

GUATEMALA

CESCR E/1997/22

114. The Committee considered the initial report of Guatemala on articles 1 to 15 of the Covenant (E/1990/5/Add.24) at its 11th to 14th meetings on 7 and 8 May 1996 and, at its 26th meeting on 17 May 1996, adopted the following concluding observations.

A. Introduction

115. The Committee expresses its appreciation to the State party for the submission of a comprehensive core document and written replies to its list of questions, and for an introductory statement which offered an overview of recent developments and plans in relation to the promotion and protection of the rights provided for in the Covenant.

116. The Committee welcomes the willingness of the high-level delegation to engage in an open and constructive dialogue with the Committee. In this regard, the Committee appreciates the delegation's frank admission that numerous difficulties continue to be encountered and problems remain to be overcome in order to ensure the effective enjoyment of the rights provided for in the Covenant. The readiness of the State party to distribute to the members of the Committee copies of the Human Rights Procurator's report, which contains material critical of the present situation with regard to the implementation of human rights in the country, is indicative of the openness of the Government in acknowledging and pointing out the present weaknesses and failures of the system for the implementation of human rights standards in Guatemala.

B. Positive aspects

117. The Committee is encouraged by the Government's commitment to the continuity of the process of negotiating a comprehensive peace agreement, as illustrated by the signing in Mexico City on 6 May 1996 of the Agreement on Social and Economic Aspects and Agrarian Situation, which forms part of, and will come into effect with the signing of, the Agreement on a Firm and Lasting Peace.

118. The Committee welcomes the signing on 29 March 1994 of the Comprehensive Agreement on Human Rights and the establishment of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA). Further positive developments are the conclusion of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, of 17 June 1994, and the Agreement on the Identity and Rights of Indigenous Peoples, of 31 March 1995, signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). The Government's recent adherence to ILO Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples is also noted with interest.

119. The Committee notes the establishment of the Presidential Commission for Coordinating

Executive Policy in the Field of Human Rights and the Office of the Human Rights Procurator. It is noted that the latter Office has a unit for the promotion and protection of the rights of persons with disabilities and the elderly and that a bill concerning the care of persons with disabilities is currently being considered.

120. The Committee expresses satisfaction at the ending of the illegal practice of forced enlistment into military service.

121. The Committee takes note of the measures introduced to promote equality between men and women through reform of the Labour Code by Congressional Decree 64-92 of November 1992 and the Constitutional Court's declaration that articles 232 to 235 of the Penal Code are null and void on the grounds that they conflicted with article 4 of the Constitution, which states that all human beings are free and equal in dignity, responsibilities and rights.

122. The Committee further notes that the Guatemalan Housing Fund (FOGUAVI) was set up in February 1995 for the principal purpose of providing funding for projects designed to solve the housing problems of Guatemalan families living in poverty or extreme poverty.

C. Factors and difficulties impeding the implementation of the Covenant

123. The Committee recognizes that Guatemala continues to suffer from the consequences of armed conflict which has lasted more than 30 years. Overcoming the resistance to reform from vested interests which have, in the past, caused the failure of agrarian reform, and which continue to be relevant today, is of major importance. Thus, as recognized by the State party, the root causes of the armed conflict remain to be tackled, embedded as they are in socio-economic disparities and uneven land distribution in an almost feudal-like system characterized by discrimination against the indigenous and rural populations.

124. The Committee agrees with the observations made by the Government that the situation of armed conflict has resulted in serious human rights violations. The continuing existence of paramilitary groups in the guise of so-called "civilian self-defence committees", which are responsible for many thousands of extrajudicial executions, remains a serious obstacle to peace. The continuing difficulties encountered in combating the problem of impunity and the uneven distribution of economic resources have led to a loss of confidence on the part of the civilian population which needs to be addressed in order to secure economic, social and cultural rights and a return to the rule of law in the country.

125. The Committee is of the opinion that traditional values and practices assigning an inferior role to women in society and within the family are serious factors impeding the full realization by women of their economic, social and cultural rights as provided for in the Covenant.

