



Guatemala

Compliance with the Convention on Economic, Social and Cultural Rights (CESCR)

Submitted by The Advocates for Human Rights,

a non-governmental organization in special consultative status

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publications, including the report *Justice Suspended: the Failure of the Habeas Corpus System in Guatemala*. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of victims of human rights violations from Guatemala have requested legal assistance from The Advocates in applying for asylum. First-hand information from asylum-seekers about the human rights violations that they experienced in Guatemala since the last review in 2014 has been used with their permission in this submission.

I. EXECUTIVE SUMMARY

1. Guatemala's justice system is unable to adequately control the dominance and violence of criminal gangs.¹ Police and other government actors are reportedly frequently complicit or actively working with gangs,² creating a sophisticated system of widespread institutional corruption,³ particularly in the police and judicial sectors.⁴ Police and military involvement has been documented in serious crimes such as kidnapping, drug trafficking, and extortion.⁵
2. Since the International Commission Against Impunity in Guatemala (CICIG) ended in 2019, meaningful reform and prosecution of corruption have stopped in the country.⁶ The current situation has worsened with the constant attacks and harassment of justice operators by gangs and paramilitary groups.⁷ Likewise, the State of Guatemala has limited public legal assistance with just 448 public defenders for 9,014,024 people with low income.⁸
3. The Advocates has provided services for numerous clients from Guatemala whose asylum claims were based on persecution by members of gangs, these clients have provided firsthand information about their experiences with widespread and systemic abuses by both gangs and police. Several clients described being injured by physical abuse, sometimes on multiple occasions; gangs could target people over multiple years.⁹ Our organization has received testimonies of gang members' systemic practice of coercing people to join the gang or do illegal labor, such as selling drugs. Clients recalled suffering death threats and money extortion both as individuals and as "fees" paid by local businesses.¹⁰

II. Indigenous peoples

4. In its 2020 List of Issues, the Committee on Economic, Social and Cultural Rights (The Committee or the ESCR Committee) requested Guatemala to provide information about the State's measures to guarantee the self-determination right of indigenous peoples in the

¹ Freedom House, *Freedom in the World 2020: Guatemala*, (2020), 84. Also available online at <https://freedomhouse.org/country/guatemala/freedom-world/2021>.

² In Sight Crime, *Familias y política se entrelazan en el tráfico de cocaína en Guatemala*, 3 August, 2021. Also available at: <https://es.insightcrime.org/noticias/familias-politica-entrelazan-trafico-cocaina-guatemala/>

³ Walter Flores & Miranda Rivers, *Frenar la corrupción después del conflicto: movilización anticorrupción en Guatemala*, United States Institute for Peace, June 2021, "Also available at https://www.usip.org/sites/default/files/2021-06/sr_482-frenar_la_corrupcion_despues_del_conflicto_movilizacion_anticorrupcion_en_guatemala.pdf.

⁴ Human Rights Watch, *World Report 2021: Guatemala*, (2021). Also available online at <https://www.hrw.org/world-report/2021/country-chapters/guatemala>.

⁵ Human Rights Watch, *World Report 2021: Guatemala*, (2021), 65-66. Also available online at <https://www.hrw.org/world-report/2021/country-chapters/guatemala>.

⁶ Human Rights Watch, *World Report 2021: Guatemala*, (2021), 65. Also available online at <https://www.hrw.org/world-report/2021/country-chapters/guatemala>.

⁷ Thematic Hearing of the Interamerican Commission of Human Rights, *Situación de los derechos humanos de las personas defensoras, operadores de justicia y el Estado de Derecho en Guatemala*, (22 June 2022), Also available online at <https://www.oas.org/es/cidh/sesiones/audiencias.asp>; Press release at <https://www.ohchr.org/en/press-releases/2021/07/guatemala-top-judges-face-threats-must-be-protected-expert>.

⁸ ICCCPG, "Defensores Públicos En Relación Con Las Personas En Situación De Pobreza", accessed 12 July 2022, <https://iccp.org.gt/indicadores/indicador-04/>.

⁹ Interviews conducted by The Advocates (2017-2022).

¹⁰ Interviews conducted by The Advocates (2017-2022).

