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Committee on Economic, Social and Cultural Rights

Fifty-third session

Summary record of the 53rd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 18 November 2014, at 10 a.m.

Chairperson: Mr. Kedzia

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The meeting was called to order at 10.05 a.m.

Consideration of reports (continued)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Third periodic report of Guatemala (continued) (E/C.12/GTM/3; E/C.12/GTM/Q/3 and Add.1; HRI/CORE/GTM/2012)

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*

2. **Ms. Coc Yup** (Guatemala), responding to questions put by Committee members at the previous meeting, said that Guatemala was taking steps to ensure a human rights approach to public administration. Measures had been adopted as part of the move towards democracy, in the wake of the peace agreements and the new Constitution, to ensure the full participation of citizens in policy development, including minority groups such as persons with disabilities, indigenous peoples and women. Building and strengthening relations between the State authorities, non-governmental organizations (NGOs) and civil society groups was a crucial part of the process.

3. In the 1990s, with the scaling down of the role of the State, there had been a need to adjust policies, so that they formed the basis for social policy development and involved civil society more actively and widely. The social development agenda had been largely based on proposals made by the Guatemalan electorate, and recent amendments to budget legislation had resulted in improvements to the planning process.

4. For the first time in its history, Guatemala was drawing up a long-term national development plan. In doing so, it would ensure that its policies were consistent and inclusive, involving not only the Government, but also the civil service, citizens and persons likely to be affected by development plans, and took into consideration the human rights element of development.

5. An inter-institutional network, working with NGOs and civil society, had made it possible to enhance government measures, and to reform and adapt legislation where necessary. For example, steps had been taken to ensure the rights of persons with disabilities and amend human trafficking legislation and racial discrimination policies.

6. Guatemala was doing much more to improve governance, including restructuring institutions, enhancing staff training and development, strengthening planning processes and ensuring good links and coordination between institutions to increase clarity and prevent inconsistencies and duplication of work.

7. As a middle-income country, Guatemala was receiving a diminishing amount of official development assistance (ODA). It therefore had to make optimum use of the development aid available and ensure effective coordination between the various bodies involved in the deployment of funds. Guatemala had been working closely with the United Nations, and had signed a new programme and framework for action for the coming five years, which outlined national plans and priorities. It had also been cooperating with other United Nations agencies, individual countries such as Spain and civil society on development aid projects.

8. Guatemala had been making every effort to combat corruption and increase transparency, and to that end had established a special unit to deal with the issue within the Office of the President. Accountability was also important, and all institutions had to publish information regularly on how they were spending public resources.

9. The national development plan had five priority areas: urban and rural development; social development; economic development; natural resources development; and strengthening the role of the State. The plan included an evaluation component.

10. A particular effort had been made to improve the quality and quantity of statistics, which provided the foundation for policy development. Sectoral units had been established in the National Institute of Statistics, and steps had been taken to ensure that institutional linkages led to consistent statistical information being available to facilitate decision-making. An effective data-collection system had been put in place as part of the new government-wide results-based management system. Public databases were free of charge and available on government websites.

11. With regard to fiscal policy, a raft of measures was being drawn up to develop an effective tax collection system. Legislation had been adopted to prevent tax evasion and measures taken to combat fraud, cash smuggling and counterfeiting. Guatemala was also working at the international level to enhance cooperation, including through improved customs checks and information exchange. At the regional level, the idea of a customs union was under discussion. Under the results-based management system, the focus had been on ensuring that tax revenue was appropriately spent and that the best use of public resources was assured. Guatemala was seeking to restructure its debt on more favourable terms and to improve analysis of credit and risk management. Centralized budget planning and programmes and accounting systems at both central and local government level must therefore be improved to provide a clear picture of public expenditure. With a better fiscal policy in place, public expenditure should reach 14 per cent of gross domestic product (GDP) in the near future, against a current figure of 11.9 per cent, and the budget deficit should be reduced to 1.8 per cent of GDP.

12. As for social development, a major percentage of the budget was spent on social welfare and development programmes. More could be done, but efforts thus far attested to the Government's willingness to improve the living standards of Guatemalan citizens.