D. Principal subjects of concern

126. While the Committee welcomes the Government's intention to reform domestic legislation to bring it into greater conformity with the provisions of international human rights instruments, among them the International Covenant on Economic, Social and Cultural Rights, it remains concerned

about the significant gap existing between the rights provided for in legislation and their implementation in practice. It notes with concern the fact that provisions of the Civil Code of Guatemala, especially its articles 109, 114 and 131, discriminate against women.

127. The Committee is extremely concerned about adverse effects which the economic and social disparities existing in the country have on the enjoyment of economic, social and cultural rights by the majority of the population, particularly by the indigenous and rural populations of Guatemala, as well as by other vulnerable groups in society, especially children, persons with disabilities and elderly persons.

128. Far-reaching racial discrimination, extreme poverty and social exclusion in relation to the indigenous populations negatively affect the enjoyment of economic, social and cultural rights by these populations, and are matters of deep concern for the Committee.

129. The Committee wishes to voice its serious concern about the continuing problem of violence against women and the insufficient attention paid to the problem by governmental institutions, which has led to the invisibility of the problem of domestic violence against women.

130. While the Committee appreciates the open admission by the Government that land was illegally appropriated by force in the past and that plans are in place to address this problem, the Committee remains convinced that the issue of land ownership and distribution of land is crucial to addressing economic, social and cultural grievances of a substantial segment of the population.

131. The Committee is deeply disturbed at the apparent flagrant disregard of labour laws, the alarming reports of employer impunity, and the lack of respect for minimum wages, conditions of work and unionization, particularly as these issues affect individuals employed in a large number of the farming sectors. The ineffectiveness of labour laws in protecting trade-union rights when coupled with the problems of high levels of unemployment and underemployment gives cause for deep concern. Thus, despite the Government's stated policy of undertaking further commitments to strengthen the labour inspectorate and introduce changes in the monitoring and enforcement of labour standards, including through the proposals on economic policy and labour legislation contained in recently signed agreements, the possibilities for ensuring effective implementation of the new proposals continue to give grounds for concern to the Committee. One aspect which is of serious concern to the Committee is the situation of those persons working in the maquilas (export sector industries), many of whom are women.

132. The Committee remains unclear as to the adequacy of social protection provided to those employed in the informal sector.

133. The general situation faced by internally and externally displaced persons remains a serious cause of concern for the Committee.

134. The Committee expresses its concern at the issue of low access to safe water for the rural population, the higher incidence of infant mortality within certain socio-economic groups, the situation of persons with disabilities, the prevalence of endemic diseases, the problem of the inadequacy of social welfare and security, the persisting housing shortage and the inadequacy of

access to health care. The Committee is of the view that this general situation affecting the most vulnerable in Guatemalan society deprives them of their full enjoyment of the economic, social and cultural rights provided for in the Covenant.

135. Particular concern is expressed by the Committee at the persisting problems of illiteracy and lack of access to education as they affect the poorest sectors of the population. Notice is also taken by the Committee of the inadequacy of human rights education provided for the entire population.

E. Suggestions and recommendations

136. The Committee acknowledges the goodwill of the Government and its open admission of the need for reform in all areas of economic, social and cultural life. The Committee stresses that the implementation of the Covenant's provisions cannot be ensured without reform and without adequate implementation of the peace accord, which require above all the just distribution of wealth and of land.

137. Thus the Committee is of the opinion that the issue of land ownership and redistribution should be closely monitored, in the light of the implementation both of article 14 of the Constitution, which provides for the expropriation of fallow land on private estates, and of the Agreement on Social and Economic Aspects and Agrarian Situation. The establishment of national benchmarks is essential to ensure a systematic review of the progress made towards implementation of these provisions and should be viewed as an essential element for ensuring international cooperation and domestic change. The Committee recommends, therefore, that international cooperation be devoted to the goal of implementation of economic, social and cultural rights.

138. The Committee notes the intention of the Government to reform its fiscal and monetary policy as a means of promoting social and economic development. The Government's plans to divert resources to social welfare measures, particularly in the fields of health and education, are welcomed. The Committee recommends that the international community support the measures taken in this regard and ensure the regular and close monitoring and review of projects undertaken pursuant to various agreements entered into with a view to securing a lasting peace.

