

**Convention on the
Rights of the Child
Alternative Report Submission:
Indigenous Children's Rights
Violations in Guatemala**

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I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org. This report was prepared with the help of consultant Demetrio Cojtí Cuxil, Maya K'iche.

II. Introduction

According to UNICEF, despite significant gains for children since the adoption of the Convention on the Rights of the Child in 1989, the world has not delivered upon its commitments to Indigenous children. Whether they live in low-, middle- or high-income countries, Indigenous children continue to face glaring disparities across all human development indicators.¹ Guatemala has a population of approximately 16 million people, with women accounting for 51% of the population and men 49%². According to the 2011 National Survey of Living Conditions conducted by the National Institute of Statistics, Guatemala is a young country with 52% of the population under the age of 20. According to the same survey, the majority of the youth population is located in the departments of Altiplano and Alta Verapaz, which also have the largest Indigenous populations.

The Guatemalan government estimates that Indigenous Peoples account for 40% of the population³, however, Indigenous Peoples in Guatemala along with the International Working Group for Indigenous Affairs estimate that Indigenous Peoples actually account for 60% of the population, making them the majority.⁴ The Guatemalan government lacks disaggregated data on Indigenous Peoples, which could contribute to the discrepancies within these population estimates. There are three Indigenous Peoples identified within Guatemala in the Guatemalan Peace Accords in 1996: the Maya, Xinka, and Garifuna (Afrodescendants). Together these three Peoples speak a total of 24 languages, with Mayan Peoples speaking a total of 22 different languages, each language representing a distinct Mayan Nation. Despite the linguistic diversity within Guatemala, Spanish is the sole official language within the country. As a result of this policy, Indigenous Peoples, especially those who only speak their native tongue, experience

¹ UNICEF. "UNICEF: Indigenous children left behind in their countries' progress" August 9, 2014.

² Instituto Nacional de Estadística Guatemala. (2017). "Indicadores sociodemográficos: 1.1. Proyecciones de población: Población por sexo" [Data file]. Retrieved from: <http://www.ine.gob.gt/index.php/estadisticas/tema-indicadores>

³ Instituto Nacional de Estadística Guatemala. (n.d.). *Caracterización: República de Guatemala*. Retrieved from: <http://www.ine.gob.gt/sistema/uploads/2014/02/26/L5pNHMXzy5FFWmk9NHC+rK9x7E5Qqvvy.pdf>

⁴ IWGIA. (2016). *The Indigenous world 2016*. Copenhagen: International Working Group for Indigenous Affairs.

great difficulty in accessing social services, education, and political participation. The Indigenous Peoples of Guatemala, in particular the Indigenous girls, are subject to discrimination within all aspects of life and have been historically marginalized by the dominant Ladino culture.

The Indigenous Peoples of Guatemala have lived through 500 years of colonization and brutal repression, including a 36-year long civil war that lasted from 1960-1996. During this time, there was a genocide in which 200,000 people were murdered or disappeared, mostly Indigenous. An additional 1.5 million people were displaced and more than 150,000 people were forced to flee the country to Mexico as refugees.⁵ The army also instituted a scorch and burn policy in which they burned and destroyed buildings and crops, contaminated water supplies, slaughtered livestock, and desecrated sacred lands and cultural symbols of Indigenous Peoples. In 1996, Guatemala signed the United Nations sponsored Peace Accords ending the 36-year long civil war. However, many Indigenous Peoples are still suffering from the after-effects of the civil war such as poverty, displacement, widowhood, and trauma. A major repercussion of the civil war has left land concentrated in the hands of few. Land ownership and distribution in Guatemala is one of the most unequal in the hemisphere: 2% of landowners hold 65% of the arable land.⁶

Guatemala ratified the Convention on the Rights of the Child in 1990, the Convention on the Elimination of all Forms of Discrimination Against Women in 1982 and the ILO Indigenous and Tribal Peoples Convention (No. 169) in 1996. In 2007, Guatemala voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2009, the Committee published the General Comment no. 11 clarifying the rights of Indigenous children under the convention.

In 2010, Guatemala received a number of recommendations specific to improving the status of Indigenous children. Despite these commitments, Indigenous children continue to face widespread rights violations.

We note the following interrelated areas of direct rights violations experienced by Indigenous children: Reduced access to quality education, especially bilingual education; Lack of access to healthcare; especially culturally appropriate health care; high levels of chronic malnutrition as a result of inadequate implementation of Indigenous land rights; forced child labor; and trafficking. We also explore the following human rights violations that have a secondary or long-term effect on the rights of Indigenous children, including forced evictions, lack of freedom of expression; forced evictions from historically Indigenous lands; and the criminalization of Indigenous human rights defenders.