13. **Mr. Martínez Juárez** (Guatemala) said that steps had been taken to address discrimination against the lesbian, gay, bisexual, transgender and intersex (LGBTI) community through measures to eliminate discrimination in general, in line with Guatemala's obligations under international instruments. Discrimination was criminalized by the Constitution, under a broad provision covering discrimination on grounds of gender, but it could be interpreted to protect persons discriminated against on the grounds of sexual orientation. The Government was working on the development of a road map, with the two major goals of establishing an institutional body to promote and protect the rights of the LGBTI community and developing guidelines for human rights organizations. It was also working with civil society to raise awareness of the issue. The measures introduced thus far would help foster a human rights culture in general and eradicate discrimination against the LGBTI community in particular.

14. Birth registration had been a problem throughout Guatemalan history. A plan had been launched to increase the number of registrations, which included the creation of a single body in the capital to centralize birth registrations. Legislation had already been adopted to implement measures to ensure people's right to documentation, together with regulations to facilitate registration procedures. As a first step, all persons under the age of 18 would be registered and issued with documents, including those living abroad and foreigners living in the country who had been granted Guatemalan nationality.

15. Guatemala had adopted a range of legislative and other measures to combat gender-based violence, sexual violence and domestic violence. Specialized courts had been established to deal with cases of femicide and violence against women. There were 14 specially trained judges, 8 specialized courts, a number of special chambers within courts

and specially trained prosecutors to handle cases. In 2012, 30 cases had been referred to the courts, with 22 convictions and 8 acquittals; 36 cases in 2013, with 29 convictions and 7 acquittals; and 83 cases in 2014, with 72 convictions and 11 acquittals. A women's office had been set up to lead institutional activities and act as an advisory body on legal matters. In addition, special clinics had been created to offer care and support to victims of violence, legal aid was available, and the State had set up a special fund to tackle violence against women, trafficking in women and femicide.

16. **Ms. Shin** asked whether regular consultations were held with people outside of government on the drafting and adoption of rural and economic development plans, particularly civil society representatives and persons likely to be affected. She wondered whether persons living in remote areas could register births at their nearest town, rather than having to go to the capital. Was a registration charge levied? She wished to know why cases of femicide had more than tripled since 2012 and what sanctions were imposed on the perpetrators of femicide.

17. **Mr. Ribeiro Leão** (Country Rapporteur) asked whether companies were required under the Mining Act to carry out environmental impact assessments before being allowed to proceed with projects.

18. **Ms. Coc Yup** (Guatemala) said that the Government held regular consultations with civil society organizations on development issues, including representatives from rural communities, and had increased the number of representatives in the urban and rural development councils so that a broader range of stakeholders could participate in setting development priorities. National workshops had also been organized to discuss the National Policy on Social Development and Population, and social and online media had been used to raise public awareness of development issues.

19. **Mr. Zapata Romero** (Guatemala) said that the National Policy on Social Development and Population was the result of seven years of negotiation between the Government and civil society organizations.

20. **Mr. Martínez Juárez** (Guatemala) said that the Government had taken a number of steps to raise public awareness of the national birth registration procedure. The National Registry of Persons Act stipulated that parents must register their children within 60 days of birth. Parents who failed to do so were liable to a fine. The Government recognized that some poor, rural families found it very difficult to obtain birth certificates for their children. It had therefore provided them with additional support and had waived their liability in the event of late registration.

21. As for the high rate of femicide, the Government had taken several measures to combat violence against women and raise women's awareness of their legal rights, which had led to a sharp rise in previously unreported cases of domestic violence being brought before the courts.

22. **Mr. Forno** (Guatemala) said that the Government had started to reform the Mining Act and had ceased issuing new mining licences. In future, prior consultations with all relevant stakeholders would be undertaken before mining licences were granted.