139. The Committee emphasizes the importance of the role being undertaken by MINUGUA in monitoring the peace process and the progress of efforts to improve respect for human rights, which should include economic, social and cultural rights.

140. The Committee recommends that all legislative and other reforms take into account the need to promote equality and reverse the devastating effects of discrimination against the indigenous populations, in particular through affirmative action.

141. It is the Committee's view that the problem of discrimination against women has been neglected and that this lacuna should be addressed, especially in view of the current efforts to effect changes in attitudes and policy for sustainable peace and development in the country. The Committee notes with approval the proposed consideration of reform of family law in the Civil Code, namely its articles 109, 114 and 131, which discriminate against women.

142. It is urgently recommended that the effective implementation of trade-union rights and the labour laws be addressed. The protection of such rights requires that particular attention be accorded to the enforcement of labour laws, consistent with the provisions of the Covenant, especially in view of the considerable need of the indigenous and other disadvantaged groups in society to enjoy economic opportunities and social mobility.

143. While taking note of the various measures undertaken to reintegrate returning refugees and internally displaced persons, the Committee wishes to highlight the need for continued international cooperation in this field too. Moreover, the careful scrutiny and involvement of the international community in all these efforts will be all the more indispensable in the event of the peace agreement being signed and of the consequent need to reintegrate the demobilized army and guerrilla forces into society and the economy.

144. The Committee recommends that further measures be taken to prevent and combat the phenomenon of child labour, including through full respect for the international standards relating to the minimum age of employment for children.

145. The Committee acknowledges the value of the shift in health and education policy towards promoting access to health care and services and to education for the most disadvantaged groups of society and strongly recommends that this focus be maintained. It reiterates its strong conviction as to the need to devote sufficient resources to the implementation of articles 9 to 14 of the Covenant. In this context, attention is also drawn to the urgent need to undertake further measures to tackle the problem of illiteracy.

146. The Committee concurs with the observations made by the delegation that a major task facing the country and its Government is further to develop, strengthen and secure the participation of the population in establishing and preserving lasting peace in the country through implementation of decisions agreed on in peace accords regarding the full respect of human rights and fundamental freedoms. It is the Committee's opinion that a human rights culture must be created, including addressing the problem of culturally ingrained discrimination, which is pervasive in Guatemala.

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393. The Committee considered the second periodic report of Guatemala on the implementation of the Covenant (E/1990/6/Add.34/Rev.1) at its 38th and 39th meetings, held on 14 November 2003, and made public, at its 56th meeting, held on 28 November, the following concluding observations.

A. Introduction

394. The Committee welcomes the submission of the second periodic report of Guatemala, which was prepared in general conformity with the Committee's guidelines, as well as the information provided in the written replies to its list of issues (E/C.12/Q/GTM/1).

395. The Committee welcomes the open and constructive dialogue with the delegation of the State party.

B. Positive aspects

396. The Committee notes with satisfaction the constitutional provisions establishing the post of Human Rights Ombudsman (arts. 273-275 of the Political Constitution), as well as the adoption of the Law on the Congressional Human Rights Commission, and the Law on the Human Rights Ombudsman. The Committee also welcomes the elaboration by the Human Rights Ombudsman of a management plan for the period 2002-2007.

397. The Committee welcomes the establishment of the Office for the Defence of Indigenous Women for the promotion and development of proposals for government policies, plans and programmes for the defence of the rights of indigenous women.

398. The Committee takes note with satisfaction of the adoption of Legislative Decree No. 19 of May 2003 on national languages recognizing, promoting and respecting the languages of the Maya, Garifuna and Xinka people.

399. The Committee welcomes the ratification by Guatemala of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as its adherence to the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

400. The Committee welcomes the invitation extended to it by the State party's delegation to visit Guatemala in the foreseeable future.

C. Factors and difficulties impeding the implementation of the Covenant

401. The Committee takes note that the consequences of the armed conflict have seriously affected the full enjoyment of economic, social and cultural rights.