State. Particularly, the Committee requested information about the prior and free consultation of indigenous about hydroelectric projects, mining exploration, and extractive initiatives and of any environmental impact studies that have been carried out for those projects.¹¹

5. The Committee also required further information on how the Guatemalan State is ensuring the recognition of the land and rights of indigenous peoples.¹² Regarding indigenous women in rural areas, the Committee requested information about access to information and technical assistance for land acquisition and production.¹³
6. The State party reported a first substantive agreement with the aya Q'eqchi' indigenous people in relation to the Fénix mining project in the municipality of El Estor, Izabal.¹⁴
7. Despite the information provided by the Guatemalan State, reports by civil society - specially community journalist- have denounced the consultation as a fraudulent process with “dozens of Q'eqchi' leaders were excluded and under a state of siege”¹⁵
8. Systemic failures to protect the individual and collective rights of indigenous peoples in Guatemala increase the vulnerability of Indigenous persons to violence. Systemic issues include the compounding factors of language barriers, poverty produced by land inequality, invalidation of indigenous knowledge and governance, and anti-indigenous discrimination in the public population and by authorities.¹⁶ As a result, indigenous persons experience disparate outcomes in income, health, employment, and other metrics.¹⁷
9. Indigenous persons endure a disparity on the enjoyment of economic, social and cultural rights, the International Work Group for Indigenous Affairs has reported the particular inequality on exercising on the rights "to health, employment, income, housing, and education, there is a great disparity between Indigenous Peoples and the rest of the population. Official data indicates that poverty affects 75% of Indigenous people and 36% of non-indigenous people; chronic malnutrition affects 58% of Indigenous people and 38%

¹¹ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶ 5.

¹² Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶ 5.

¹³ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶ 10.

¹⁴ Committee on Economic, Social and Cultural Rights, *Replies of Guatemala to the list of issues in relation to its fourth periodic report*, (16 May 2022), U.N.Doc. E/C.12/GTM/RQ/4 ¶ 13.

¹⁵ Guatemala on Trial: Maya Land Rights Case Reaches International Court.” NACLA, <https://nacla.org/guatemala-maya-land-rights-court>. Accessed 25 Aug. 2022.

¹⁶ Dwane Mamo, *The Indigenous World 2022*, (IWGIA, April 2022), 403. Available online at https://www.iwgia.org/doclink/iwgia-book-the-indigenous-world-2022-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWUiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTIwMjltZW5nIiwiaWF0IjoxNjUxMTM5NTg1LCJleHAiOiJlMjE2NTEyMjU0ODV9.jRnv3PeantfRZtJg4jph8xds hK5Mh25Z3hlcPs9As_U.

Zoë Elspeth, and Tolib Mirzoev, *Intimate Partner Violence Against Indigenous Women in Sololá, Guatemala: Qualitative Insights Into Perspectives of Service Providers*, *Violence Against Women*, vol. 28, no. 1 (Violence Against Women, Jan 2022), 150–168. Also available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8564254/>.

¹⁷ Interviews conducted by The Advocates (2017-2022).

of non-indigenous people; and, in terms of political participation, Indigenous individuals represent no more than 15% of parliamentarians and high-ranking public officials.”¹⁸

10. Clients’ stories illustrate that anti-Indigenous oppression compounds the vulnerabilities to violence, extortion, lack of effective remedy, and the failure of police to investigate. One Quiche Mayan client expressed how the local cell of the gang MS-13 persistently targeted him when his family was experiencing poverty, and he had to stop attending school in order to work. This culminated one day when, after finding him, the gang beat him and robbed him of his money because he still refused to join. The gang members targeted him specifically when he was experiencing poverty, and his education was disrupted, illustrating how intersecting oppressions render people susceptible to gang violence.
11. Widespread failure of police to investigate crimes also applies to crimes involving anti-Indigenous discrimination. One client was approached by a woman who said, “her people [were] from the *Curte* (*anti-Indigenous term*) who were invading the area she lived” and physically assaulted the client’s mother. She reported the incident to the police, but she does not believe assault charges are pending.
12. Reports recall the barriers to access to affordable and quality education for indigenous peoples such as the Maya communities, particularly in rural schools. Consequently, the rate of illiteracy rates for indigenous adults is 33 percent.¹⁹