23. **Mr. Contreras** (Guatemala) said that informal employment posed a serious threat to national development. Only one in six workers in Guatemala worked in the formal sector and very few workers were affiliated to the national social security system. There were a large number of ongoing labour disputes and a general absence of tripartism in the country. The Government had begun to reform the Labour Code in order to promote formal employment and had strengthened the financial and human resources of the Ministry of Labour. It had also simplified the recruitment process for hiring labour inspectors and had enhanced the General Labour Inspectorate's working methods. Labour inspectors now

spent on average 60 per cent of their time carrying out unannounced visits to companies and 40 per cent settling labour disputes. The number of inspections had therefore increased exponentially in recent years, from 5,000 visits in 2010 to 36,000 visits in 2013, and inspections had become more detailed and probing. Such changes had led to a reduction in the number of persons working in the informal sector and had enabled 50,000 additional workers to contribute to the social security system.

24. The Government had taken steps to create new jobs in the formal economy, including through the introduction of tax incentives for companies hiring young persons and entrepreneurship loans for persons wishing to start their own small to medium-sized businesses. It had also introduced new incentives for companies to encourage them to make the necessary social security contributions on behalf of their workers. Regular consultations with companies and employees were also conducted to ensure that the minimum wage took account of current living costs.

25. The Government had implemented a series of measures to promote social dialogue and strengthen the tripartite system in Guatemala, and had shortened the trade union registration process to 20 working days. In March 2013 it had signed a Memorandum of Understanding with the International Labour Organization (ILO) on the right to freedom of association and had signed an agreement with the United States of America under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA) to address the weaknesses in its national collective bargaining system. Two collective agreements on working conditions had subsequently been signed with the national education and health-care unions. The Government had also taken steps to address impunity and had established a dedicated unit within the Public Prosecutor's Office to investigate and prosecute crimes committed against trade union members and human rights defenders.

26. **Ms. Bras Gomes** asked whether the Government intended to introduce basic social security guarantees for all workers.

27. **Mr. Contreras** (Guatemala) said that Guatemala had ratified 73 ILO conventions and was committed to upholding the rights of workers, particularly domestic workers. The Government was in the process of reviewing its legal and institutional frameworks to ensure that it could meet all its international obligations in respect of employment and had recently introduced sanctions for persons who violated the rights of domestic workers.

28. **Mr. González Oriano** (Guatemala) said that half of children under 5 in Guatemala were severely malnourished. The Government had devised the Zero Hunger Plan in consultation with civil society organizations and had introduced legislation establishing the national food security system with a view to eradicating child malnutrition. It had also implemented a monitoring mechanism to assess the impact of its policy measures and conducted regular surveys to collect disaggregated data on poverty and malnutrition rates. The Government aimed to reduce severe child malnutrition by 10 per cent in the coming years and had focused its efforts on municipalities with the highest levels of malnutrition. Under the Zero Hunger Plan, children had been successfully treated for malnutrition and chronic anaemia, and severe child malnutrition had declined by 1.7 per cent year-on-year. Steps had also been taken to improve national breast-feeding rates and increase access to milk substitutes where required. According to the Hunger and Nutrition Commitment Index, Guatemala currently ranked number 1 in the world for its political commitment to tackling hunger and malnutrition.

29. **Ms. Shin** asked whether the Government had devised a national health insurance plan and whether it had taken steps to address the high rates of adolescent pregnancy.

30. **Mr. Sadi** requested further information on the State party's campaign to curb obesity, including whether it had succeeded in reducing the number of cases.

31. **Mr. Dasgupta** requested up-to-date data on progress made towards reducing poverty in Guatemala, particularly extreme poverty. He also wished to know whether the State party had achieved Millennium Development Goal 1.A to halve the proportion of people whose income was less than US\$ 1.25 a day.

32. **Mr. Martínez Juárez** (Guatemala) said it was true that teenage pregnancy rates were high in the country, and that the Government needed to do more to provide sex education to young girls. The number of cases of HIV/AIDS had also increased in recent years, which was largely due to inadequate education, insufficient prevention measures and the high cost of antiretroviral drugs. Recent reforms of the Criminal Code had criminalized sexual relations with girls under 14 years of age. Men or boys who engaged in such acts were subject to punishment, while the girls involved were referred to services where they could receive proper care. Midwives were being trained and certified so as to decrease the risks involved in childbirth, particularly in indigenous communities.

