

**ICERD**  
**Shadow Report Submission:**  
**Indigenous Rights Violations**  
**in Guatemala**

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## **ICERD Shadow Report Submission Indigenous Rights Violations in Guatemala**

### **II. Reporting Organization**

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org). Since 2005, Cultural Survival has been working in Guatemala in partnership with a national network of 80 community radio stations. Our Community Media Program works to legalize community radio in Guatemala by pressing for reform of Guatemala's repressive telecommunications law. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civic participation; train volunteers in journalism, lobbying, content creation, script-writing, and Internet use; and build local capacity to sustain the project.

### **III. Issue Summary**

Guatemala is one of only two countries in the Western Hemisphere with a majority Indigenous population. Guatemala's Indigenous population (principally Mayan) speaks 24 different languages. Indigenous Peoples in Guatemala have inadequate representation in the government, have been historically marginalized by the dominant ladino culture and are severely underserved by public services.

The foundation of any democracy is an informed citizenry, and currently, radio is the best tool to provide Indigenous Guatemalans with the news and information that they need. While Guatemala now has an uncensored press, its commercial radio stations, television, and print media are available only in Spanish and broadcast mainstream culture, music, and information, rarely addressing the interests of Indigenous communities, particularly in remote rural areas. Community radio stations, on the other hand, which broadcast in Indigenous languages, provide a vital and reliable source of news and information about health, human rights, development, the environment, and other issues critical to Guatemala's Indigenous Peoples. The country's 80 community radio stations, which broadcast locally (the average broadcast range is 3 to 15 miles), provide a crucial venue for primary school education, and supply both the public and private sector with an active, participatory mode of communication. Community radio stations and equal access to radio frequencies contributes to Indigenous Peoples maintaining their cultures and languages and increases civic and political participation.

However, persecution against community radio stations is an all too-common occurrence in Guatemala, the Public Ministry raids stations, seizes equipment, and arrests radio operators. Community radio has been a vital presence in Indigenous communities in Guatemala since the 1960s. Indigenous Peoples in Guatemala rely on community radio to keep their cultures, languages, and traditions alive as well as to inform their communities about issues and events relevant to their lives. Community radio also serves the vital function of distributing content to listeners in their own language, reaching even the poorest areas where radio may be the only affordable form of communication. The right to this media by Indigenous Peoples is clearly defined by the Guatemalan Peace Accords, the Guatemalan constitution, and several international human rights documents such as the UN Declaration on the Rights of Indigenous Peoples (Article 16), the International Labor Organization, yet access to community radio remains restricted due to an outdated telecommunications law that the Guatemalan Congress refuses to change. In the Agreement on Identity and Rights of Indigenous Peoples ("AIDPI"), signed in 1995, Guatemala agreed to "make frequencies available for Indigenous projects" and "promote... the abolition of any provision in the national legislation which is an obstacle to the right of Indigenous peoples to have at their disposal communications media for the development of their identity." The "CRONOGRAMA" Agreement, which established a time-table for the implementation the Peace Accords, provided that the AIDPI be complied with during the years 1998, 1999 and 2000. After the Government's failure to reform Guatemala's telecommunications law, MINUGUA, the United Nations Verification Mission in Guatemala, rescheduled this process for 2001 and 2002. Seventeen years later, these provisions of the AIDPI remain unfulfilled.

Despite years of lobbying for amendments to Guatemala's telecommunications law, the law remains unchanged, making it near impossible for communities to obtain a state-sanctioned radio frequency. In 2012, the Constitutional Court of Guatemala issued a decision exhorting the legislative power of Guatemala to reform the legislation concerning access of Indigenous people to radio frequencies to promote 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. No action was taken in response to this exhortation by the Constitutional Court.

Guatemala's current law, in effect, only provides for commercial and government radio stations. Under Article 62 of the General Telecommunications Law, radio frequencies are awarded through a public auction. The Superintendent of Telecommunications, the government agency charged with administering the assignment of frequencies, shall always award the frequencies to whomever offers the highest bid at public auction. The highest bid at a public auction is entitled to the radio frequency. The law does not provide for community radio or any other form of non-profit radio.

Community radio stations serving Indigenous communities are often raided by Guatemalan police forces who detain the broadcasters and confiscate radio equipment. Although, civil penalties for operating a community radio station without a license are unclear under current law, this has not stopped the Government of Guatemala from charging individuals who operate community radio stations with a variety of infractions ranging from theft of fluids to drug trafficking. Since Guatemala's last UPR in 2012, there have been at least eight government raids on Indigenous community radio stations in Guatemala.