III. Continuing Rights Violations Against Indigenous Children

A. Education

In Article 29 C, The Convention on the Rights of the Child states: “*State Parties agree that the education of the child shall be directed to the development of respect for the child's parents, his*

⁵Holocaust Museum Houston. (n.d). *Genocide in Guatemala (1981-1983)*. Retrieved from: https://www.hmh.org/la_genocide_guatemala.shtml

⁶ Cooperative for Education, “Guatemala” <http://www.coeduc.org/guatemala/profile.html>

or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” Additionally, the Guatemalan Peace Accords indicate the State should take steps to promote the use of Indigenous languages in the education system, with the goal of allowing children to read and write in their own languages and the language most commonly spoken in their community, specifically promoting bilingual and intercultural education, Maya Schools, and other experiences of Indigenous education.

Approximately 54% of Indigenous girls and 71% of Indigenous boys attend school in Guatemala. These rates drastically decrease by the age of 16, when only 25% of these Indigenous girls and 45% of these Indigenous boys remain enrolled.⁷ According to the “Report on the living conditions of Indigenous children and adolescents in Mesoamerica and compliance with their rights” published by the UN Permanent Forum on Indigenous Issues (UNPFII) in 2014, Indigenous girls from rural areas have particular difficulty accessing education. Only 16.76% of students enrolled in school were Indigenous students, and only 20% of those were Indigenous students from rural areas. Indigenous girls from rural areas made up only 9.65% of the national total of 59,637 Indigenous students were girls from rural areas.⁸ While the State has made some efforts to increase Indigenous girl’s attendance, and matriculation rates of Indigenous children are not improving. Rural, Indigenous Guatemalan schools have inadequate teaching materials, low-quality instructors, and serve highly impoverished areas. Most Indigenous children have no choice but to leave school to make low wage money to support their families.⁹

Those that have the opportunity to stay in school often face discrimination and difficulty learning in a monolingual Spanish environment. Bilingual education programs run by the State have remained at a pilot program level, only reaching roughly twenty percent of Indigenous children, and it’s effective goal, rather than to support functional additive bilingualism, is subtractive bilingualism that moves toward the elimination of Indigenous language instruction after the first three years of primary school. The failure of the Guatemalan education system to support multilingualism into adulthood has repercussions in the lack of culturally and linguistically appropriate state services for Indigenous Peoples at State hospitals and clinics, across the justice system, at RENAP (the National Registry of Persons), in carrying out the census, and other key areas for ensuring anti-discrimination and equal access to services for Indigenous children, despite legislation that requires state services be provided in Indigenous languages.¹⁰

Research supported by UNESCO has shown that when receiving primary education in their mother tongue, children are more likely to enroll and succeed in school (Kosonen, 2005); parents are more likely to communicate with teachers and participate in their children’s learning (Benson, 2002); girls and rural children with less exposure to a dominant language stay in school longer and repeat grades less often (Hovens, 2002; UNESCO Bangkok, 2005); and children in

⁷ “Why Guatemala?” *Mayan Families*, www.mayanfamilies.org/page/guatemalanfacts.

⁸ Permanent Forum on Indigenous Issues (UNPFII), *Report on the living conditions of Indigenous children and adolescents in Mesoamerica and compliance with their rights : note / by the Secretariat*, 27 February 2014, E/C.19/2014/5, available at: <http://www.refworld.org/docid/534bca1d4.html> [accessed 12 December 2017]

⁹ “State of Education in Guatemala.” *Global Education Fund*, www.globaleducationfund.org/guatemala.

¹⁰ CEPAL. “Ley Idiomas Nacionales” <https://observatoriop10.cepal.org/es/instrumentos/ley-idiomas-nacionales-decreto-no-19-2003>

multilingual education tend to develop better critical thinking skills compared to their monolingual peers (e.g., Bialystok, 2001; Cummins, 2000; King & Mackey, 2007).¹¹

Lack of access to education for Indigenous girls has significant outcomes for Indigenous women later in life. In 2011, the literacy rate for Indigenous women age 15 and older was 51.9%, which was significantly lower than the literacy rate for their non-Indigenous women counterparts at 81.1%. The literacy rate for Indigenous men that year was 74.6% and the rate for non-Indigenous men was 88.9%.¹² This means that the gap between literacy rates for non-Indigenous men and Indigenous women in 2011 was 37%. Within Guatemala's State Report to the CEDAW, it acknowledged that The National Literacy Committee (CONALFA) only provides literacy materials in 17 of the 24 Indigenous languages spoken in Guatemala. A gap also exists in CONALFA's services for Indigenous children who do not have access to schooling, as children under 13 are ineligible to receive literacy training from the Committee. "The education system in Guatemala thus apparently favours or facilitates the education of the non-Indigenous population and of those living in urban areas. It therefore follows that the current system is an exclusive one through which Guatemala condemns the rural and Indigenous population to fewer job opportunities and to a future of little opportunity, while also perpetuating this system of inequality. Unless strong, decisive action is taken to change this situation, these trends will continue for a long time to come," determined the UNPFII study in 2014.¹³