III. Non-discrimination

13. In its 2020 List of Issues, the Committee required the Guatemalan State to provide data about the measures in combating structural discrimination on the enjoyment of economic, social and cultural rights. The Committee also required information about specific programs to reduce inequality gaps, discrimination on the basis of gender identity and/or sexual orientation, and multiple and intersectional discrimination, as well about the steps taken to enhance accountability, including mechanisms for the reporting, investigation and punishment of discrimination²⁰
14. Guatemala fails to investigate human rights violations against LGBTI persons.²¹ Testimonies from LGBTI clients display a pattern of police lack of investigation on even serious crimes, such as hate crimes against LGBTI persons, the torture or murder of LGBTI individuals. The Advocates has also received testimonies about the lack of access to justice in cases of sexual abuse due to the sexual orientation of the victim.²²

¹⁸ Guatemala - IWGIA - International Work Group for Indigenous Affairs. <https://www.iwgia.org/en/guatemala.html>. Accessed 22 Aug. 2022.

¹⁹ “Why Guatemala?” The Guatemala Literacy Project, <https://www.guatemalaliteracy.org/why-guatemala/>. Accessed 22 Aug. 2022.

²⁰ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶17

²¹ Human Rights Watch, “Every Day I Live in Fear”: Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States,” accessed 11 July 2022, <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador>.

²² Interview by The Advocates (2017-2022)

15. The experiences reported by our clients correspond with the current national policies that discriminate against LGBTI persons in the country. Guatemala is experiencing a retrogression in the respect and protection of LGBTI individuals. In the last year, the Guatemalan Congress Passed the “Life and Family Protection Law,” which prohibits same-sex marriage and education and similar public policies.²³ Though the Congress passed the law,²⁴ it was ultimately shelved²⁵ as it violates human rights standards such as the right to non-discrimination. Congress is still debating the proposed legislation, bill 5940,²⁶ placing an immediate risk to the rights of LGTBIQ+ persons.²⁷ This bill intends to ban the education on gender identity and restrict access to educational materials on sexual orientation, gender identity and gender expression.²⁸

Equal Rights of Men and Women (art. 3)

IV. Gender-based violence

16. Violence against women remains widespread and persistent in Guatemala.²⁹ During the March 2020 lockdown, the Public Prosecutor’s Office received 4,399 complaints of violence against women. The National Institute of Forensics in Guatemala (INACIF) reported 140 violent female deaths between March and June.³⁰ The Guatemalan legislation addressing gender violence is inadequate and poorly implemented.³¹
17. The *Secretaria Presidencial de la Mujer* (Presidential Secretary of Women Issues) issued a public policy document “*Estrategia de Seguimiento a la Convención sobre la Eliminación de todas las formas de discriminación contra la mujer*” for the period 2018-

²³ BBC, “Guatemala Congress Bans Same-Sex Marriage,” accessed 12 July 2022, <https://www.bbc.com/news/world-latin-america-60675472>.

²⁴ Human Rights Watch, “La ley de la ‘vida y la familia’ es una cortina de humo para la corrupción,” accessed 12 July 2022, <https://www.hrw.org/es/news/2022/03/15/la-ley-de-la-vida-y-la-familia-es-una-cortina-de-humo-para-la-corrupcion>.

²⁵ Presa Libre, “Congreso archiva polémica Ley para la Protección de la Vida y la Familia que generó críticas de sectores sociales,” accessed 12 July 2022, <https://www.prensalibre.com/guatemala/politica/congreso-archiva-polemica-ley-para-la-proteccion-de-la-vida-y-la-familia-que-genero-criticas-de-sectores-sociales-breaking/>.

²⁶ Different Human Rights Council Special Procedures have presented a communication to the State of Guatemala highlighting the imminent risk upon the approval of this law. See, United Nations Human Rights Council Special Procedures, Communication GTM 10/2021.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26826>.

²⁷ Plaza Publica, “La otra ley «antiderechos» que se encuentra en el Congreso y podría convertirse en cortina de humo,” accessed 12 July 2022, <https://www.plazapublica.com.gt/content/la-otra-ley-antiderechos-que-se-encuentra-en-el-congreso-y-podria-convertirse-en-cortina-de>.

²⁸ Human Rights Watch, *Guatemala: Ley contra personas trans amenaza derechos, Jan 21 2022*. Also available at: .

²⁹ Sydney Bay, *Criminalization is Not the Only Way: Guatemala’s Law Against Femicide and Other Forms of Violence Against Women and the Rates of Femicide in Guatemala*, (Washington International Law Journal, 2021). Also available online at <https://digitalcommons.law.uw.edu/wilj/vol30/iss2/11>.