If the raids were not proof enough of Guatemala inaction, a bill, Initiative 4479, was introduced in Congress on July 10, 2012 which would amend current Guatemalan laws to criminalize the unauthorized use of radio frequencies. Initiative 4479 would not only shut down the community radio stations who are currently fighting for legalization, but it would also sanction a ten year detention penalty for participants in the operation of any such unauthorized radio stations.

#### **IV. Concluding Observations:**

There have not been any Concluding Observations on this issue. This is the first time this issue is being raised.

#### **V. Guatemalan Report**

The issues that we are concerned with were ignored in the Guatemalan report.

#### **VI. Legal Framework**

*ICERD Article 2b*). The State of Guatemala is in clear violation of Article 2b due to overwhelming evidence that the State police have conducted many raids on Indigenous radio stations. Whether or not they directly support the discrimination, their sponsoring of a police program that functions unlawfully is a violation in itself.

*ICERD Article 5b*). Indigenous communities have the right to be protected from any threat, be it government sponsored or not.

*ICERD Article 5c*)

As stated by ICCPR Article 19, freedom of expression through media is a political right.

#### **VII. The CERD Committee's Comments**

General Recommendation 23 on the rights of Indigenous Peoples

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11)

#### **VIII. Other UN Body Recommendations**

##### **Universal Periodic Review**

In 2008, Norway recommended to Guatemala: "*Reform the law on radio communication in order to guarantee the proper and free functioning of local radios.*"<sup>1</sup> In 2012, Norway reiterated its 2008 recommendation urging Guatemala to follow through with the reform then urged by its Constitutional Court: *Follow up its Constitutional Court's 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.*<sup>2</sup>

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<sup>1</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Guatemala*, 29 May 2008, A/HRC/8/38; A/HRC/WG.6/2/L.4, available at: <http://www.refworld.org/docid/485b962f0.html> (accessed 23 Feb. 2015).

<sup>2</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Guatemala*, 31 December 2012, A/HRC/22/8, available at: <http://www.refworld.org/docid/50f91f3a2.html> (accessed 23 Feb. 2015).

Norway also in 2012 recommended that Guatemala: *Adopt national legislation to fully implement the ILO Convention No. 169 on Indigenous and tribal peoples. Particular focus should be put on the Indigenous peoples' right to be consulted at all levels of decision-making, in policy, legislative, administrative and development processes affecting them.*<sup>3</sup>

### **UN Special Rapporteur on Freedom of Expression, Frank La Rue**

*"The current Law of Telecommunications, in effect since 1997 – after the signing of the peace agreements – has two fundamental defects:*

- 1. It does not consider, nor establish or regulate, the existence of community media – radio or television – of a non-profit character, despite national and international rights established that Indigenous communities should have access to establish their own means of communication that allow them to defend and reproduce their culture and cultural values.*
- 2. The law established that the only method for obtaining access to frequencies is through state auction. This also violates the constitutional principle of 'equality under the law;' it discriminates against social sectors that do not have the economic resources to purchase a frequency while in competition with multi-million dollar corporations.*<sup>4,56</sup>

In 2012, La Rue noted: *"The United Nations Declaration on Indigenous Peoples states that Indigenous peoples should have access to their own means of media to communicate and reproduce their culture, language, history, traditions, and values."*

<https://docs.google.com/a/culturalsurvival.org/file/d/0B7LJtxKQkzp6M3hMb2pyR3BTtlk/edit>

**Former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya**, on World Radio Day 2012 stated, *"Radio has been a fundamental means for Indigenous Peoples to maintain their languages and to exercise and defend their rights."*<sup>7</sup>

### **UN High Commissioner for Human Rights in Guatemala:**

The Commission's 2010 annual report notes the following: *"The absence of legal recognition of community radio stations has led to their criminal prosecution, while legislation establishes economic criteria for the distribution of radio frequencies, therefore affecting equal conditions of access for all sectors of the population. Although preliminary steps have been taken in the implementation of the law on access to information to ensure the transparency of public institutions, an overall policy on State accountability vis-à-vis civil society is pending."*

**UN High Commissioner on Human Rights Navi Pillay** made the following statement after her visit in 2012:

*"Although indigenous peoples constitute the majority of the population, they continue to be subject to exclusion and denial of their human rights. During my meeting with indigenous ancestral authorities in Totonicapan last Tuesday, I was struck by the unanimous voices describing exclusion in all spheres, including access to basic services, land*

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<sup>3</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Guatemala*, 31 December 2012, A/HRC/22/8, available at: <http://www.refworld.org/docid/50f91f3a2.html> (accessed 23 Feb. 2015).