B. Health

Between 1987 and 2016, the infant mortality rate decreased from 73 per 1000 births to 29 per 1000 births.¹⁴ However, the infant mortality rate continues to be higher among Indigenous populations. These continuously poor rates are related to the severe malnutrition by which Indigenous children are affected.¹⁵ Rural, Indigenous populations suffer the most from chronic malnutrition, which is exacerbated by poor access to education, a weak economy,¹⁶ and poor access to health care services.¹⁷ For children between the ages of 3 to 59 months old, the majority of which are Indigenous, 49.8% suffer from malnutrition as of 2009.¹⁸ While 44% of the Guatemalan population suffers from stunting, it affects 58% of Indigenous children.¹⁹ There are some governmental programs to eliminate malnutrition, but despite these efforts, most

¹¹ "Children Learn Better in Their Mother Tongue" Global Partnership for Education. February 2014. Accessible at <https://www.globalpartnership.org/blog/children-learn-better-their-mother-tongue>

¹² Orozco, M. and Valdivia, M. (2017). *Educational challenges in Guatemala and consequences for human capital and development*. Retrieved from <http://www.thedialogue.org/wp-content/uploads/2017/02/Educational-Challenges-in-Guatemala-and-Consequences-for-Human-Capital-and-Development-1.pdf>

¹³ Permanent Forum on Indigenous Issues (UNPFII), *Report on the living conditions of Indigenous children and adolescents in Mesoamerica and compliance with their rights : note / by the Secretariat*, 27 February 2014, E/C.19/2014/5, available at: <http://www.refworld.org/docid/534bca1d4.html> [accessed 12 December 2017]

¹⁴ Maternal Child Survival Program. "Guatemala" <http://www.mcsprogram.org/where-we-work/guatemala/>

¹⁵ *Health In The Americas*. Pan American Health Organization, 2012, www.paho.org/salud-en-las-americanas-2012/index.php?option=com_docman&view=download&category_slug=hia-2012-country-chapters-22&alias=132-guatemala-132&Itemid=231&lang=en.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ USAID "Nutrition Profile, Guatemala" <https://www.usaid.gov/what-we-do/global-health/nutrition/countries/guatemala-nutrition-profile>

¹⁹ "Why Guatemala?" *Mayan Families*, www.mayanfamilies.org/page/guatemalanfacts.

Indigenous children under the age of 5 in Guatemala still suffer from significant development delays, considerably more so than non-Indigenous children. There is approximately a 13-year difference in life expectancy between Indigenous and non-Indigenous people in Guatemala.

Infant mortality, child malnutrition, and poor child health are intricately related to access to healthcare for Indigenous women while pregnant, giving birth, and as mothers. Indigenous women face serious barriers to access to health care services and discrimination within health care facilities. One barrier to access to health care services that Indigenous women face is the lack of quality health care facilities in rural areas. Many Indigenous women have to travel far from their homes into cities in order to obtain quality health care services. Not only does this cost more financially, it is also very taxing for the women and children to travel far when they are sick. Another barrier is that Indigenous mothers who do not speak Spanish often face language barriers and discrimination at healthcare facilities due to a lack of translators and health care professionals who speak Indigenous languages. General Recommendation 34 under the Convention on the Elimination of all Forms of Discrimination Against Women specifically encourages State parties to safeguard rural women's right to adequate healthcare that is culturally acceptable to them, and that health care information be widely disseminated in local languages and dialects through several media. Yet, Indigenous women in Guatemala who do not speak Spanish often have difficulties communicating their symptoms to health care professionals and many times they are not allowed to be accompanied into examination rooms by family members who speak Spanish. The lack of quality health care facilities in rural areas and multilingual health care professionals and translators are serious barriers that often keep Indigenous mothers and their children from receiving the health care services that they need.

A recent study conducted by Cerón et al. (2016) investigated abuse and discrimination towards Indigenous Peoples in public health care facilities in rural Guatemala via focus group discussions with Indigenous Peoples from fourteen municipalities in the western highlands. The study found that Indigenous Peoples often face three types of discrimination when using public healthcare facilities: discrimination in access to health care, abusive treatment during care, and neglect of professional ethics. Also, Indigenous women are more than twice as likely to die during childbirth than their non-Indigenous counterparts. The focus group discussions also revealed cases of forced Cesarean sections and sterilization within rural public health facilities.²⁰

In March 2017, Guatemalan President Jimmy Morales vetoed a law advocated for by Indigenous women that would have formalized the work of *comadronas* or traditional midwives by allocating Q3,000 (roughly \$400 USD) per year as an incentive. His stated reasons for vetoing the law was that the title of the law²¹ was written in just one of the Mayan languages (Kakchiquel) which, he argued, did not reflect the diversity of the Mayan peoples. He also cited ILO Convention 189 (in erroneous attempt to reference convention 169) as a reason to veto the bill, saying that the law would impinge on the freedom of Indigenous Peoples as outlined under the

²⁰ Cerón, A., Ruano, A. L., Sánchez, S., Chew, A. S., Díaz, D., Hernández A., & Flores, W. (2016). Abuse and discrimination towards Indigenous people in public health care facilities: Experience from rural Guatemala. *International Journal for Equity in Health*, 15 (77).

