenous leaders have expressed concerns that because indigenous perspectives are not incorporated into curriculum, nonindigenous children might never be exposed to indigenous historical and cultural perspectives. This will result in less of a cohesive

111 Vernor Muñoz Villalobos, *Report of the Special Rapporteur on the right to education*, 11 Human Rights Council 7 (2009).

112 *Id.*

113 *Id.*

114EFA Global Monitoring Report 2009.

115 McEwan & Trowbridge, *The Achievement of Indigenous Students in Guatemalan Primary Schools*, Int'l J of Educ. Development 27 (2007) 61–76; Shapiro, J., 2006. Guatemala. In: Hall, G., Patrinos, H.A. (Eds.), *Indigenous People, Poverty and Human Development in Latin America: 1994–2004*. Palgrave, New York.

national understanding of the cultural experiences and perspectives in Guatemala as these children grow up and become contributing members of their communities.

Measures Adopted by Congress:

90. Since 2008, the draft on Act generalization of multicultural and intercultural bilingual education is currently pending of approbation within the congress.

Measures Adopted by the State:

91. In 2013 the MINEDUC expanded its National Reading Program to all 22 departments of the country, reaching approximately two million students – 80% of those enrolled in government schools nationwide. An important accomplishment in the National Reading Program roll-out was that the materials were produced, printed, and distributed not only in Spanish, but also in four indigenous languages.¹¹⁶

92. To improve the quality of education for indigenous students for whom Spanish was a second language, the MINEDUC designed and approved the reading and writing components for the Intercultural and Bilingual Education Model.¹¹⁷

93. The MINEDUC has developed strong primary school national education standards that were put into effect in 2005. The educational reform was designed with the following objective: the establishment of a multicultural, intercultural and multilingual education system, in a regionalized and decentralized form, adapted to its linguistic, cultural, economic and environmental foundations.¹¹⁸

94. Additionally, the Ministry improved the transparency and efficiency of its processes, and as a result, in 2007, received international certification of its management system. The Ministry is the first public institution in Guatemala to meet this standard.

95. The Ministry has attempted to promote indigenous culture in the educational system by allowing indigenous students to wear traditional dress and prohibiting schools from requiring indigenous students to wear school uniforms.¹¹⁹

96. The MINEDUC has organized academic programs for the training and development of teachers, including the professionalization of teaching (PADEP) and the National Literacy Act. The goal of these two programs is to increase literacy rates and develop educational

116 USAID

117 Luis Lopez, *Reaching the Unreached: Indigenous Intercultural Bilingual Education in Latin America*, Education for All Global Monitoring Report (2010).

118 CERD 2009.

119 Ministerial Decision No. 9-2011 of 3 January 2011; CERD 2013.

material that will combat racial and gender-based discrimination through the national education system.¹²⁰

97. In cooperation with the Vice-Ministry of Intercultural Bilingual Education, an effort is being made to apply Mayan language writing rules to educational material, as well as to prepare of educational materials in 22 Mayan, Garifuna and Xinka languages.¹²¹
98. The State adopted Educational policies, 2008–2012. These policies provide for strengthening intercultural bilingual education. Their strategic objective consists in expanding educational coverage at all levels of the system on the basis of equity and cultural and linguistic relevance.¹²²
99. The National Comprehensive Literacy Strategy (2004–2008) aimed to reduce the high illiteracy rates existing among the State’s indigenous population.¹²³ The program focused on: 1) the initial stage of literacy teaching; 2) the post-literacy stage, in which it runs programs both in Spanish and in 17 Mayan languages.
100. Affirmative measures have been adopted to emphasize the education of indigenous girls. In 2008, Guatemala implemented a conditional transfer program, which provided subsidies to selected families to allow their school-age children to attend school. Although it targets neither gender in particular, the program benefits mainly indigenous girls, since they are faced with greater financial obstacles to school attendance.
101. In order to eradicate illiteracy in rural areas, especially among indigenous men and women, the National Literacy Counsel and Comité Nacional de Alfabetización (CONALFA) has implemented various literacy programs.¹²⁴
102. The State provides 18 of approximately 80 public teacher training centers specialized courses in bilingual education, although as yet not all the national indigenous languages are covered.¹²⁵

Observations and recommendations of the CERD on Education:

103. Despite the improvements and the implementation of various programs, the CERD remains concerned that illiteracy is particularly high in rural areas, where the rate for the indigenous population is at least 61 per cent in the departments of Quiché, Alta Verapaz,

120 Ministry of Education.

121 CERD 2013.

122 CERD 2013.

123 CERD 2010.

124 Congress of the Republic of Guatemala, Decree No. 43-86 of August 1986, art. 2.

125 CERD 2009.

Huehuetenango, San Marcos, Totonicapán, Baja Verapaz and Sololá. It is even more concerned that the situation is still worse for women, since 87.5% of women are illiterate and only 43% complete their primary education (art. 5 (e) (v)).¹²⁶

104. The Committee urges the State party to take steps in the short, medium and long terms to reduce illiteracy, especially in rural areas, where the indigenous population is concentrated. The Committee also recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party duly implement educational reform, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples signed by the Government and the Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Union)¹²⁷.

Recommendations for the State:

105. Effectively enforce Article 5(v) & Article 7 of CERD at the national level regarding the right to education of indigenous people in Guatemala. Soliciting bilingual teachers through attractive salaries could help to increase the number of bilingual teachers in each school. It is also recommended that the State offer additional academic programs and training, similar to PADEP, to develop more standard academic standards and curricula. Teachers in indigenous communities should be compensated for the pay that they lost while attending these programs. In order to provide funding for these proposed programs, it is recommended that the State increase its investment in education. It is estimated that the State currently spends only 2% of the GDP on education. An increase in funding for the State's programs would contribute to increasing both the literacy and the bilingual education of Guatemala's indigenous children.

126 CERD 2010.

127 *Id.*