<sup>4</sup> Cultural Survival, *Community Radio Gains Time in Fight against Further Monopolization in Guatemala*, available at: <http://www.culturalsurvival.org/news/community-radio-gains-time-fight-against-further-monopolization-guatemala> (accessed 23 Feb. 2015).

<sup>5</sup> Cultural Survival, *UN Special Rapporteur on Freedom of Speech Stands Up for Community Radio in Guatemala*, available at: <http://www.culturalsurvival.org/news/guatemala/un-special-rapporteur-freedom-speech-stands-community-radio-guatemala> (accessed 23 Feb. 2015).

<sup>6</sup> Cultural Survival, *Rigoberta Menchu Hosts Media Conference in Support of Community Radio*, available at: <http://www.culturalsurvival.org/news/guatemala/rigoberta-menchu-hosts-media-conference-support-community-radio> (accessed 23 Feb. 2015).

<sup>7</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, *James Anaya*, available at: <http://unsr.jamesanaya.org/home/page-12> (accessed 23 Feb. 2015).

ownership, access to justice, participation in public decision-making processes and bodies, as well as the criminalization of indigenous leaders who are using their right to dissent.”<sup>8</sup>

#### **Human Rights Committee:**

Consideration of reports submitted by Guatemala under Article 40 of the Covenant:

*The State party should continue its efforts to eradicate stereotypes and discrimination against Indigenous and Afro-descendent persons by, inter alia, carrying out more education campaigns to promote tolerance and respect for diversity. The State party should adopt measures to promote equal opportunity and access to services through appropriate efforts to resolve existing inequalities. Lastly, the State party should amend article 202 bis of the Criminal Code to ensure the investigation of acts of racial discrimination, the prosecution and punishment of the perpetrators, and adequate compensation for the victims so that it is not necessary to establish that those acts impede or hinder the exercise of one or more rights in order to constitute an offence.*<sup>9</sup>

#### **Committee Against Torture:**

Concluding observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013)

*The State party should strengthen existing training programmes and ensure that all public servants, particularly police, army and prison officers, migration officials and members of the judiciary and the Public Prosecution Service, attend regular, suitable and compulsory training courses on the Convention, which include strategies for dealing with violence against children, women, Indigenous peoples, human rights defenders and the lesbian, gay, bisexual and transgender community.*<sup>10</sup>

#### **IX. Questions**

1. Why has the Guatemalan government not complied with the exhortation of the Guatemalan Constitutional Court 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”?
2. Why has the Guatemalan government failed to comply with the Agreement on Identity and Rights of Indigenous Peoples (“AIDPI”), signed in 1995, Guatemala agreed to “make frequencies available for Indigenous projects” and “promote... the abolition of any provision in the national legislation which is an obstacle to the right of Indigenous peoples to have at their disposal communications media for the development of their identity”?

#### **X. Recommendations**

Cultural Survival urges the Guatemalan government to:

- a) Amend the Guatemalan General Telecommunications Law to establish and institute a legal mechanism under domestic law, acceptable to the Indigenous communities concerned and in conformity with the legal standards stated in this petition, that will result in the establishment of community or non-profit radio frequencies;
- b) Suspend consideration of all future permits or licenses of radio frequencies until issues affecting Indigenous communities have been resolved;
- c) Issue an injunction on any further legal or state action against community radio stations;
- d) Comply with any other relief that the Committee deems appropriate.

<sup>8</sup> UN Human Rights, *A critical period in Guatemala's history - Navi Pillay Press conference by UN High Commissioner for Human Rights Navi Pillay in Guatemala City, Guatemala, 15 march 2012*, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11967&LangID=E> (accessed 23 Feb. 2015).

<sup>9</sup> UN Human Rights Committee, *Concluding observations on the third periodic report of Guatemala*, 28 March 2012 CCPR/C/SR.2887 and 2888, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7vhsrVIorLp58pj2f0XtkalCbxe4PcB7fE2XCJedoLvt0cdFHEEwPA7kR2c6QFYSiHEWBf1NUTuvIWaORupw6vqzIbYYOB319kFWBFU%2bB6L1VR>

<sup>10</sup> UN Convention Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Guatemala*, adopted by the Committee at its fiftieth session, 27 and 28 May 2013 CAT/C/SR.1161 and SR.1162, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7vhsrV8caYZRrn8MoNjn4orHkCGqxO6Nu%2fXAFc4v8YxseJsuRAp9DK4NbYNjwWBvJivADv0ranmOXsPcjJh835vTxhBGFq9GBMeZtHuq4swI>