³⁰ Sydney Bay, *Criminalization is Not the Only Way: Guatemala’s Law Against Femicide and Other Forms of Violence Against Women and the Rates of Femicide in Guatemala*, (Washington International Law Journal, 2021). Also available online at <https://digitalcommons.law.uw.edu/wilj/vol30/iss2/11>.

³¹ Interviews conducted by The Advocates (2017-2022).

2021.³² However, to date there is no public information about the implementation of these policies and the Government of Guatemala has not updated the current public policy document for 2022. Similarly, the *Instituto Nacional de Estadística de Guatemala* has not updated the public national data on violence against women since 2019.³³ The lack of access to information restricts public monitoring and accountability to State institutions.

18. Perpetrators often experience impunity for crimes of violence against women.³⁴ The testimonies from our women clients include kidnapping, rape, and pregnancies resulting from the rape. Women clients reported that police failed to investigate the reports these acts of violence.³⁵ Survivors of violence rarely received remedy and rehabilitation. Our clients have reported receiving constant threats by perpetrators and experiencing PTSD and depression, partly due to the lack of police action to protect them. These clients eventually were forced to flee Guatemala to seek international protection.³⁶

V. *Domestic Violence*

19. In the 2014 concluding information, the Committee recommended to Guatemala to raise awareness among the population regarding the criminal nature of domestic violence and bring those responsible before the courts.³⁷

20. While there is a lack of official data on domestic violence since at least 2019,³⁸ it is estimated that more than 36% of women in Guatemala living with male partners experience intimate partner violence.³⁹ More than 57,000 cases of violence against women were reported in 2020.⁴⁰ Clients of The Advocates, mainly women and children, reported their experiences of physical abuse (including beatings that resulted in miscarriage), sexual assault, and other crimes in their homes by intimate partners, fathers, and uncles.⁴¹

³² Secretaría Presidencial de la Mujer, *Estrategia de Seguimiento a la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer*, (2021). Available online at <https://seprem.gob.gt/wp-content/uploads/Estrategia-CEDAW.pdf>

³³ Instituto Nacional de Estadística de Guatemala, “Violencia en contra de la mujer,” accessed 12 July 2022, <https://www.ine.gob.gt/ine/estadisticas/bases-de-datos/violencia-en-contra-de-la-mujer/>

³⁴ See Silvia Trujillo, *Violencia contra las mujeres: cambian las cifras, persiste el problema*, March 8 2021. Also available at: <https://dialogos.org.gt/blog/violencia-contra-las-mujeres-cambian-las-cifras-persiste-el-problema;> *Tribuna Feminista Guatemala: aumenta feminicidio, con 99% de impunidad*. Also available at: <https://tribunafeminista.org/2017/06/guatemala-aumenta-feminicidio-con-99-de-impunidad/>.

³⁵ Interviews conducted by The Advocates (2017-2022).

³⁶ Interviews conducted by The Advocates (2017-2022)

³⁷ Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Guatemala*, (9 December 2014), U.N. Doc. E/C.12/GTM/CO/3 ¶10.

³⁸ Instituto Nacional de Estadística, *Indicadores de violencia familiares*, last accessed July 13 2022. Available at: <https://www.ine.gob.gt/ine/violencia-intrafamiliar/>

³⁹ Zoë Elspeth, and Tolib Mirzoev, *Intimate Partner Violence Against Indigenous Women in Sololá, Guatemala: Qualitative Insights Into Perspectives of Service Providers*, *Violence Against Women*, vol. 28, no. 1 (Violence Against Women, Jan 2022), 150–168. Also available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8564254/>.

⁴⁰ Washington Office on Latin America, “Little to Celebrate: 5 Facts about Women and Violence in El Salvador, Guatemala and Honduras,” accessed 12 July 2022, <https://www.wola.org/2022/03/women-violence-northern-triangle-5-facts/>

⁴¹ Interviews conducted by The Advocates (2017-2022).