²¹ "Ley que declara el diecinueve de mayo de cada año, Día de la Dignificación Nacional Iyom y/o Rati't Ak'al Comadrona de Guatemala"

convention, because the law would require them to register as midwives in order to receive the incentive.²²

There is clearly a unwillingness among Guatemalan leadership to ensure culturally appropriate healthcare for Indigenous women and children, despite data that the availability of culturally appropriate care is a major factor in the rate of access to health care for Indigenous women in Guatemala,²³ and international obligations under CEDAW Gen Rec. 34 article 39 (h) which urges State parties to ensure gender and culturally responsive training of community health workers and traditional birth attendants.

C. Food Sovereignty, Land Rights, and Extractive Industries

A major systematic cause of malnutrition among Indigenous children is failed agrarian reform. Colonization, privatization, and later free trade agreements such as CAFTA have converted Indigenous communities in Guatemala from a subsistence farming lifestyle to being seasonally employed low-wage workers on banana, sugar, coffee, and now palm oil plantations for foreign markets. Guatemala currently has one of the highest GINI coefficients at .49, and land distribution is among the most unequal in the world: only 2.5% of the farms own two-thirds of the land.²⁴ Low incomes and displacement from arable land has led to poverty, food insecurity, and a dependence on processed foods. As men migrate in search of temporary seasonal agricultural work, women and children are often left without income, access to land, water, and support, and are those most significantly affected.

The Peace Accords signed in 1996 had a goal of reforming land policy and respecting Indigenous community title to lands, but efforts to do so have largely failed. A World Bank funded effort titled FRONTIERRAS aimed to lend small farmers money to buy back their original lands. However, analysis on its effectiveness in 2012 showed that it was not effective in promoting rural development and that the majority of the land that changed hands was bought by intermediaries who then consolidated into large landholdings.²⁵ Indigenous communities still face extreme difficulty in establishing collective title, and more work needs to be done to integrate land reform policy with traditional Indigenous governance structures and concepts of land management.

Relatedly, the State's continuing authorization of licenses for extractive industry, particularly mining and hydroelectric projects, on Indigenous lands has significant impact on the health and wellbeing of Indigenous children. The well known case of GoldCorps' Marlin Mine in San Miguel Ixtahuacan, Huehuetenango, is demonstrative. In 2010 studies conducted by the University of Michigan and Physicians for Human Rights found that individuals residing closest to the mine, generally communities adjacent to or downstream from the mine, had higher levels of certain metals — urinary mercury, copper, arsenic, zinc — when compared to those living

²² Prensa Libre, "Ejecutivo Veta ley que Reconoce a Comadronas" (2017) <http://www.prensalibre.com/guatemala/politica/ejecutivo-veta-ley-que-reconoce-a-comadronas>

²³ Schooley J, Mundt C, Wagner P, Fullerton J, O'Donnell M. (2009) "Factors influencing health care-seeking behaviours among Mayan women in Guatemala", *Midwifery*. 2009 Aug; 25(4):411-21. Epub 2007 Dec 3.

²⁴ Land Rights, Palm Oil, and Conflict in Guatemala. Action Aid, Septemeber 2017. Accessible at <https://www.actionaidusa.org/wp-content/uploads/2017/09/Land-Rights-Palm-Oil-and-Conflict-in-Guatemala.pdf>

²⁵ Grünberg et al. "Tierra e Igualdad." December 2012.

further away.²⁶ Levels of blood aluminum, manganese, and cobalt were elevated in comparison to established normal ranges in many individuals. The researchers noted that these levels would be expected to be magnified over time during the operations of the mine, which began in 2005. The researchers called specifically for longitudinal studies on the effects of contaminated water on the health of children. No such study was carried out. The mine closed operations in 2017 and according to GoldCorp, is now engaging in a process of environmental remediation.²⁷ However, Guatemala's Mining Law does not regulate the process for closing a mine including the remediation of the environment.²⁸ The State does not have the legal tools to demand that the company close the mine in a safe and proper manner that will oversee safe conditions of drinking water and food for Indigenous children.

Guatemala's Mining Law was passed in 1997 and is in urgent need of updating and replacing, despite recommendations issued by Norway in the second cycle of Guatemala's Universal Periodic Review. Designed to encourage foreign investment, the law in 1997 reduced the percentage of royalties on gross revenues to the government from 7 to 1 percent and allowed foreign companies 100 percent ownership of mining enterprises, and exempted them from paying various taxes, amongst other things on the use of water and on imported machinery.²⁹ In addition to failing to regulate environmental remediation after mine closure, it also fails entirely to mention Indigenous Peoples rights to their ancestral lands nor does it require consultation nor Free, Prior and Informed Consent of Indigenous Peoples. Despite heavy criticism and some attempts to update the law in 2012-2014, the existing Mining Law remains in effect and has not been improved for the benefit of Guatemalan citizens and is glaringly inconsistent with ILO Convention 169 which Guatemala ratified as domestic law. In 2012 the Perez Molina administration acknowledged problems with the existing mining laws and a series of reforms were proposed under Bill 4590. However, the proposed changes in Bill 4590 were seen by Indigenous Peoples organizations as largely benefitting mining companies, and still did not take into account the Free, Prior and Informed Consent of affected communities³⁰.