D. Principal subjects of concern

402. The Committee is concerned by the insufficient progress made by the State party towards the effective implementation of the peace agreements of 1996 (including the Comprehensive Agreement on Human Rights, the Agreement on Social and Economic Aspects and the Agrarian Situation) which has led to persistent serious problems, such as violence at the national level, intimidation, corruption, impunity and lack of constitutional, fiscal, educational and agrarian reforms. All these have impacted adversely on the full realization of economic, social and cultural rights enshrined in the Covenant, particularly with regard to indigenous peoples.

403. The Committee is concerned about the persisting discrimination against indigenous peoples, with regard to access to, inter alia, landownership, work, education, health services and adequate nutrition and housing.

404. The Committee is concerned about the de facto inequality between women and men, which is perpetuated by traditional prejudices and social conditions, in spite of an important number of legal instruments adopted by the State party.

405. The Committee is concerned about the high level of unemployment, in particular among indigenous peoples. In this regard, the Committee takes note that the State party has not yet ratified ILO Convention No. 2 (1919) concerning Unemployment.

406. The Committee is particularly concerned that the minimum wage is not sufficient to provide a decent living for the workers and their families and that, in practice, such insufficient salary is not always paid.

407. Notwithstanding the measures taken by the State party to decentralize and expand labour inspection services, the Committee is concerned that labour inspections are not carried out regularly, especially in rural areas.

408. The Committee is also concerned about sexual harassment of women in the workplace.

409. The Committee is concerned that only 15 per cent of the population are covered by the Guatemalan Social Security Institute and that there is a considerable disparity in the coverage of workers in rural and urban areas. The Committee also notes that the State party has not yet ratified ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security.

410. The Committee takes note of the legislative measures undertaken by the State party to address the needs of persons with disabilities, but regrets the lack of implementation measures and adequate financial and human resources in this area.

411. The Committee also takes note of the efforts made by the State party towards the implementation of the National Reparations Programme for victims of war. However, the Committee expresses concern at the lack of effective measures to reunite families separated by the conflict, to establish the whereabouts of children who have disappeared and to safeguard the rights of children orphaned by the war.

412. The Committee is deeply concerned about the persistent problem of child labour in the State party, especially in agricultural and domestic services.

413. The Committee is concerned about the extent of the problem of violence against women in Guatemalan society, both within and outside the family, and its implication for both the physical and mental health of women and children. The Committee is also concerned that the Penal Code does not consider domestic violence as a crime.

414. The Committee is concerned about the high level of poverty which affects, according to official statistics, 73.8 per cent of the indigenous population and 40.6 per cent of the non-indigenous populations.

415. The Committee is concerned about the negative effects of the coffee crisis on rural employment and standard of living.

416. The Committee continues to be deeply concerned that the uneven distribution of wealth and land and the high level of social exclusion, in particular among indigenous and rural populations, hinder the full enjoyment of economic, social and cultural rights.

417. The Committee is concerned about the current state of sexual and reproductive health of women and that the incidence of child and maternal mortality is relatively high.

418. The Committee is alarmed about the increasing level of drug addiction in the State party, especially among young people.

419. The Committee is concerned that only 30 per cent of children living in rural communities complete primary education and, in the case of indigenous children, only 20 per cent complete it. The Committee also expresses its concern about the limited access for indigenous peoples to enjoy education in their mother tongue and to use it in their dealings with public authorities.

E. Suggestions and recommendations

420. The Committee recommends that the State party make every possible effort, including through international assistance, to provide adequate follow-up to various issues contained in the peace agreements of 1996, which, following over 30 years of civil unrest, laid the foundation for national reconciliation and for the promotion of human rights.

421. The Committee recommends that the State party increase its efforts to combat discrimination against indigenous peoples, in particular in the areas of employment, health services, landownership, adequate nutrition, housing and education.

422. The Committee calls upon the State party to ensure equality between men and women in all spheres of life, in particular by taking effective measures to combat discrimination in the education of the girl-child, in access to employment, in equal pay for work of equal value and in access to land and credit services. The Committee urges the State party to increase the level of representation of women in public services.

423. The Committee urges the State party to increase its efforts to combat unemployment by strengthening technical and professional training programmes and by adopting policies aimed at facilitating investments that create jobs. The Committee encourages the State party to ratify ILO Convention No. 2 (1919).