33. Therapeutic abortion was currently illegal, though it did not incur any criminal penalties. The Constitutional Court had been asked to review the relevant law and consider the possibility of reforming it or adding exceptions in cases of rape or incest. The debate on the issue was ongoing, and the conservative positions of religious communities and other sectors of society must be considered. If abortions were to be performed, the women who underwent the procedure should receive full support and be adequately informed about the consequences.

34. The overall level of child nutrition had improved substantially over the past 25 years or so. Persons living on less than US\$ 1 per day were not only marginalized but, in most cases, exploited, and they needed assistance from the State and from other sources so that they could be in a position to access the labour market.

35. **Mr. Contreras** (Guatemala) said that various government offices were collaborating to look into the root causes of teenage pregnancy in Guatemala and to run information campaigns in an effort to reduce teenage pregnancies. His delegation would provide statistical data in writing to show the extent to which those campaigns had been effective. There were many causes of poverty, including a lack of decent jobs. The improvement in the implementation of labour laws had unfortunately not done enough to create jobs, and the Government was therefore investing in rural development to remedy that situation. It also aimed to expand the social security system to cover more of its citizens.

36. **Ms. Coc Yup** (Guatemala) said that the latest report of Guatemala on the progress made towards the Millennium Development Goals was currently being prepared but that the data had not yet been completely collated and processed. The absolute poverty rate had decreased from about 18 per cent in 2000 to about 13 per cent in 2011, and one of the Government's top priorities was to reduce the rate further. Efforts were being made to develop a single registry of recipients of State benefits, so that persons in need of assistance could be identified more easily. Coordination among various government departments and ministries was needed in order to gather information about people in rural areas who required assistance.

37. **Mr. González Oriano** (Guatemala) said that one of the most effective ways to promote development was by combating malnutrition and that the Government was working to do just that. Guatemala was facing problems of both undernutrition and obesity and was taking action to prevent both, including by ensuring that the food provided through its assistance programmes was nutrient-dense without being overly high in calories.

38. **Ms. Shin** asked at what age a child was considered to be a minor, and at what age sex with a child was considered to be statutory rape. She suggested that, when studying the root causes of teenage pregnancy, the Government should also study the situations of the male partners involved.

39. **Mr. Forno** (Guatemala) said that sexual relations with any person under 14 years of age was classified as a separate offence, but that the offence of statutory rape applied in cases involving persons under 18 years of age. The parliament was considering lifting the ban on abortion or allowing exceptions to the ban, but it had met with resistance on the part of various Christian denominations.

40. **Mr. Zapato Romero** (Guatemala) said that the amount of land used to grow sugar cane and African oil palm had increased in recent years. Although those commercial monocultures had not yet made a substantial impact on food production, if the trend continued it could pose problems, including with regard to the concentration of landownership. In that vein, while the Government was legally unable to cancel the “agrarian debt” accrued by peasants to pay for the land allocated to them, by using other means it had reduced that debt by more than 80 per cent. Land from 36 plantations had been redistributed to more than 2,000 rural families.

41. The Government recognized that private investment alone was not sufficient to improve the lives of all the poor throughout the country, that poverty primarily affected indigenous people, people in rural areas and women, and that measures to promote family agriculture in rural areas were needed. While a multisectoral approach was necessary to fight poverty, it was also essential to coordinate social policies with economic policies. That was being achieved through the nearly 10,000 rural development learning centres established in rural communities, where the community members learned from each other rather than from outside experts.

42. **Mr. Forno** (Guatemala) said that his delegation would provide statistical data in writing on school enrolment and other matters related to education.

43. **Mr. Zapata Romero** (Guatemala) said that the punitive approach to combating drug trafficking had proved to be ineffective or even counterproductive. Guatemala was therefore advocating a seismic shift in the strategy used to deal with drug trafficking, and it was using diplomatic channels to promote that idea. A small country like Guatemala would not be able to implement such a major shift on its own; international cooperation and agreement on the matter would be needed. He expected that certain countries, particularly the United States of America, would oppose the proposed new approach, but it should be recognized that the war on drugs had been a complete failure and that its human and social costs were far too high.