D. Trafficking

Poverty is a primary factor that contributes to the human trafficking of Indigenous Guatemalan children.³¹ Approximately 86% of the Indigenous population is impoverished. This poverty is reflected in Guatemala's weak legal institutions, which leads to the trafficking of many vulnerable Indigenous people, including infants for illegal adoption.³² 2007 saw the passage of

²⁶ Basu, Niladri. "Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala" Physicians for Human Rights, May 2010.

²⁷ Goldcorp. (2017) "Marlin Mine at Closure: A Review of Goldcorp Commitments to the 2010 Human Rights Assessment" Accessible at http://csr.goldcorp.com/2016/_img/docs/BSR-Report-Marlin-Mine-at-Closure.pdf

²⁸ Ley de Minería. https://www.mem.gob.gt/wp-content/uploads/2015/06/2_Reglamento_a_Ley_de_Mineria_Acuerdo_Gubernativo_176_2001.pdf

²⁹ De Leon, Vilma. (2015) "EVOLUCIÓN HISTÓRICO JURÍDICA DE LA LEGISLACIÓN EN MATERIA DE MINERÍA EN GUATEMALA; DESAFÍOS Y NUEVAS TENDENCIAS NORMATIVAS," Universidad Rafael Landívar, <http://recursosbiblio.url.edu.gt/tesiseortiz/2015/07/01/De-Leon-Vilma.pdf>

³⁰ Amnesty International. (2014). "GUATEMALA: MINING IN GUATEMALA: RIGHTS AT RISK," September 2014. <https://www.amnesty.org/en/documents/AMR34/002/2014/en/>

³¹ pp.org

³² "Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion." *Country Report Guatemala*, www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf.

the Adoption Law gave rise to standards and procedures to prevent adoption from becoming child trafficking. However, even with legislative momentum, inadequate oversight perpetuates perpetrators' access to loopholes in the adoption system.³³ In addition to trafficking for illegal adoption, Indigenous children are "recruited," or manipulated, and taken to urban Guatemala where they are sold into prostitution in brothels or more commercial sexual exploitations.³⁴ The 2015 Inter-Agency Commission Against Trafficking in Persons Protocol, the 2016 Child Protection System, the Office of the Prosecutor for Human Trafficking Offenses' Child Pornography Unit, and the national Civil Police's Sub-Department for Crime Prevention's Children's Division strive to protect children from crimes like trafficking. They combat the organization of illegal adoptions, baby theft, and sex trafficking. Guatemala has also ratified international trafficking treaties and has passed trafficking-specific laws like the 2009 Law on Sexual Violence, Exploitation, and Trafficking in Persons. In 2011, *Trafficking in persons* was defined as a crime in the Guatemalan Criminal Code.³⁵

These laws and agency efforts are important, but the general public remains uneducated about the meaning of *trafficking in persons*, which impedes the improvement of access to justice and providing care for trafficking victims. The need for the understanding of *trafficking in persons* is particularly important because the majority of victims are Indigenous children, who have especially poor resources and access to protection. The State needs to better train their investigative and punitive personnel across agencies to better coordinate with each other. Lack of training has caused poor coordination, and therefore the prolonging of solutions. The State, by educating the public on *trafficking in persons* and training its personnel, has the power to increase the number of investigations and punishment in trafficking cases, which was only 30% as of 2014.³⁶

As of 2016, only two attorneys in Guatemala work on sex trafficking cases.³⁷

E. Forced Child Labor

Exploitation of Indigenous Guatemalan children is widespread, and a contributing factor to Guatemala's intensely high rates of chronic malnutrition in Indigenous communities. Indigenous children are particularly vulnerable targets, as the majority of them are impoverished and defenseless. Approximately 415,000 children in Guatemala work, the majority of which are Indigenous.

The high risk of Indigenous children in Guatemala being subjected to forced child labor is largely driven by poverty. Indigenous parents struggle to provide for their families, which leads to them encouraging their children to drop out of school, leave home, and work in Guatemala

³³ "Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion." *Country Report Guatemala*, www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ UNICEF, (2016) "HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION PURPOSES IN GUATEMALA." Accessible at http://www.cicig.org/uploads/documents/2016/Trata_Ing_978_9929_40_829_6.pdf

City. This leaves Indigenous children extremely vulnerable to many forms of exploitation, including forced labor.³⁸

In June 2017, 22 teenage children from impoverished Indigenous communities were rescued from forced labor conditions. This labor consisted of 16-hour work days, seven days a week, with poor pay and little food.³⁹ These 22 Indigenous children are not unique in their suffering.

