



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Concluding observations on the third periodic report of Guatemala\*

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Guatemala on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/GTM/3) at its 52nd and 53rd meetings, held on 18 November 2014 (E/C.12/2014/SR.52 and 53). At its 70th meeting, held on 28 November 2014, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the third periodic report of Guatemala, the core document (HRI/CORE/GTM/2012) and the written replies to its list of issues (E/C.12/GTM/Q/3/Add.1).

#### B. Positive aspects

3. The Committee welcomes the ratification by the State party in 2009 of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

4. The Committee also welcomes the adoption of the following legislation:

- (a) The Housing Act (2012);
- (b) The Act on Femicide and Other Forms of Violence against Women (2008).

5. The Committee notes with appreciation that the State party has made significant progress since its most recent interactive dialogue with the Committee in 2003, and also notes with appreciation its determination to ensure that human rights and social inclusion are key components of its policies. The Committee in particular welcomes:

- (a) The creation of the K'atun Nuestra Guatemala 2032 National Development Plan (2014);
- (b) The creation of the Rural Development Cabinet (2013);
- (c) The establishment of the Ministry for Social Development (2012);

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\* Adopted by the Committee at its fifty-third session (10–28 November 2014).



- (d) The creation of the Zero Hunger Plan (Plan Hambre Cero) (2012);
- (e) The introduction of the National Policy for the Advancement and Comprehensive Development of Women and of the Equal Opportunities Plan (2009);
- (f) The establishment of the National Policy on Comprehensive Rural Development (2009).

## C. Principal subjects of concern and recommendations

### **The right to land and to natural resources**

6. The Committee finds it regrettable that the State party has not granted legal recognition to indigenous peoples in its Constitution. The Committee is also concerned that the State party has no effective legal mechanism for recognizing the rights of indigenous peoples as such to obtain collective land titles. The Committee regrets the lack of up-to-date statistics on the number of indigenous persons living in the State party (arts. 1, 2 and 15).

**The Committee recommends that the State party grant recognition to indigenous peoples in its Constitution. It also recommends that the State party incorporate mechanisms for recognizing the rights of indigenous peoples over their traditional lands and their natural resources. The Committee urges the State party to conduct an up-to-date census of the indigenous population and to continue strengthening measures to ensure their effective enjoyment of their economic, social and cultural rights.**

### **Consultation of indigenous peoples**

7. The Committee takes note of the State's intention to establish a legal mechanism to conduct free and informed prior consultation of indigenous peoples in respect of all matters of concern to them, in keeping with the recent decisions of the Constitutional Court, which have reasserted the duty of the State party to consult the indigenous peoples. It is in particular concerned that the indigenous peoples are still not effectively consulted, nor is their free, prior and informed consent obtained in the decision-making process concerning the exploitation of the natural resources within their traditional lands. The Committee is also concerned that the indigenous peoples did not participate in the debate over the reform of the Mining Act (arts. 1, 2 and 15).

**The Committee urges the State party, in connection with the exploration and exploitation of mining resources and hydrocarbons, to adopt expeditious measures to carry out consultations to allow free expression of consent to the desirability of such projects, sufficient time and opportunity to reflect and take a decision, together with measures to preserve cultural integrity and provide reparation, where necessary. In this respect, the Committee recommends that the State party urgently establish a legal mechanism for conducting such consultations, in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and with the United Nations Declaration on the Rights of Indigenous Peoples. It also recommends that the State party revise the legislative and institutional provisions relating to projects for the exploitation of natural resources, in consultation with the indigenous peoples, and that it strengthen its capacity to oversee extractive industries and ensure that they do not have a negative impact on the rights of indigenous peoples, their territory and their natural resources.**

### **Allocation of public resources**

8. The Committee notes with concern that, despite the adoption of the reform of the tax law in 2012, tax collection is still insufficient and considerably limits the resources available for economic, social and cultural rights. The Committee is also concerned about the persistence of mechanisms whereby certain economic sectors, such as the mining and maquila (in-bond manufacture) sectors, enjoy tax privileges (art. 2).

**The Committee urges the State party to pursue a tax policy that is adequate, progressive and socially equitable and which improves tax collection so as to ensure resources sufficient for implementing economic, social and cultural rights. The Committee also recommends that any tax reform and resource allocation plan are conducted in a manner that is transparent and participative.**

### **Non-discrimination**

9. The Committee takes note of the establishment of the office of the Ombudsman for sexual diversity. However, it regrets the persistence of discrimination against individuals in terms of employment, housing, access to education and health care on grounds of sexual orientation (art. 2).