44. **Mr. Martínez Juárez** (Guatemala) said that the traditional education model should be overhauled, as it had shown many shortcomings in both State and private schools. While public education was free of charge, many people did not have access to education. The Government was therefore taking steps to make the entire school experience more accessible, in the form of subsidized school transport, scholarships and free school lunches. From 2011 to 2013, 5 to 6 per cent of the total State budget had been allocated to education. Dropout rates had been reduced in recent years. There were nearly 40,000 teachers who were trained to provide bilingual intercultural education. Municipalities were being encouraged to eliminate illiteracy, and several of them had already done so. The Government had made it a priority to expand the coverage of preschool education throughout the country. School curricula should be overhauled to include more innovative subject matter, so that students could gain the skills needed to succeed in the labour market.

45. Whereas in the past indigenous culture had been exploited to promote tourism, efforts were now being made to strengthen indigenous communities’ control over their own heritage. The adoption of a law on the indigenous management of sacred sites had been a step in the right direction, and such protection efforts should be continued. The Government had spent more than 27 million quetzales to provide indigenous communities with Internet access.

46. **Ms. Coc Yup** (Guatemala) said that the Government had given priority to low-income families when granting direct subsidies to allow them to purchase a new home or improve their current one. Thus far, more than 2,800 families had benefited from such measures. Despite substantial State investment, the housing deficit in Guatemala was still significant.

47. **Mr. Marchán Romero** suggested that the State party should include information on the protection of traditional knowledge in its next periodic report. Despite the State party's stated commitment to speed up the process of holding consultations with indigenous peoples concerning development projects affecting their ancestral lands, it seemed that not much progress had been made in that regard. He asked why the Consejo del Pueblo Maya de Occidente had not been invited to participate in any such consultations. While he recognized the efforts made by the current Government, the obligations under the Covenant were the responsibility of the State party as a whole rather than any individual government, and for many years those obligations had gone unfulfilled with respect to the prior and informed consent of indigenous peoples.

48. **Mr. Forno** (Guatemala) said that the previous regulations on consultations with indigenous peoples had been declared unconstitutional, and that the Government had then adopted a new mechanism in the form of a law on consultations. With advice from the Government of Peru, which had experience in the matter, the Government of Guatemala had developed a plan for carrying out consultations with indigenous communities.

49. **Mr. Contreras** (Guatemala) said that the Ministry of Labour took measures to ensure that it was acting fully in accordance with legal requirements when holding consultations with indigenous peoples and that such consultations were transparent and tripartite in nature. The consultations were carried out through development councils at the community, municipal, departmental and national levels.

50. **Mr. Forno** (Guatemala) thanked the Committee members for their many questions and for the constructive and professional manner in which most of them had participated in the dialogue. He found it regrettable, however, that certain Committee members had made inappropriate comments that failed to show due objectivity or respect for the Government of Guatemala, which had appeared before the Committee in good faith. Nevertheless, he looked forward to reading the Committee's concluding observations and to engaging in future collaboration with the Committee.

51. **Mr. Ribeiro Leão** said that he had found the dialogue to be very helpful in identifying some of the challenges the State party was facing in its implementation of the Covenant. The Committee would gain a better understanding of the situation in the country once it received the statistical data that the delegation had agreed to provide in writing.

52. **The Chairperson** said that he respectfully disagreed with Mr. Forno's views on the comments made by certain Committee members, and that he had not heard any statements made during the dialogue that would justify such an assessment. The Committee was guided by a spirit of cooperation and assistance in all its dialogues with States parties. He thanked the members of the delegation for their thorough responses. The purpose of the dialogue was twofold – to allow the Committee to learn about the problems the State party was facing in its implementation of the Covenant and to allow the delegation to learn about the Committee's concerns that had arisen in the context of the consideration of the State party's report. He believed that that objective had been achieved, and he hoped that the next dialogue with Guatemala would build on that experience through further mutual exchange.

The meeting rose at 1 p.m.