IV. Continuing Rights Violations with Secondary Impact on Indigenous Children

A. Forced Eviction

In its 2010 review, the Committee on the Rights of the Child noted to Guatemala that it was “concerned that disputes over land ownership between Indigenous Peoples and owners often result in forced evictions of Indigenous peoples,” and agreed with a concern of the CERD that Guatemala “continues to allow Indigenous peoples to be dispossessed of land that has historically belonged to them.”

The eviction of Indigenous communities from their ancestral lands still continues to be an urgent problem that leads to negative outcomes for Indigenous children. In Guatemala, the rights of the wealthy elite and transnational corporations are respected above Indigenous Peoples. Forced evictions are frequently carried out by private security forces or by military in collusion with private companies. Communities are not provided with alternative housing nor compensation, they are simply forced out with violence and left to fend for themselves. This practice has obvious negative impacts on Indigenous children as families are thrown into instability, food insecurity, homelessness, and poverty, and children often experience trauma during the eviction.

The department of Alta Verapaz, one of the highest Indigenous populations in the country, has seen repeated violent evictions since the last review. This region, located in the northern part of the country, is characterized by strong interests surrounding hydroelectric projects; petroleum extraction and mining; as well as mono-culture crops for the production of agro-fuels and other products. The most recent example of these evictions at the time of this report took place on November 1st, 2017. On this date, 25 Q’eqchi’ Mayan families that lived in the hamlet of La Cumbre Chamché in the municipality of Tactic, Alta Verapaz, were forcibly evicted from their land. According to the Unión Verapacense de Organizaciones Campesinas, the community had been in negotiations with the La Secretaría de Asuntos Agrarios (SAA) de la Presidencia de la República in order to resolve the long-standing conflict over the land prior to the eviction. Following the Liberal reforms in 1871, the original residents of the community had been transformed into a slave labor force, known as *mozos*, for the landowner. The community members were working with the SAA at the time of the eviction to gain the rights to the land. The families of La Cumbre Chamché were left without any means of survival following the

³⁸ Moloney, Anastasia. “Guatemala Rescues 22 Children from Forced Labor: Police.” *Reuters*, Thomson Reuters, 1 June 2017, www.reuters.com/article/us-guatemala-child-labour/guatemala-rescues-22-children-from-forced-labor-police-idUSKBN18S5XO.

³⁹ Moloney, Anastasia. “Guatemala Rescues 22 Children from Forced Labor: Police.” *Reuters*, Thomson Reuters, 1 June 2017, www.reuters.com/article/us-guatemala-child-labour/guatemala-rescues-22-children-from-forced-labor-police-idUSKBN18S5XO.

eviction. They established a makeshift camp, but faced more hardships due to cold temperatures and rain.⁴⁰

Just days earlier, on October 30, the Guatemalan National Police forcibly evicted at least 60 Q'eqchi' families in Chaab'il Ch'och from their ancestral lands in the municipality of El Estor, Izabal. The families watched from afar as police razed their community to the ground, burning their houses and what belongings they could not carry with them. The eviction forced families to set up an improvised camp in the community of Qoeox Hä, where children are forced to sleep on the ground under plastic tarps. The community of Chaab'il Ch'och sits on a plantation called Santa Isabel, which was acquired by a shell company owned by former president Otto Pérez Molina, currently in jail on corruption charges. The plantation is currently being administered by Rodrigo Lainfiesta, a businessman and ally of Pérez Molina, who also is facing corruption charges. As both Pérez Molina and Lainfiesta await justice, the landless Q'eqchi' families launched an occupation of the finca in December 2016. They demanded that the government confiscate the land and provide the funds to purchase the land through the Fondo de Tierras, or the Land Fund. Following the country's 1996 Peace Accords, the Guatemalan government established the Fondo de Tierras to provide loans to communities to purchase lands in order to resolve the historical land inequalities. Though, in the 20 years since the end of the internal conflict, the fund has instead begun to provide a means for the reconcentration of lands into a small landholding elite.⁴¹

B. Criminalization of Leaders

As Indigenous human rights and environmental defenders are criminalized for their efforts, it is their families, particularly children, who are left most impacted. One community that provides a clear examples is the Q'anjob'al Maya community of Santa Cruz Barillas, Huehuetenango. In July of 2015, representatives of the community in Santa Cruz Barillas submitted an official complaint to the World Bank regarding a proposed hydroelectric dam on the Q'am B'alam River. It outlined the damage being inflicted by the Bank's financing of the project and the strategies of criminalization being employed by the Guatemalan government and Spanish company Hidro Santa Cruz in an attempt to silence local opposition, giving first-hand testimony about the impacts on families and communities when leaders are illegally detained and imprisoned for months, and years on end. Since 2009, Hidro Santa Cruz had planned a series of dams on the Q'am B'alam River that surrounds the town of Santa Cruz Barillas. The river and its three waterfalls are considered sacred by the Q'anjob'al community. The community twice held referenda and both times voted unequivocally to reject the exploitation of its natural resources by transnational corporations. Nevertheless, the government approved the Cambalam I Dam with neither the Free, Prior and Informed Consent of the community, nor any legitimate social or environmental impact assessments. Dozens of community organizers and leaders were arbitrarily detained and arrested after speaking out against the dam. Some were imprisoned for over two years. All were eventually released due to lack of evidence of having committed a crime. Two men have been killed for defending their lands against this project; one, Andres Francisco

⁴⁰ Abbott, Jeff. "A War by Other Means? Land Grabs and Forced Displacement of Indigenous Communities in Guatemala" Upside Down World Nov 28, 2017. Accessible at <http://upsidedownworld.org/uncategorized/war-means-land-grabs-forced-displacement-Indigenous-communities-guatemala/>

⁴¹ Ibid.