**The Committee recommends that the State party adopt measures, and in particular awareness-raising measures, to ensure that lesbian, gay, bisexual and transgender persons (LGBT) are not discriminated against on account of their sexual orientation or gender identity.**

### **Gender-based violence**

10. The Committee takes note of the establishment of the courts and tribunals specialized in dealing with femicide and other forms of violence against women. However, it regrets the persistence of the climate of impunity and fear among victims with regard to reporting cases of violence against women. The Committee reiterates its concern regarding the high rates of violence against women, and in particular domestic violence (see E/C.12/1/Add.93, para. 39) (arts. 2, 3 and 10).

**The Committee recommends that the State party continue to raise awareness among the population regarding the criminal nature of domestic violence and bring those responsible before the courts. It also recommends that the State party strengthen and expand legal counselling programmes by allocating the necessary resources to the courts and tribunals dealing with femicide and other forms of violence against women.**

### **Equal treatment for men and women**

11. The Committee regrets that in spite of the amendments made to legislation to ensure equality between men and women, in practice inequalities between men and women still persist, in part as a consequence of the deeply rooted stereotypes relating to the role of women in society and the family. The Committee also notes with concern the disadvantaged situation of indigenous women, in particular as regards the right to education, health, employment and landownership (arts. 3 and 7).

**The Committee refers to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3 of the Covenant) and recommends that the State party:**

(a) **Carry out, in conjunction with civil society organizations and the mass media, campaigns to raise public awareness in order to eliminate gender stereotypes and roles within the family and in society at large which discriminate against women;**

(b) Strengthen implementation of measures intended to combat discrimination against women, such as the national policy for the advancement and comprehensive development of women and the equal opportunities plan (2008–2023);

(c) Adopt specific measures to eliminate the persistent inequality between men and women, and in particular indigenous women, and promote full access to primary education, health and land.

#### **Equality between men and women as regards the right to work**

12. The Committee remains concerned about the inferior representation of women at all levels of public forums (see E/C.12/1/Add.93, para. 30). It is also concerned that in spite of the efforts made in this respect, the pay gap between men and women remains considerable (arts. 3, 6, 9 and 10).

**The Committee recommends that the State party redouble its efforts to combat gender stereotypes by promoting equal representation of men and women in public office. The Committee recommends that the State party guarantee equal remuneration for men and women. It also recommends that the State party promote training programmes, continue to educate men and women about equality in career opportunities so as to encourage them to continue their education and training in sectors distinct from those traditionally dominated by one sex or the other, and take specific measures to promote women on the labour market.**

#### **Fair and equal pay**

13. The Committee reiterates its concern about the minimum wages established in the State party, which are inadequate to provide workers and their families with a decent standard of living (see E/C.12/1/Add.93, para. 32), and regrets that many workers earn much less than the statutory minimum wage. The Committee notes with concern the trend in the agro-industrial sector to link workers' wages to productivity, with targets that are often too high and without guaranteeing the minimum wage. The Committee also regrets the disparities that exist between minimum wages in different sectors of economic activity and in particular in the export and in-bond textile sectors (arts. 6 and 7).

**The Committee urges the State party to harmonize the level of the minimum wage in all sectors of activity and to continue gradually to increase the amount of the minimum wage, in compliance with the requirements of article 7, paragraph (a), subparagraph (ii), of the Covenant. It also recommends that the State party ensure that employees are both guaranteed and paid a wage that is at least equal to the national minimum wage, including the benefits required by law.**

#### **Labour inspectorate**

14. The Committee takes note of the progress made in strengthening the work of the labour inspectorates, although it regrets that the Inspectorate-General for Labour (IGT) lacks sufficient resources to carry out its functions and that its work is concentrated in the capital. The Committee also regrets the delays and difficulties that affect the application of penalties to those who infringe labour standards (arts. 6 and 7).

**The Committee urges the State party to take urgent measures to strengthen the capacity of the IGT, in particular by assigning to it the necessary financial and human resources for it to perform its tasks. The Committee also recommends that the State party adopt the measures necessary to ensure that all violations of labour rights by employers are duly investigated and if appropriate punished.**

### **Informal labour and domestic work**

15. The Committee notes with concern the large number of workers in the State party who are employed in the informal sector of the economy. The Committee regrets the existence of the special regime for domestic employees, which restricts a number of labour rights which are statutory for other workers (arts. 6 and 7).

**The Committee urges the State party to continue doing everything possible to reduce the informal sector of the economy in order to encourage work in the formal sector and thus ensure that all workers are able fully to enjoy their economic and social rights. The Committee recommends that steps be taken to ensure full legal protection for workers, regardless of the sector in which they are employed. It also recommends that the State party ratify the ILO Domestic Workers Convention, 2011 (No. 189) and its Domestic Workers Recommendation, 2011 (No. 201).**

### **Trade union rights**

16. The Committee is concerned about the existence of restrictions on the exercise of the right to form trade unions and to exercise trade union rights. The killings of numerous trade unionists, the perpetrators of which often go unpunished (art. 8), are of particular concern to the Committee.