21. Guatemalan police fail to consistently investigate reports of domestic violence and offenders often act with impunity.⁴² The Advocates has received multiple testimonies of women experiencing harassment and persecution by their former partners, including death threats, sexual abuse, and extortion. Our clients asserted that the police do not pursue them in most cases after those being reported. One of our clients reported that the failure to investigate worsened her case as the perpetrator worked for the National Police Force.⁴³
22. Fear of retaliation by gangs also prevents victims from reporting domestic abuse. Commonly, The Advocates have received testimonies of families being afraid to “stand up” to their abusive relatives — members of a gang— even in cases of documented domestic assault charges in the past.⁴⁴

VI. Economic exploitation of children and lack of protection to the right to education.

23. In its 2020 List of Issues, the Committee required aggregated statistics on the prevention of child labor.⁴⁵ The Committee also requested information about the measures taken to prevent physical, sexual, psychological and all other forms of violence.⁴⁶
24. Gangs regularly attempt to recruit children through physical violence and death threats. Several Advocates’ clients under the age of 18 reported experiencing repeated instances of gang members demanding that they join the gang. Gang members “offered” protection from other gangs. When clients refused to join, they threatened to kill them. Threats of murder occurred persistently, sometimes daily, or several times a week.⁴⁷
25. Teenager clients also reported a pattern of harassment at schools, workplaces, and even on the soccer field.⁴⁸ One of The Advocates’ clients testified about asking their teachers to allow them to leave class early to avoid the gangs waiting outside the school. Commonly, teachers were aware of the threats but did not want to get involved.⁴⁹ Consequently, children are isolated as a self-protection tactic.⁵⁰ Gang members then targeted child clients outside of their houses and physically assaulted them.
26. Domestic abuse is also exacerbated when domestic abuse offenders are members of a gang. Clients’ testimonies expressed a pattern of systemic lack of access to justice for child victims of domestic violence due to fear of reprisals by gangs and lack of investigations, charges, or arrests by police.⁵¹

⁴² Erik Beck, *Los Impactos Desiguales de Leyes contra Violencia contra la Mujer en Guatemala*, (2021). Available online at <https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/4/18551/files/2021/11/Los-Impactos-Desiguales-de-Leyes-contra-VCM.pdf>

⁴³ Interviews conducted by The Advocates (2017-2022).

⁴⁴ Interviews conducted by The Advocates (2017-2022).

⁴⁵ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶17

⁴⁶ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fourth periodic report of Guatemala*, (9 November 2020), U.N.Doc. E/C.12/GTM/Q/4 ¶20.

⁴⁷ Interviews conducted by The Advocates (2017-2022).

⁴⁸ Interviews conducted by The Advocates (2017-2022).

⁴⁹ Interviews conducted by The Advocates (2017-2022).

⁵⁰ Interviews conducted by The Advocates (2017-2022).

⁵¹ Interviews conducted by The Advocates (2017-2022).

VII. RECOMMENDATIONS

- Take measures to protect the right to education vulnerable populations such as children and girls.
- Take measures to combat gang presence and recruitment in areas in places where children and youth frequently visit, especially schools.
- Adopt reforms to ensure the independence of the police force from organized crime and to end deep-rooted associations between gangs and police officers to adequately protect at-risk women and LGBTIQ+ individuals.
- Implement effective and coordinated measures to prevent violence against women, especially against young women and girls, and ensure that perpetrators of violence are brought to justice and the survivor repaired.
- Collect data and provide statistics on the access to justice and rehabilitation of survivors of violence against women, LGTBIQ+ persons, and victims of domestic violence.
- Ensure gender-equitable representation in the police force and other agencies of the justice system, particularly at the decision-making and managerial levels.
- Improve legal economic opportunities for youth and make efforts to end child poverty.
- Establish alternatives to detention for youth facing charges related to low-level gang involvement.
- Adopt policies and enact campaigns to promote awareness, education, and respect for LGBTIQ+ persons.
- Strengthen legislation to ban discrimination based on sexual orientation or gender identity.
- Combat impunity by ensuring that law enforcement conducts a thorough investigation of every allegation of violence or discrimination based on sexual orientation or gender identity to assist prosecutors in prosecuting individuals suspected of committing crimes against LGBTI persons.
- Take measures to guarantee the self-determination of indigenous peoples and socio-economic equality of indigenous persons by working with indigenous communities to establish Indigenous-led management programs of their land of origin and natural resources.
- Take measures to reduce economic instability for indigenous persons, including improving the legal framework for the recognition of Indigenous land rights.