Miguel, was shot by security guards of the company in 2012, and another, teacher Daniel Pedro Mateo, father of eight children, was kidnapped while on his way to a community meeting training environmental defenders in 2013. His body was later found with signs of torture.⁴² In 2016 Hidro Santa Cruz announced it would be pulling out of the project Cambalam. However, the families of the victims and those arbitrarily detained for years, have yet to be compensated for the damages.

C. Freedom of Expression and Access to Information

Article 13 of the CRC states, “*1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*” Article 16 of the UN Declaration on the Rights of Indigenous Peoples also guarantees Indigenous Peoples the right to their own forms of media. This right is also protected in the Acuerdo de Identidad, Inciso H, of the 1996 Guatemalan Peace Accords, which guarantees Indigenous Peoples the right to their own forms of media. The Peace Accords also guarantee Indigenous Peoples the right to freedom of information in their own languages.

Indigenous community radio stations are vital to Indigenous Peoples’ ability to stay informed about current events and issues that they care about, and are important mediums for the self-expression and learning of Indigenous children in rural areas. Guatemala’s mainstream radio stations, television, and print media are only available in Spanish and rarely address issues that are important to Indigenous communities, particularly those in rural areas. Community radio stations, which broadcast in Indigenous languages, provide a vital and dependable source of information about current events, health, human rights, development, the environment, and other issues that are critical to Indigenous Peoples and to children. Guatemala’s 57 Indigenous community radio stations provide a crucial venue for primary school education and supply the public with an active, participatory mode of communication in rural Indigenous communities.⁴³ Community radio stations contribute to Indigenous children maintaining their cultures and languages and increases civic and political participation. Many of these community radio stations host children’s radio programs that are run by and for Indigenous children. One example is in San Pedro La Laguna, Solola, where 9 year old “Miguelito” is the president of an eight-member youth auxiliary group who plans, produces, and broadcasts a live radio show every week, by and for the youth in the village. Their show is broadcast live every Saturday morning. On their motivations for hosting their radio show, Miguelito explained, “We thought that the radio station needed a show especially for the kids in town. Everybody here listens to the radio, but before we started our show everything was just for adults. Now we have our own show. Last week on the show we got the kids in the town to pick up trash. There is an organization that we work with. Kids find a plastic bottle and pack it full of plastic bags and other garbage until the bottle is so full and tightly packed that it is hard. Then they can turn it in and get a notebook or a pencil to

⁴² Cultural Survival “Community Leader Daniel Pedro Mateo Kidnapped and Murdered in Guatemala” 2013. <https://www.culturalsurvival.org/news/breaking-news-community-leader-daniel-pedro-mateo-kidnapped-and-murdered-guatemala>.

⁴³ Cultural Survival, “Violaciones a la Libertad de Expresión de las Mujeres Indígenas en Guatemala” Report to CEDAW, October 2017. Accessible at https://www.culturalsurvival.org/sites/default/files/CEDAW_libertad%20de%20expresion%202017.pdf

use in school. The organization then uses the full bottles to build houses. When we talk about it on the radio, lots of kids in town hear about it and participate.”⁴⁴

Despite the importance of community radio for Indigenous children’s self-expression and as a tool for learning about their rights in their own languages, community radio is considered illegal by the Guatemalan government. The Guatemalan Telecommunications Law does not contemplate community radio, and therefore Indigenous communities do not have access to legal frequencies. Those who operate community radio stations, including children, are regularly demonized through government media campaigns, threatened, and even prosecuted for their work. A Constitutional Court decision in 2011 ordered congress to amend the Guatemalan Telecommunications Law to allow for Indigenous Peoples to access radio frequencies, but there has been no progress in making this a reality, despite a 2012 UPR recommendation by Norway to “Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of Indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios.”

Efforts to pass legislation to legalize community radio, (Bill 4087, the Ley de Medios de Comunicación Comunitaria, which would authorize one community radio station per municipality in Guatemala) has remained stalled in congress since 2010. Meanwhile, Indigenous community radio stations remain in limbo, and the volunteers at community radio stations, largely Indigenous children and youth, are under constant threat due to demonizing mainstream media campaigns, government raids, imprisonment, and confiscation of equipment for operating without a license to a legal frequency.