**The Committee recommends that the State party take steps to ensure that the right to form trade unions and to exercise trade union rights are respected, as established in article 8 of the Covenant. It further recommends that the State party take effective measures to ensure that workers are protected from any reprisals on account of their involvement in trade unions. The Committee urges the State party to investigate all cases of killings of trade unionists and to punish the perpetrators.**

### **Social security**

17. Despite the Committee's previous recommendation (E/C.12/1/Add.93, paras. 17 and 35) and the incentives introduced by the State party to increase the number of persons registered with the Guatemalan Social Security Institute, the Committee notes with regret that only 22.1 per cent of workers are covered by the State party's social security system. In particular, the Committee regrets the State party's failure to ensure social security coverage for agricultural and domestic workers (art. 9).

**The Committee recommends that the State party take the necessary measures to guarantee broad social coverage that ensures appropriate benefits for all workers, including agricultural and domestic workers, taking into consideration the Committee's general comment No. 19 (2008) on the right to social security (article 9 of the Covenant). The Committee also recommends that the State party consider establishing social protection floors (see the ILO Social Protection Floors Recommendation, 2012 (No. 202)) for the realization of the right to social security.**

### **Economic exploitation of children**

18. Despite the reduction in child labour, the Committee reiterates its concern about the continuing economic exploitation of children in the State party, especially in agricultural and domestic services (E/C.12/1/Add.93, paras. 20 and 38). The Committee notes with concern that the poverty of rural households and limited access to secondary education increase the risk of child labour (art. 10).

**The Committee encourages the State party to redouble its efforts to combat the problem of child labour by means of an emergency plan. It urges the State party to conduct systematic labour inspections and to implement public policies aimed at**

**reducing the vulnerability of children in rural and urban areas and promoting full access to secondary school. The Committee requests the State party to provide in its next periodic report information on the prosecution of child labour offences.**

#### **Access to adequate housing and forced evictions**

19. The Committee notes with concern that despite the measures taken by the State party, there is a considerable shortage of social housing in the State party and that the budget allocated to housing, in particular to the Housing Fund, is insufficient. The Committee is also concerned about the large number of families living in informal urban settlements, particularly vulnerable to forced evictions, and about the reports that document forced evictions without prior consultation of the persons affected and without providing compensation, alternative housing or resettlement (art. 11).

**The Committee recommends that the State party allocate sufficient resources to the implementation of programmes aimed at granting security of tenure, including access to credit and housing subsidies for low-income families and disadvantaged groups, taking into consideration the Committee's general comment No. 4 (1991) on the right to adequate housing (article 11, paragraph 1, of the Covenant). The Committee also recommends that the State party adopt laws to determine the circumstances and safeguards governing eviction and to ensure that alternative housing or resettlement and adequate compensation are provided to the victims, in accordance with the Committee's general comment No. 7 (1977) on forced evictions.**

#### **Poverty in rural areas**

20. The Committee regrets the alarming level of poverty in rural areas, despite the establishment of the Rural Development Cabinet and the adoption of a plan of action targeting rural populations living in poverty. The Committee is concerned about the limited budget allocated to the Ministry of Social Development and the limited number of families benefiting from the "Mi bono seguro" programme (art. 11).

**The Committee recommends that the State party pass the bill on rural development with a view to effectively implementing the National Policy for Comprehensive Rural Development addressing poverty and extreme poverty in rural areas. It further recommends that the State party intensify measures to combat poverty and extreme poverty among indigenous peoples and that it continue to strive to fulfil its commitments with respect to the Millennium Development Goals. It also recommends that the State party progressively increase the budget allocated to the Ministry of Social Development and that it adopt a human rights-based approach in the implementation of its programmes.**

#### **Malnutrition and the right to food**

21. The Committee notes with regret the number of cases of acute malnutrition in children under the age of 5, which, despite the measures taken by the State party, continues to be alarmingly high. The Committee is concerned about reports of the limited impact of the Zero Hunger Plan and allegations of political patronage in the management of food assistance programmes. It also notes with concern the considerable expansion of monocultures and the way that has restricted indigenous peoples' access to land on which to grow their own food (art. 11).

**The Committee urges the State party to intensify its efforts to combat and prevent malnutrition among children, in particular those living in rural and remote areas. It also recommends that the State party ensure that sufficient financial and human resources are available and that the necessary measures are adopted to guarantee the**

effective implementation and sustainability of the Zero Hunger Plan, strengthening the components that address the structural causes of malnutrition. It particularly urges the development, within the framework of the National Policy for Comprehensive Rural Development, of the mechanisms necessary to prevent the expansion of monocultures from exacerbating the food insecurity of rural communities.