424. The Committee recommends that the State party ensure that the minimum wage is increased regularly in proportion to the cost of living so as to guarantee an adequate standard of living for workers and their families and to ensure that the rules regarding the minimum wage are respected in practice.

425. The Committee urges the State party to verify and ensure the fulfilment of labour legislation concerning occupational health and safety conditions, including through regular inspections.

426. The Committee urges the State party to amend all its relevant legislation in order to define sexual harassment as a crime and to take effective measures to combat the crime.

427. The Committee recommends that the State party take all necessary measures to ensure that the coverage of the national social security system is significantly extended to include rural and domestic workers and their families. The Committee also recommends that the State party ratify ILO Convention No. 102 (1952).

428. The Committee urges the State party to address the condition of persons with disabilities by formulating adequate implementation measures in this area. It also recommends that the State party provide in its next periodic report detailed information on measures taken and the results obtained.

429. The Committee urges the State party to increase its efforts to reunite separated families, to continue seeking children who have disappeared and to safeguard the situation of war orphans while facilitating access to the judicial system for affected persons.

430. The Committee urges the State party to take all necessary measures, legislative or otherwise, to address the persistent problem of child labour, especially in agriculture and domestic services.

431. The Committee urges the State party to combat violence against women, including through the effective application of the Act on the Prevention, Punishment and Eradication of Domestic Violence and awareness-raising campaigns designed to combat negative traditional practices and prejudices and their effects and consequences. In this regard, the Committee urges the State party to amend the Penal Code by including domestic violence as a crime. The Committee requests the State party to provide, in its third periodic report, detailed information and up-to-date statistics on a comparative basis on the phenomenon of domestic violence in Guatemala, as well as the results of the measures to combat this serious problem.

432. The Committee recommends that the State party intensify its programmes and activities to combat poverty and improve the living conditions of the population of Guatemala, in particular of the marginalized and vulnerable groups, including indigenous peoples. The Committee requests the State party to provide in its next periodic report detailed information on the progress made.

433. The Committee encourages the State party to reorient its agricultural policies and to implement its social plan to combat the coffee crisis through measures that ensure access to adequate nutrition, health care, subsidized housing and employment opportunities for those affected by the crisis.

434. The Committee reiterates its previous recommendation²⁷ and urges the State party to implement the measures contained in the peace agreements of 1996, in particular those related to the agrarian reform and the devolution of communal indigenous lands.

435. The Committee recommends that the State party take measures to reduce child and maternal mortality, and in particular intensify the implementation of its national programme on reproductive health, provide further assistance and training to midwives, organize educational campaigns regarding women's sexual and reproductive health, and include such subjects in the school curricula.

436. The Committee urges the State party to undertake effective measures to combat drug addiction, such as awareness-raising campaigns and educational activities.

437. The Committee urges the State party to make efforts to increase school attendance of children, particularly of indigenous children. The Committee recommends that the State party broaden its intercultural bilingual education and allocate adequate funds and human resources to the Department of Intercultural Bilingual Education, and improve the working conditions of teachers by paying them better salaries and providing them with training as well as hiring additional teachers to cover rural areas fully.

438. In the light of paragraph 71 of the Vienna Declaration and Programme of Action,²⁵ the Committee encourages the State party to continue preparation, through an open and consultative process, of a comprehensive national plan of action on human rights and to seek technical cooperation from the Office of the United Nations High Commissioner for Human Rights. The Committee requests the State party to include in its third periodic report information on progress made in this regard.

439. The Committee requests the State party to provide information, in its third periodic report, on specific measures adopted by the Office of the Human Rights Ombudsman that had been set up to promote and protect economic, social and cultural rights in the country.

440. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society and, in particular, among State officials, the judiciary and the legislature and to inform the Committee, in its next periodic report, of all steps undertaken to implement them.

441. The Committee also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its third periodic report.

442. The Committee requests the State party to submit its third periodic report by 30 June 2008.

Notes

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²⁵ Adopted by the World Conference on Human Rights, held in Vienna from 14 to 25 June 1993 (A/CONF.157/24 (Part I), Chap. III).

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²⁷ *Official Records of the Economic and Social Council, 1997, Supplement No. 2* (E/1997/22-E/C.12/1996/6), chap. IV, para. 137.