From July 2006 to June 2016 the Public Ministry raided twelve non-profit community radio stations that were operated by Indigenous communities. During the raids, police (and sometimes soldiers) seized radio equipment, which led the radio stations to shut down indefinitely or for an extended period of time. During four of the twelve raids, Indigenous Peoples who were operating the community radio stations were arrested. The detention of community radio broadcasters represents an illegitimate application of the Guatemalan penal code, as no crime exists for which an individual can be charged for broadcasting with a license. The charges put forward are variable and have not held up in courts, meaning those that have been detained are being held arbitrarily. However, legislation has been put forward to criminalize community radio station operators up to 10 years in prison for broadcasting without a license. This bill, 4479, is unconstitutional and would violate Indigenous Peoples’ right to freedom of expression. The continued Government raids of Indigenous community radio stations by police and soldiers and persecution against community radio broadcasters constitutes a serious and urgent situation that is causing irreparable harm to the exercise of the right to freedom of expression by the Indigenous women, men, and children who volunteer at these stations as well as the right to free access to information by the hundreds of thousands of those who benefit from the educational and human rights based programming that is available on the radio in their native languages.

⁴⁴ Camp, Mark. “On the Air”. Cultural Survival Quarterly, June 2010. Accessible at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/air>

V. UN Body Recommendations

1. 2010 CRC Recommendations relevant to Indigenous children that continue to be not implemented:

- a. *The Committee encourages the State party to further enhance awareness that children are subjects of rights. It reiterates its recommendation that the State party increase its efforts to disseminate more informative material and translate it into the main Indigenous languages in a culturally sensitive manner, and that it develop more creative methods to promote the Convention, in particular at the local level.*
- b. *The Committee recommends that the State party strengthen its cooperation with non-governmental organizations, including Indigenous organizations, to better implement the Convention at the national and local levels and in urban, rural and Indigenous areas*
- c. *The Committee recommends that the State party urgently address the situation of discrimination against Maya, Garifuna and Xinca children in its policies and plans for the elimination of racial discrimination, as well as in social development plans, ensuring the sustainability and cultural suitability of these programmes. In light of article 2 of the Convention, the Committee recommends that the State party ensure full implementation in practice of all legal provisions prohibiting discrimination, combat discrimination by, inter alia, ensuring equal access to education, health-care facilities and poverty reduction programmes, and take measures to address the inappropriate characterization and stigmatization of children and adolescents.*
- d. *The Committee recommends that the State party increase its efforts to ensure access of all children to free birth registration, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee also encourages the State party to adopt flexible measures of birth registration, including mobile units to reach all children. The Committee further recommends that the State party implement a specific birth registration strategy for Indigenous peoples based on respect for their culture and taking into account the Committee's general comment No. 11 (2009) on Indigenous children and their rights under the Convention.*

UPR Recommendations relevant to Indigenous children that still need addressing:

- a. *Commit to improving the situation of Indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services. - Switzerland (1st cycle)*
- b. *Implement a specific strategy of birth registration for Indigenous communities based on the respect of their culture. - Uruguay (2nd cycle)*

- c. *Prepare and implement a specific birth registration strategy for Indigenous peoples. - Slovenia (2nd cycle)*
- d. *Implement targeted, sustainable and effective measures to reduce the alarmingly high rate of children suffering from chronic malnutrition, especially among the Indigenous population, where eight of ten children are affected, according to UNICEF - Norway (2nd cycle)*
- e. *Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of Indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios - Norway (2nd cycle)*

VI. Questions

1. What steps will the Government of Guatemala take to better protect and fulfill the rights of Indigenous children?
2. What steps are being taken to improve food security for Indigenous families?
3. What steps are being taken to implement the Ley de Idiomas Nacionales?

VII. Recommendations

Cultural Survival urges the government of Guatemala to:

1. Reform the Telecommunications Law to allow one community radio license per municipality, giving children access to educational radio programming in their native language.
2. Invest in quality, culturally sensitive health care facilities in rural areas and develop policies that require healthcare professionals speak the languages of the patients that they are serving.
3. Pass legislation in support of traditional midwives known as *comadronas*.
4. Restructure the Ministry of Education to focus on multiculturalism and additive bilingualism; Increase funding for bilingual primary education programs in rural areas, ensuring all children have access to education in their mother language as guaranteed in the Peace Accords.
5. Comply with the Ley de Idiomas Nacionales which requires that State services are provided in Indigenous languages and that public employees receive training in Indigenous languages spoken in the area.
6. Incorporate ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples into policies on agrarian reform.
7. Recognize the legal title of Indigenous communities to their ancestral lands and resources, and immediately end the practice of forced eviction of Indigenous families.
8. Implement the right to Free, Prior, Informed Consent for Indigenous Peoples on all policies that affect them.

9. End the criminalization and violence against human rights defenders, which negatively impacts children who are left without their parents.
10. Ensure that the closure of the Marlin Mine is held to the highest international standards of environmental remediation and consultation with affected Indigenous communities, paying particular attention the health of children.
11. Reform the Mining Law to be in compliance with ILO Convention 169 and the right to Free Prior Informed Consent.