#### **The right to health**

22. The Committee notes with concern the considerable disparities in the various regions of the country with regard to access to and quality of health-care services, including the concentration of doctors in urban areas, which affects mainly the indigenous population living in poverty and extreme poverty. The Committee finds it regrettable that the health budget is insufficient to provide adequate coverage for the entire population, thereby favouring the private provision of health-care services (art. 12).

**The Committee recommends that the State party increase the health-care budget and take the necessary measures to consolidate a national health system accessible to all without discrimination of any kind, in accordance with article 12 of the Covenant and taking into consideration general comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the Covenant). The Committee recommends that the State party strengthen measures to ensure the coverage and accessibility of the health-care services provided by the State in rural areas and zones inhabited by the indigenous population.**

#### **Sexual and reproductive health**

23. The Committee reiterates its concern about the shortage and inadequacy of sexual and reproductive health services, in particular for girls and women, which result in high rates of maternal mortality and teenage pregnancy (E/C.12/1/Add.93, para. 25). The Committee notes with concern that the State party excludes from liability only those abortions performed to protect the life or health of the pregnant woman and that unsafe or illegal abortions continue to be one of the principal causes of maternal mortality (arts. 10 and 12).

**The Committee recommends that the State party intensify its efforts to address the high rate of teenage pregnancies and ensure the accessibility and availability of sexual and reproductive health services, particularly in rural areas. It further recommends that the State party incorporate comprehensive, age-related sexual and reproductive health education into school curricula at both primary and secondary school level and introduce public education and awareness-raising programmes in this respect. The Committee urges the State party to review its legislation on abortion and to study the possibility of providing for exceptions to the prohibition on abortion, including in cases of pregnancies resulting from rape or incest. It also recommends that the State party guarantee access to health facilities, supplies and services to diminish pre- and post-abortion risks.**

#### **Access to education and budget allocation**

24. The Committee notes with concern the limited size of the education budget and the fact that the State party is one of the countries that spends the least on education in Latin America. The Committee finds it regrettable that the budget allocation for primary education is not sufficient to cover educational costs, which has led, in some public schools, to informal fees being charged in the form of “donations” or “voluntary contributions”, a practice which particularly affects indigenous girls. The Committee is concerned about

discrepancies in quality and infrastructure between urban and rural schools, the low salaries of teachers and their lack of training (art. 13).

**The Committee recommends that the State party remove all direct and indirect charges in primary education, which should be compulsory and available free to all, as established in article 13 of the Covenant. The Committee recommends that the State party provide the resources required to ensure that the quality and infrastructure of the education system are of an acceptable standard in both rural and urban areas. The Committee encourages the State party to improve the salaries, material conditions and training of teaching staff.**

#### **School dropout**

25. Despite the State party's efforts in this regard, the Committee is concerned about the high dropout rates in primary education, in particular among girls in rural areas. The Committee also notes with concern that, despite advances, illiteracy rates remain high, especially in rural areas and among indigenous peoples, and in particular among girls (arts. 13 and 14).

**The Committee recommends that the State party continue its efforts to implement its literacy plan and step up its efforts in rural areas and among the indigenous peoples. It encourages the State party to develop targeted programmes aimed at helping to ensure that students do not drop out of school and addressing the reasons why they do so.**

#### **Bilingual intercultural education**

26. Despite the efforts made by the State party in this regard, the Committee reiterates its concern that indigenous peoples do not always enjoy the right to be educated in indigenous languages. The Committee is further concerned about the existence of factors that limit students' access to secondary and higher education and that make it more difficult for students, once they are in school, to remain there, particularly in the case of indigenous adolescents and young persons (arts. 13 and 14).

**The Committee recommends that the State party intensify its efforts to guarantee the access of indigenous peoples to intercultural education in their own languages and to ensure that such education is adapted to their specific needs. The Committee urges the State party to take urgent steps to preserve and promote the use of indigenous languages.**

#### **Internet access**

27. The Committee is concerned that, despite the State party's efforts in this connection, the access to and use of cyberspace by indigenous peoples remain limited.

**The Committee recommends that the State party continue working to expand Internet access and that it redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet, in particular for indigenous peoples.**

### **D. Other recommendations**

28. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among indigenous peoples (translating them into the main indigenous languages spoken in the country), judicial authorities, lawmakers, lawyers, business people and civil society organizations and to



**inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to engage civil society organizations in the discussions to be held at the national level prior to the submission of its next periodic report.**

**29. The Committee takes note of the fact that the State party has signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and encourages the State party to ratify it.**

**30. The Committee requests the State party to submit its fourth periodic report in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2) by 30 November 2019 at the latest.**

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